

A regular meeting of the Board of Supervisors of Albemarle County, Virginia, was held on December 18, 2019, at 1:00 p.m., Lane Auditorium, Second Floor, County Office Building, McIntire Road, Charlottesville, Virginia.

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

ABSENT: None.

OFFICERS PRESENT: County Executive, Jeff B. Richardson; Deputy County Executive, Doug Walker; Assistant County Executive, Trevor Henry; County Attorney, Greg Kamptner; Clerk, Claudette Borgersen; and Senior Deputy Clerk, Travis O. Morris.

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

Mr. Gallaway also introduced staff present and the presiding security officers, Officer Dominick Zambrotta and Officer Kristian Hernandez.

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

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Agenda Item No. 4. Adoption of Final Agenda.

Mr. Gallaway asked if Ms. McKeel wanted to speak to Item 21.

Ms. McKeel said they needed to pull from the agenda the Parking General Prohibitions. She said this particular ordinance needed more work and would likely come back to the Board in February. She said since it was advertised for a public hearing, Mr. Kamptner's suggestion was that it be pulled from the agenda and then, at 6:00 p.m., explained that it was pulled but that anyone who was signed up to speak to it will be able to speak. She said the item would be re-advertised when it comes back to the Board in February.

Ms. McKeel said there were some concerns about the item that they needed to address before considering it. Ms. McKeel said she was referring to Item #21.

Mr. Gallaway asked Ms. Mallek if they were also pulling Item #8.11, Special Exception for Disturbance of Critical Slopes, from the Consent Agenda.

Ms. Mallek said she did receive more information that she would like to share with the Board on that topic, having just received that morning from the Forestry Department. She said the Board could take up this item at the end of the day, if people were interested.

Mr. Randolph said he was interested.

Mr. Gallaway said under Item #23, From the Board -- Committee Reports and Matters Not Listed on the Agenda, two items had been added that evening: a resolution in support of legislation improving the Local Fiscal Impact Review Process, and a resolution of support of objectors Champion Brewery on Earlysville Road. He said if for some reason they find some time to address these before Closed Meeting, the Board may be able to move those topics up for discussion.

Ms. Mallek added that if people would like to address those, they could use the 1:00 p.m. Matters from the Public section to cover that rather than the 6:00 p.m. time, or whichever time suited them better.

Ms. McKeel **moved** to adopt the final agenda as amended. Ms. McKeel **seconded** motion. Roll was called and the motion carried by the following recorded vote:

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

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**Introductions.** Mr. Gallaway introduced staff present and the presiding security officers, Officers Dominick Zambrotta and Kristian Hernandez, and Lieutenant Terry Walls.

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

Ms. Mallek said that past Saturday, there had been great weather for the Wreaths Across America ceremony at the Dogwood Memorial and at the WWI, WWII, Korea, and Vietnam Memorial in the front yard of the County Office Building. She said about 50 people came to the Dogwood, and many people placed wreaths for their lost family members, as well as for Monty Montero's brother, who was still MIA and has a new plaque there.

Mr. Randolph noted that Tuesday was the anniversary of the Battle of the Bulge, which was an important day that had a lot of personal resonance with him.

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Agenda Item No. 6. Proclamations and Recognitions.

Mr. Gallaway said he would like to take some time to recognize Mr. Randolph and Mr. Dill, who were finishing out their terms on the Board, for their service to the County.

Ms. McKeel said the Board would miss Mr. Randolph and his land use expertise that he gained from all his years on the Planning Commission, as well as his policy and process recommendations based on his life experiences. She said she is always amazed at Mr. Randolph's many life experiences such as contract negotiation, education, bicycling, and the military, just to name a few. She said they would also miss his sense of humor and the laughter they share.

Ms. McKeel thanked Mr. Randolph for accepting leadership positions on the Board, on committees and commissions. She said the Board recognizes that those leadership positions require a lot of additional time and work.

Ms. McKeel said she went around the building to ask various people who had worked with Mr. Randolph over the past four years to offer some quick thoughts about him. She shared some of those thoughts with everyone.

Ms. McKeel said she has had a quote from Mr. Randolph from a Daily Progress editorial and shared the quote. "Supervisor Rick Randolph summed up things at the County Board meeting. 'The purpose of this revision is to better protect the health, safety, and welfare of our citizens. That, after all, is our rationale for being a local government.'" She thanked Mr. Randolph for giving the County his time and expertise, not only to the residents of the Scottsville District, but to the residents of Albemarle County.

Ms. McKeel presented Mr. Randolph a plaque from the Board in appreciation for his dedicated service and leadership, as well as other gifts.

Ms. Mallek said she appreciated the dedication taken by Mr. Randolph and Mr. Dill to do the Supervisors Master's in Public Policy offered by VACO.

Ms. Palmer said she would miss all the land use expertise from Mr. Randolph.

Mr. Gallaway said a staff's comment about the need to be prepared before trying to persuade and make a case to Mr. Randolph was true.

Ms. Palmer said she went around and asked many people to comment about serving with Mr. Dill and that she incorporated it into the words that she wrote last night as she contemplated it all. She read some of the comments, which spoke to Mr. Dill's four years on the Board, his work with CACs to help guide development in the urban areas and ensure the community's voices are heard, his environmental and climate action efforts, his support for local businesses, his interest in affordable housing, especially for seniors, has helped highlight this critical need in the community and his contributions to solid waste planning. She read her own statement as well.

Ms. Palmer said Mr. Dill's thoughtful, reasonable, and considerate perspective will be missed; his kindness and ability to listen have been evident in our public and private meetings, and our aspects of his character that made working with him so easy and we appreciate him for the ways he maintains his composure and his genuine nature. Ms. Palmer said they respect his analytical approach to problem solving and how he breaks down problems into their constituent parts focusing on core issues. Ms. Palmer said working with Mr. Dill has been a great pleasure and he would be missed. Ms. Palmer said one comment she thought was very special was, "Norman is the conscience of our current Board." She said she agreed.

Ms. Palmer presented Mr. Dill with a plaque from the Board, as well as other gifts.

Ms. Mallek said she was grateful for Mr. Dill's support with local and healthy foods, as well as his certification through VACO.

Mr. Dill thanked Ms. Mallek for encouraging him to go to VACO, stating it was extremely valuable.

Ms. McKeel said the Board would miss Mr. Dill and his thoughtfulness, calmness, and deliberate attitude.

Mr. Gallaway said he knew Mr. Dill was enthusiastic and sincere when he first met him when he campaigned, and that he would be missed.

Mr. Randolph said he wanted to extend his appreciation to Mr. Dill for his generosity of spirit. He said Mr. Dill was away in India and was not able to be there for an application that was somewhat controversial due to the road interface, but Mr. Dill permitted Mr. Randolph to represent his district in his absence, which he felt was a unique honor to be able to represent another Supervisor. He said he appreciated Mr. Dill's faith in him as well as a fellow member of the Class of 2015 election.

Mr. Dill said with the adjoining districts, which are sometimes blurred, he and Mr. Randolph had a lot of overlapping issues but worked well together on them. He said an important part of being on the Board is to be able to have intelligent conversation and being able to respectfully disagree and resolve issues together.

Mr. Gallaway said on behalf of all of our Supervisors, County staff and residents of Albemarle they thank both of you gentlemen for your service to the County.

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

Mr. Jeff Holloway, Site Director and Operating Unit Director at Northrop Grumman Corp. on Route 29, said he would be introducing his replacement. He said he has enjoyed and appreciated his interactions with the Board over the last number of years and that he was retiring at the end of the month after 20 years. He said his replacement, Michael Corrigan, was very capable.

Mr. Holloway thanked the Board for its support and interest in their business, which continues to grow. He said they are hiring and have over 500 employees there now.

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Mr. Michael Corrigan said he would be replacing Mr. Holloway as Site Director at Northrop Grumman. He said he grew up on the Eastern Shore of Maryland before going to school in Washington, D.C. and beginning his 17-year career with Northrop. He said he spent most of this time at their Baltimore facility, which was their sector headquarters, and, most recently, two years in Chicago. He said he was excited to be in Charlottesville and to continue the corporation's partnership with the County.

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Ms. Gay Einstein said she wanted to speak about the debate on sanctuary counties. She said she is a member of the Charlottesville Coalition for Gun Violence Prevention but that she would be speaking as a Presbyterian pastor. She shared a statement adopted by local churches and Presbytery of the James:

"We live in a world in which gun violence has become a fact of life. Our nation's Constitution guarantees the right to bear arms, and we recognize that guns have a role in society for public safety, self-protection, and sport.

"While most people who have guns use them responsibly, there are far too many preventable gun tragedies -- mass shootings, gang hostility, assault, suicide, domestic abuse, accidents (including those that result in the death of children).

"Our creator God gives life. God and Christ brought a message of love and peace. Gun violence is inconsistent with these affirmations."

Ms. Einstein said she wanted to share some of her own experiences drawn from her years as a pastor. She said in one congregation she served, there were two young teens who lived in loving families, but each of them experienced depression and each attempted suicide. She said happily, in both situations, the method they chose was pills, and their acts of desperation were discovered before it was too late.

Ms. Einstein said she stays in contact with one of the teens who, today, is married, has children, and has a successful career. She said her life would have ended too soon if her method of killing herself had been a bullet. She said most gun deaths in the country are suicides.

Ms. Einstein said recently, while serving a different congregation, a woman there was separated from her husband. She said the husband was hurt, angry, and armed with guns. She said the woman was afraid, and her attorney suggested moving into a shelter until her husband's anger subsided, which she did. She said good people suffer from depression, confusion, and anger, and these emotions may be temporary, but they are no less real.

Ms. Einstein said ERPO (Extreme Risk Protection Laws) could be established, and have been established in 17 states, plus D.C. She said that law would allow courts to issue orders to temporarily confiscate firearms from people deemed to be at risk to others or themselves. She said it was one of the many sensible gun laws that will be considered at the General Assembly.

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Ms. Virginia Rovnyak, Crozet resident, said she is an officer at the Charlottesville Center for Peace and Justice. She said she was not there to talk about gun rights, but about gun "wrongs." She said when 30,000 people in the U.S. die from guns every year, that is 30,000 gun "wrongs." She said she did not accept this as it was not a tolerable situation, expressing that something must be done.

Ms. Rovnyak said a few years earlier, a neighbor was sitting in the car with her adult mentally-ill daughter. She said this caring mother had done everything she could over the years with counseling and treatment to help her daughter, yet the daughter bought a gun and, sitting next to the car, she pulled it out and shot her mother dead.

Ms. Rovnyak said there needs to be universal background checks. She said an enormous

percentage of people in the country support universal background checks that would prevent something like this from happening.

Ms. Rovnyak said the local Shelter for Help and Emergency (SHE) is full of women who are afraid for their lives and for those of their children. She said red flag laws are needed that would keep guns from those who are determined to be a present danger to others.

Ms. Rovnyak said there was an armed invasion in the City two years earlier, and the people need a way to be able to protect themselves. She said the County needs a way to be able to prohibit guns at permitted events. She said the presence of guns creates a swagger and an atmosphere of violence, intimidation, and threat. She said when guns are prohibited, that atmosphere evaporates.

Ms. Rovnyak asked the Board to communicate its support to the upcoming General Assembly session for gun safety laws. She asked the Board to uphold any such laws that are passed, and specifically asked them not to declare Albemarle County as a Second Amendment sanctuary.

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Mr. Kirk Bowers, Rivanna District resident, said he wanted to talk about gun amendment rights and was very opposed to any gun sanctuary resolutions. He thanked the Board for not including a resolution to be a gun sanctuary in its meeting agendas.

Mr. Bowers said guns are a sensitive issue in the County because of the events of August 2017, when the people witnessed armed militia parading down their city streets. He said he watched men and women, armed with automatic weapons, walk single file down the Downtown Library and were ready for action. He said it was a threatening sight.

Mr. Bowers said that as surveyor and a combat engineer battalion in Vietnam, he was constantly surrounded by the horror of gun violence, which left a lasting impression on him and one he would never recover from. He said as a veteran, he takes guns extremely seriously and the responsibility of owning a gun.

Mr. Bowers said he was a graduate of Virginia Tech and that 34 students were killed in the building where he had most of his classes, which is only 120 miles away. He said laws are needed to restrict access to guns from the mentally ill.

Mr. Bowers said legally, with the Dylan Rule, it is not within the County's scope of authority to set restrictions on gun law enforcement. He said for these reasons and more, it is sending the wrong message to support gun sanctuaries.

Mr. Bowers thanked Mr. Dill and Mr. Randolph for their excellent service to the community, noting that Mr. Dill was his district representative and has been a bright light after 12 years of dark skies.

Mr. Bowers said he is the recently-elected Conservation Chair to the Piedmont Group. He said they oppose and do not support the proposed brewery on Earlysville Road and would be sending their position statement to the Board soon. He said they will support any resolutions for opposing the brewery.

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Mr. John Cruickshank, Earlysville resident, said he has lived in the area for 41 years. He said he feels that responsible citizens should be able to own guns for hunting, sports, and to defend their own homes, if they feel it is necessary. He said that Virginia, however, does need to implement new gun regulations that align with the Second Amendment of the Constitution of the United States. He said those should include a ban on assault weapons and high-capacity magazines, background checks, red flag laws, and keeping guns out of public venues such as the Downtown Mall, library, supermarkets, or government meetings.

Mr. Cruickshank urged that the Board not make Albemarle County a Second Amendment sanctuary, as it would send the wrong message to the population, particularly to young people. He said he didn't think that responsible gun owners need to worry because he did not think there would be any radical gun regulations passed by the General Assembly.

Mr. Cruickshank said he would also mention the proposed brewery. He said living in Earlysville, he's driven on that road by the bridge for about 31 years and that this is not a safe stretch of road. He said the road is curvy just coming off the bridge, and to the north of the bridge is a huge curve in the road. He said this is not a safe area for an entertainment venue. He said he would support a resolution opposing it.

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Dr. Charles Battig said there is talk about the east coast of Virginia being swallowed up, but that there was a definitive study done by the Virginia Institute of Marine Science showing that the land is sinking, and that it wasn't the ocean going up due to any climate change.

Dr. Battig said there is talk about it getting warmer. He said that one could go to NOAA on the U.S. Government website to see that there are two three-year periods with the temperature going down in the late summer, not going up.

Dr. Battig said regarding hurricanes, the chart he presented shows averages going down, and

that perhaps CO2 is causing fewer hurricanes.

Dr. Battig said actions on carbon footprints were wasted efforts. He said to consider China coal, stating that in one year, China added up 43 gigawatts of new coal power, and the world reduced it by 8 gigawatts. He said even more tellingly, China is building about the same amount of coal fired plants as the entire European Union.

Dr. Battig said the Paris Climate Agreement is actually detrimental to the U.S.'s interests. He said it excludes China and India from doing anything significant and is against the country's interest.

Dr. Battig said Danish academics say it's okay for the U.N. to enforce climate regulations. He said the U.N. are well on their way to climate and social totalitarianism using U.N. climate propaganda.

Dr. Battig said Angela Merkel from Germany said, "We must take away your freedom of speech, or else society won't be free." He said this was a direct quote and not his words.

Dr. Battig asked why the Board has acted as a group against the country's own interests. He said noble cause elitism or other things may be to blame. He wished everyone a happy New Year.

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Ms. Pat Cochran said in response to the eminent request to the Board to create a Second Amendment sanctuary, they in the League of Women's Voters would like the Board to consider the position statement of the National League of Women Voters regarding gun safety:

"The League of Women Voters of the United States believes that the proliferation of hand guns and semiautomatic assault weapons in the United States is a major health and safety threat to its citizens, and the League supports strong federal and state measures to limit the accessibility and regulate the ownership of these weapons by private citizens."

"The League supports regulating firearms for consumer safety, and the League supports licensing procedures for gun ownership by private citizens to include a waiting period for background checks, personal identity verification, safety education, and annual license renewal. The license fee should be adequate to bear the cost of education and verification."

"The League supports enforcement of strict penalties for the improper possession of, and crimes committed with, handguns and assault weapons; and the allocation of resources to better regulate and monitor gun dealers."

"Thank you for your consideration of our position when deliberating on the matter of the Second Amendment sanctuaries to come. And yes, we too, in the League, support the tenants of our Constitution and the Second Amendment itself."

Ms. Cochran thanked the Board for its service to the community.

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Ms. Nancy Carpenter said there has been a lot of talk about affordable housing in the nation, in the County, and in the City where she lives. She said one thing they must look at are interventions and what will keep people housed who run into one of life's challenges that can set them back a month, a half a month, or maybe a couple months. She said she was talking about prevention and emergency assistance.

Ms. Carpenter said the New York Times had an article on December 13 about eviction, citing that from 2014 to 2016, 22% of the amount due for landlords in eviction courts was less than \$600. She asked the Board that as they deliberate through the County budget, they determine, depending on how they would administer it whether in house, or through a contracted agency, that for probably less than \$70,000 in one fiscal year, they could affect the lives of 80-90 distinct individuals or families. She said when they help families, they help children stay stably housed and help them to be able to focus on their schoolwork and education. She said they help the health of a family or individual when they do this.

Ms. Carpenter said she knew there were County staff who are very well-versed in the ideas of interventions and that hopefully, they were bringing them to the Board in order to adopt them. She said there are times when people don't always fit in the safety net because it cannot cover everyone. She said there are huge gaps in the safety nets used locally, and one of them is in emergency assistance.

Ms. Carpenter said if someone needs a car battery and their car is the only way they can get to work, this could cost \$60-70 and perhaps prevent someone from paying their rent. She said if there was an emergency assistance fund to help get the battery installed and they are going back to work, they are able to maintain sustainability in the community instead of looking for other public services when they lose a job. She asked the Board to consider this while they look at their budget, stressing the importance of understanding that emergency assistance can make a great deal of difference to people during challenges, whether they be transportation-related or medical.

Ms. Carpenter cited Sugar Shack as an example of a business that suddenly closed in the City. She said she had a couple calls from people who did not know they were going to lose their job and they are now in a tough place.

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Mr. Nathan Alderman, Crozet resident, said he was there to oppose any measure that would allow Albemarle County to ignore gun safety laws because he cares about reducing gun suicides. He said the Virginia Department of Health records who dies and how. He said the following numbers come from their data, which currently extends through 2017.

Mr. Alderman said that over the recent decade for which there is data, gun suicide has killed more Virginians each year than any kind of murder. He said on average, a person is about 1.6 times more likely to shoot yourself to death than be killed by someone else, a gap that has steadily grown wider over time as suicides rise and homicides fall. He said these figures soar among white men like himself, in particular. He said white Virginian men are more than 5 times more like to die by their own gun than be killed by someone else.

Mr. Alderman said that on average, in that ten-year period, white men represented 36% of the population, 39% of total death, 24% of murders, 67% of suicides, and 76% of gun suicides. He said white men using guns represented more than 4 out of every 10 suicides in Virginia.

Mr. Alderman said red flag laws, like the ones the Assembly will likely consider, can save those lives. He said since 2007, they have cut gun suicides nearly 14% in Connecticut. He said from 2005 to 2015, they reduced gun suicide by 7.5% in Indiana.

Mr. Alderman said no amount of range time or safety training can protect someone from what's in their own head or keep what could just be a low moment from becoming their last moment. He said red flag laws, like all gun safety laws, aren't just about gun owners but are also about their friends, families, and the communities around them. He said if they pledge to thumb their noses at laws like those before they have even come to a vote, they literally do so at their own peril.

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Ms. Deborah Povich, resident of Rio District, said she was there to speak about the myth of the Second Amendment sanctuaries. She said the Second Amendment, as the First and all the other amendments to the Constitution, are guaranteed to all people in all places, so one doesn't need a sanctuary to protect oneself or to assure a right that is guaranteed to all citizens.

Ms. Povich said she strongly supports sensible gun safety policies. She said the state and local governments are responsible to help keep citizens safe. She said there were three particular policies she would urge the Board to consider supporting, acknowledging this is done at the state level, not at the local level: effective background checks, a prohibition on open carry in public places, noting everyone was all somewhat terrorized in 2017 and were merely fortunate there were no gun deaths that day, and a ban on assault weapons and high-capacity magazines.

Ms. Povich thanked the Board for its service. She said she looked forward to continuing to be a safe resident in the County.

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Ms. Sarah Lanzman, resident of White Hall, said she has been in Albemarle County for 37 years and is a landowner. She said she is also a mother and has two grandchildren in Albemarle County Schools. She said she is worried about their safety. She asked the Board to not have Albemarle be a sanctuary county. She said the County should all go through a process together so that the Board doesn't decide on their own, but that everyone has input. She asked for a ban on assault weapons and for discussion about other things that need to be done to keep everyone safe.

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Mr. Tom Straussburg said he lives in the Lockridge subdivision, which adjoins the Rivanna Reservoir. He said he wanted to thank the Board in advance for what he hopes will be a unanimous resolution opposing the granting of an ABC license for a brewery on the reservoir. He said the Board is protecting the environment, ensuring people's safety along Earlysville Road, protecting neighborhoods, and looking out for its constituents. He said everyone appreciates this.

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Ms. Chris Tucker said she also lives near the reservoir. She thanked Mr. Gallaway for holding a community meeting last week at Agnor-Hurt. She also thanked other Board members for attending and listening to what the community has to say about the proposed Champion Brewery.

Ms. Tucker said when they started the process a couple months before, no one had any idea about the zoning laws, particularly the by-right laws. She said now, the people know more about that and they appreciate being heard by everyone. She thanked the Board for its willingness to listen and consider the residents' thoughts about the brewery.

Ms. Tucker said she lives in a residential neighborhood and that the roads are bad. She said there is a lot of potential runoff from the proposed brewery, and the citizens feel very strongly about this.

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Agenda Item No. 8. Consent Agenda.

Ms. McKeel **moved** to adopt the Consent Agenda, as amended. Ms. Mallek **seconded** the

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

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

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Item No. 8.1. Personnel Policy P-86 Amendment.

The Executive Summary forwarded to the Board states that, on June 19, 2019, the Board approved the exchange of the Thomas Jefferson Birthday holiday for a floating holiday for qualified County government employees. The Leave Program policy § P-86 and Holiday policy § P-81 are being revised to incorporate rules around the new floating holiday leave. Additional revisions to the holiday section of the Leave Program policy clarify questions raised since the last revision to this policy on February 6, 2019.

In addition, references to "XX" in Section V of the Leave Program policy is being updated to reflect the new policy number created on February 6, 2019.

The attached amendments to County policies P-81 and P-86 establish procedures for how the floating holiday will work as summarized below. Those departments that are partially or fully live in our new time and attendance system follow the new comprehensive Leave Program policy § P-86. Those departments that are not yet live in our new time and attendance system continue to follow Holiday policy § P-81.

The floating holiday leave will apply on July 1 of each year (start of fiscal year) to employees who are eligible for holiday leave based on their employment status on July 1. Employees will have until June 30 of each year (end of fiscal year) to use the floating holiday leave. Consistent with the other holiday days of leave, non-exempt employees who have not taken the floating holiday by June 30 of each year will be paid out for any unused floating holiday leave at the employee's hourly rate. Exempt employees who have not taken the floating holiday by June 30 of each year will not be paid for the unused holiday leave. Employees starting after July 1 of each year and employees not eligible for holiday leave on July 1 of each year will not be eligible for the floating holiday that fiscal year.

The FY 20 transition year floating holiday leave will be applied on January 1, 2020 to employees eligible for holiday leave based on their employment status on July 1, 2019. Employees will have until June 30, 2020 to use the floating holiday leave. Pay-out of unused floating holiday leave in FY 20 will be consistent with how it will be handled in future years, as set forth above. Employees starting after July 1, 2019 and employees not eligible for holiday leave on July 1, 2019 will not be eligible for the floating holiday this fiscal year.

There is minimal anticipated budgetary impact for this policy change. There is a possible budgetary impact of up to \$5,000 for 5-10 hours of vendor programming time for Fire Rescue's Telestaff system to accommodate this change from a static holiday to floating holiday.

Staff recommends that the Board adopt the attached Resolutions (Attachments A and B) to amend personnel policy §§ P-81 and P-86, respectively.

**By the above recorded vote, the Board adopted the attached Resolutions (Attachments A and B) to amend personnel policy §§ P-81 and P-86, respectively:**

**RESOLUTION**

**WHEREAS**, the Board of Supervisors has adopted County of Albemarle Personnel Policies pursuant to Albemarle County Code Section 2-901; and

**WHEREAS**, the Board desires to amend Section P-81 regarding holidays.

**NOW, THEREFORE, BE IT RESOLVED THAT** the Board of Supervisors of Albemarle County, Virginia, hereby amends Section P-81, Holidays, of the County of Albemarle Personnel Policies, as follows:

**Section P-81 Holidays**

**A. Holidays Observed**

The County has established the following holiday schedule for County 12-month benefits-eligible employees.

1. New Year's Day – January 1
2. Martin Luther King, Jr. Day - Third Monday in January
3. President's Day (Washington's Birthday) – Third Monday in February
4. Memorial Day – Last Monday in May
5. Independence Day – July 4
6. Labor Day – First Monday in September
7. Veteran's Day – November 11
8. Thanksgiving Day – Fourth Thursday in November

9. Friday after Thanksgiving
10. Christmas Eve – December 24
11. Christmas Day – December 25
12. Floating Holiday – 1 day per fiscal year

Other holidays are granted by special proclamation of the Board of Supervisors. Holiday leave for qualified employees is paid.

Employees of departments who serve both the County and Albemarle County Public Schools as client groups may choose, with supervisor approval, which holiday leave schedule to follow each fiscal year. If the holiday schedules of the County and Albemarle County Public Schools do not equal the same number of days, County employees who choose to follow the Albemarle County Public Schools holiday schedule must be granted the same number of holidays as other County employees. If business needs necessitate a mid-year change, an employee's schedule shall be adjusted so that the employee receives no more than the Board approved number of holidays granted that fiscal year.

Under certain situations, due to coverage requirements or non-County building closures, the holiday schedule for some departments or groups of employees within departments may fall on alternate dates within the fiscal year. Departments in these situations must receive Director of Human Resources/designee approval for designating alternate holiday schedules. These alternate holiday schedules must equal the number of approved County holidays.

Employees of offices that follow the State holiday schedule (such as the courts and constitutional offices) may be approved for an alternate holiday schedule matching the State's holiday schedule regardless of whether the schedule contains more, fewer, or the same number of days at the County's schedule.

#### **B. Qualifying for Holiday Leave**

1. Twelve (12)-month benefits-eligible employees qualify for holiday leave (except floating holiday) as soon as they begin working. New employees must physically work at least a day before a holiday to qualify for holiday leave.
2. Employees who are terminating employment with the County will not qualify for holiday leave unless they physically work a day after the holiday. Approved paid leave may be used in lieu of physically working following a holiday. If a holiday falls on the last day of the month or week, holiday leave may be granted by the department head/designee for retiring employees.
3. If a holiday falls within the employee's scheduled annual leave, holiday leave may be used in lieu of annual leave.

#### **C. Working on Holidays**

1. Due to coverage requirements, some employees may be required to work on a scheduled holiday. Any qualified non-exempt employee who is required by the department head/designee to work on a scheduled holiday shall:
  - a. Be paid the hourly rate for the hours worked on the holiday plus the hours normally granted for the holiday; or
  - b. Substitute another day in the workweek / work cycle (for 28-day public safety employees) as holiday leave, including days in the workweek / work cycle (for 28-day public safety employees) before the established holiday.
2. Qualified exempt employees who work on a holiday may take the holiday on another day approved by the supervisor within the fiscal year. Employees may not take the holiday prior to the County designated holiday date, except within the workweek / work cycle (for 28-day public safety employees) in which the holiday falls. Unused holiday leave is never paid out and does not carry over fiscal years. Holiday leave does not transfer if an employee changes departments. It must be taken prior to transfer or it is forfeited.
3. Qualified employees who are scheduled to work on a holiday, but fail to do so for any reason, are considered to have observed the holiday. Unworked scheduled work hours in excess of holiday hours must be covered by use of some other appropriate leave.
4. Alternative Work Schedules: A "day of holiday leave" is equivalent to a "day of leave" as defined in section I(B), above. Employees must discuss the impact of holiday leave on their alternative work schedules with supervisors. Employees are responsible for making up any hourly difference between the hours granted for the holiday and the employees' work schedule by either using other applicable leave or working at another time during the workweek or work period. Fire Rescue employees on 12- or 24-hour shifts will receive 12 hours of a "day of holiday leave" regardless of their "day of leave" status.



Example: A non-exempt employee's day of leave is 8 hours/day and the employee's position is established at 8 hours/day, 5 days/week for a total of 40 hours/week. The employee has an alternative work schedule of 10 hours/day, 4 days/week for a total of 40/hours per week. Eight (8) hours of holiday leave would be granted and the employee must account for the remaining 2 hours by working 2 additional hours within that workweek or using 2 hours of compensatory time leave or annual leave.

#### **D. Floating Holiday**

1. Employees who qualify for holiday leave as of July 1 of each year are granted one (1) day of floating holiday leave for that fiscal year. Qualified employees are granted the floating holiday leave based on their day of leave status on July 1 of each year.
2. Scheduling of a floating holiday shall follow the same approval procedures as annual leave. Floating holiday leave may be used in the same increments as annual leave.
3. Floating holidays do not rollover to the following fiscal year.
  - a. Non-exempt employees who have not taken the floating holiday by June 30 of each year will be paid out for any unused floating holiday leave at the employee's hourly rate.
  - b. Exempt employees who have not taken the floating holiday by June 30 of each year will not receive additional pay.
  - c. Employees who move during a fiscal year from a non-exempt position eligible for the floating holiday to an exempt position eligible for the floating holiday (and vice versa) will receive/not receive additional pay based upon their non-exempt/exempt status at the end of the fiscal year.
4. Upon transfer/hire from a 12-month position to any position that is not eligible for the floating holiday leave and upon separation of employment:
  - a. Non-exempt employees will be paid out for any unused floating holiday leave at the employee's hourly rate.
  - b. Exempt employees will not receive additional pay for any unused floating holiday leave.
5. For the implementation year of floating holiday leave, employees who qualified for holiday leave as of July 1, 2019 will be granted one (1) day of floating holiday leave on January 1, 2020 for the remainder of the FY2019-2020 fiscal year.

#### **E. Half-day Holidays**

The Board may grant half-day holidays to benefits-eligible 12-month employees. A "half-day" is defined as half of an employee's day of holiday leave. Any non-exempt employee who receives approval not to work the other half of the day is responsible for taking compensatory time leave, annual leave, leave without pay, or arranging with his/her supervisor to work those hours within the workweek. An exempt employee who doesn't work on the half-day may make arrangements with the supervisor to work the time missed on another day within the fiscal year or use annual leave for the half-day.

#### **F. Religious Holidays**

Any regular or temporary employee observing a religious holiday occurring on the employee's workday may request time off. Supervisors should allow employees to take time off for such occasion if the time off can be accommodated without undue hardship to the department. Leave must be requested in advance in accordance with policy. Supervisors shall contact the Department of Human Resources prior to denying religious holiday leave requests. Applicable accrued leave shall be used. Leave without pay will be considered in the absence of accrued leave.

Amended: August 4, 1993; August 2, 2000; February 10, 2016

\* \* \* \* \*

#### **RESOLUTION**

**WHEREAS**, the Board of Supervisors has adopted County of Albemarle Personnel Policies pursuant to Albemarle County Code Section 2-901; and

**WHEREAS**, the Board desires to amend Section P-86 regarding building closure leave and holiday leave.

**NOW, THEREFORE, BE IT RESOLVED THAT** the Board of Supervisors of Albemarle County, Virginia, hereby amends Section P-86, Leave Program, of the County of Albemarle Personnel Policies, as follows:

## **Section P-86 Leave Program**

### **V. Building Closure Leave**

Paid leave and unpaid leave due to inclement weather and other County emergencies are addressed in § P-66, Coverage Due to Weather and/or Emergency.

## **XIII. Holiday Leave**

### **A. Holidays Observed**

The County has established the following holiday schedule for County 12-month benefits-eligible employees. Other holidays are granted by special proclamation of the Board of Supervisors. Holiday leave for qualified employees is paid.

1. New Year's Day – January 1
2. Martin Luther King, Jr. Day - Third Monday in January
3. President's Day (Washington's Birthday) – Third Monday in February
4. Memorial Day – Last Monday in May
5. Independence Day – July 4
6. Labor Day – First Monday in September
7. Veteran's Day – November 11
8. Thanksgiving Day – Fourth Thursday in November
9. Friday after Thanksgiving
10. Christmas Eve – December 24
11. Christmas Day – December 25
12. Floating Holiday – 1 day per fiscal year

Employees of departments who serve both the County and Albemarle County Public Schools as client groups may choose, with supervisor approval, which holiday leave schedule to follow each fiscal year. If the holiday schedules of the County and Albemarle County Public Schools do not equal the same number of days, County employees who choose to follow the Albemarle County Public Schools holiday schedule must be granted the same number of holidays as other County employees. If business needs necessitate a mid-year change, an employee's schedule shall be adjusted so that the employee receives no more than the Board approved number of holidays granted that fiscal year.

Under certain situations, due to coverage requirements or non-County building closures, the holiday schedule for some departments or groups of employees within departments may fall on alternate dates within the fiscal year. Departments in these situations must receive Director of Human Resources/designee approval for designating these alternate holiday schedules. These alternate holiday schedules must equal the number of approved County holidays. Employees of offices that follow the State holiday schedule (such as the courts and constitutional offices) may be approved for an alternate holiday schedule matching the State's holiday schedule regardless if the schedule contains more, fewer, or the same number of days at the County's schedule.

### **B. Qualifying for Holiday Leave**

1. Twelve (12)-month benefits-eligible employees qualify for holiday leave (except floating holiday) as soon as they begin working. New employees must physically work at least a day before a holiday to qualify for holiday leave.
2. Employees who are terminating employment with the County will not qualify for holiday leave unless they physically work a day after the holiday. Approved paid leave may be used in lieu of physically working following a holiday. If a holiday falls on the last day of the month or week, holiday leave may be granted by the department head/designee for retiring employees.
3. If a holiday falls within the employee's scheduled annual leave, holiday leave may be used in lieu of annual leave.

### **C. Working on Holidays**

1. Due to coverage requirements, some employees may be required to work on a scheduled holiday. Any qualified non-exempt employee who is required by the department head/designee to work on a scheduled holiday shall:
  - a. Be paid the hourly rate for the hours worked on the holiday plus the hours normally granted for the holiday; or
  - b. Substitute another day in the workweek / work cycle (for 28-day public safety employees) as holiday leave, including days in the workweek / work cycle (for 28-day public safety employees) before the established holiday.
2. Qualified exempt employees who work on a holiday may take the holiday on another day approved by the supervisor within the fiscal year. Employees may not take the holiday prior to the County designated holiday date, except within the workweek / work cycle (for 28-day public safety employees) in which the holiday falls. Unused holiday leave is never paid out and does not carry over fiscal years. Holiday leave does not transfer if an employee changes departments. It must be taken prior to transfer or it is forfeited.
3. Qualified employees who are scheduled to work on a holiday, but fail to do so for any reason, are considered to have observed the holiday. Unworked scheduled work hours in excess of holiday hours must be covered by use of some other appropriate leave.
4. Alternative Work Schedules: A “day of holiday leave” is equivalent to a “day of leave” as defined in section I(B), above. Employees must discuss the impact of holiday leave on their alternative work schedules with supervisors. Employees are responsible for making up any hourly difference between the hours granted for the holiday and the employees’ work schedule by either using other applicable leave or working at another time during the workweek or work period. Fire Rescue employees on 12- or 24-hour shifts will receive 12 hours of a “day of holiday leave” regardless of their “day of leave” status.

**Example:** A non-exempt employee’s day of leave is 8 hours/day and the employee’s position is established at 8 hours/day, 5 days/week for a total of 40 hours/week. The employee has an alternative work schedule of 10 hours/day, 4 days/week for a total of 40 hours per week. Eight (8) hours of holiday leave would be granted and the employee must account for the remaining 2 hours by working 2 additional hours within that workweek or using 2 hours of compensatory time leave or annual leave.

#### **D. Floating Holiday**

1. Employees who qualify for holiday leave as of July 1 of each year are granted one (1) day of floating holiday leave for that fiscal year. Qualified employees are granted the floating holiday leave based on their day of leave status on July 1 of each year.
2. Scheduling of a floating holiday shall follow the same approval procedures as annual leave. Floating holiday leave may be used in the same increments as annual leave.
3. Floating holidays do not rollover to the following fiscal year.
  - a. Non-exempt employees who have not taken the floating holiday by June 30 of each year will be paid out for any unused floating holiday leave at the employee’s hourly rate.
  - b. Exempt employees who have not taken the floating holiday by June 30 of each year will not receive additional pay.
  - c. Employees who move during a fiscal year from a non-exempt position eligible for the floating holiday to an exempt position eligible for the floating holiday (and vice versa) will receive/not receive additional pay based upon their non-exempt/exempt status at the end of the fiscal year.
4. Upon transfer/hire from a 12-month position to any position that is not eligible for the floating holiday leave and upon separation of employment:
  - a. Non-exempt employees will be paid out for any unused floating holiday leave at the employee’s hourly rate.
  - b. Exempt employees will not receive additional pay for any unused floating holiday leave.
5. For the implementation year of floating holiday leave, employees who qualified for holiday leave as of July 1, 2019 will be granted one (1) day of floating holiday leave on January 1, 2020 for the remainder of the FY2019-2020 fiscal year.

#### **E. Half-day Holidays**

The Board may grant half-day holidays to benefits-eligible 12-month employees. A “half-day” is defined as half of an employee’s day of holiday leave. Any non-exempt employee who receives approval not to work the other half of the day is responsible for taking compensatory time leave, annual leave, leave without pay, or arranging with his/her supervisor to work those hours within the workweek. An exempt employee who doesn’t work on the half-day may make arrangements with the supervisor to work the time missed on another day within the fiscal year or use annual leave for the half-day.

#### **F. Religious Holidays**

Any regular or temporary employee observing a religious holiday occurring on the employee’s workday may request time off. Supervisors should allow employees to take time off for such occasion if the time off can be accommodated without undue hardship to the department. Leave must be requested in advance in accordance with policy. Supervisors shall contact the Department of Human Resources prior to denying religious holiday leave requests. Applicable accrued leave shall be used. Leave without pay will be considered in the absence of accrued leave.

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Item No. 8.2. Resolution Request for Funding Through VDOT Recreation Access Program to Construct New Entrance and Roadway to Biscuit Run Park.

The Executive Summary forwarded to the Board states that Biscuit Run Park is a nearly 1200-acre property located in Albemarle County. The Commonwealth of Virginia acquired the property in 2009 under Governor Kaine’s administration. On January 4, 2018 Governor McAuliffe announced a partnership with Albemarle County to open Biscuit Run park to the public.

Governor McAuliffe and the Department of Conservation and Recreation signed a 99-year lease with Albemarle County for the property. The park will be the first of its kind in Albemarle’s development area, as it will serve as an urban and regional recreational facility. This partnership will allow the park to open sooner than expected and will provide high-quality recreational opportunities/experiences for residents in Albemarle County and surrounding communities.

The lease assures protection of the park’s natural resources; a minimum of eighty percent of the park will remain forested, all sensitive natural heritage resources will be protected, and management concerns like invasive species will be minimized.

The property on which this facility is located has no adequate access to a public street or roadway, and will require the construction of a new roadway that will connect to Avon Street Extended (Route 742) and will provide access to the first parking area which will serve as trail head parking to access the many existing multi-use trails. Capital Improvement Project funds have already been appropriated in the amount of \$2,171,702.

Phase 1A road/entrance construction of this project is eligible through the Virginia Department of Transportation (VDOT) Recreation Access Program for \$250,000 unmatched State dollars and up to an additional \$100,000 in State dollars with \$100,000 in Local Government matched dollars. A requirement of the grant process is an official request by resolution of the local governing body, Attachment A, which also authorizes the County Executive and/or his designee(s) to act on behalf of the Board of Supervisors to execute any and all documents necessary to secure the funding up to, but not exceeding, \$350,000 in State funds which will be matched with not less than \$100,000 in Local funds.

Capital Improvement Project funds have already been appropriated in the amount of \$2,171,702. The VDOT Recreational Access Grant Funds will provide an additional \$350,000 from VDOT, which is needed to procure the complete access road construction services for Biscuit Run Phase 1A. The Capital Improvement Project funds already appropriated will provide the required \$100,000 in matched Local funds.

Staff recommends the Board of Supervisors adopt the attached Resolution (Attachment A) to authorize the County Executive and/or his designee(s) to execute the application for Recreational Access Funds for this project.

**By the above recorded vote, the Board adopted the attached Resolution to Request for Funding Through VDOT Recreation Access Program to Construct New Entrance and Roadway to Biscuit Run Park (Attachment A) to authorize the County Executive and/or his designee(s) to execute the application for Recreational Access Funds for this project.:**

#### **RESOLUTION REQUESTING FUNDING THROUGH THE RECREATION ACCESS PROGRAM TO CONSTRUCT A NEW ENTRANCE AND ROADWAY TO BISCUIT RUN PARK**

**WHEREAS**, Biscuit Run Park is owned by the Commonwealth of Virginia, leased to Albemarle County, and is to be developed by Albemarle County as a nearly 1,200-acre recreational facility serving the residents of Albemarle County and adjoining localities; and

**WHEREAS**, the property on which this facility will be located has no adequate access to a public street or roadway and will require the construction of a new roadway that will connect to Avon Street Extended (Route 742) and provide access to the first parking area serving a major focal point; and

**WHEREAS**, the access road is planned to be constructed entirely on publicly owned property as required by Section 33.2-1510(C) of the *Code of Virginia*; and

**WHEREAS**, the procedure governing the allocation of recreational access funds as set forth in Section 33.2-1510 of the *Code of Virginia* requires joint action by the Director of the Department of Conservation and Recreation and the Commonwealth Transportation Board; and

**WHEREAS**, a statement of policy agreed upon between the said Director and Board approves the use of such funds for the construction of access roads to publicly-owned recreational areas; and

**WHEREAS**, the Board of Supervisors has duly adopted a zoning ordinance pursuant to Article 7 (Section 15.2-2280 et seq), Chapter 22, Title 15.2 of the *Code of Virginia*; and

**WHEREAS**, it appears to the Board of Supervisors that all requirements of the law have been met to permit the Director of the Department of Conservation and Recreation to designate Biscuit Run Park as a public recreational facility and further permit the Commonwealth Transportation Board to provide funds for access to this public recreation area in accordance with Section 33.2-1510 of the *Code of Virginia*; and

**WHEREAS**, the Board agrees, in keeping with the intent of Section 33.2-405 of the *Code of Virginia*, to use its good offices to reasonably protect the aesthetic or cultural value of this road leading to or within areas of historical, natural or recreational significance; and

**WHEREAS**, the County of Albemarle acknowledges that no land disturbance activities may occur within the limits of the proposed access project without the permission of the Department of Transportation as a condition of the use of the Recreational Access Fund; and

**WHEREAS**, Albemarle County hereby guarantees that the necessary environmental analysis, mitigation, and fee simple right of way for this improvement, and utility relocations or adjustments, if necessary, will be provided at no cost to the Virginia Department of Transportation.

**NOW, THEREFORE BE IT RESOLVED**, that the Board of Supervisors of Albemarle County hereby requests that the Director of the Department of Conservation and Recreation (a) designate Biscuit Run Park as a public recreational area and (b) recommend to the Commonwealth Transportation Board that recreational access funds be allocated for an adequate access road to serve said park;

**BE IT FURTHER RESOLVED**, that the Commonwealth Transportation Board is hereby requested to allocate the necessary recreational access funds to provide a suitable access road as hereinbefore described; and

**BE IT FURTHER RESOLVED**, that the County Executive and/or his designee(s) are authorized to act on behalf of the Board of Supervisors to execute any and all documents necessary to secure the funding sought through the Recreational Access Program up to, but not exceeding, \$350,000 in State funds, to be matched with not less than \$100,000 in Local funds.

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Item No. 8.3. Eastern Avenue South Connection Design and Engineering Study.

The Executive Summary forwarded to the Board states that, in October 2019, Community Development (CDD) Transportation Planners drafted a Revenue Sharing grant application for submission to the Virginia Department of Transportation (VDOT) for the Eastern Avenue South Connection project. This two-lane roadway would connect the southern portion of Eastern Avenue and portions of the Westhall and Foothills Crossing Developments across Lickinghole Creek to the Cory Farms Development and on to US 250. It would provide a new access point to the rapidly growing residential neighborhoods east of Crozet Avenue in the Crozet Development Area and would include sidewalks, bike lanes and street trees; the bridge over Lickinghole Creek would be the most substantial, and the costliest, feature of the new roadway.

Staff based this grant application on a preliminary, 2008 conceptual design and VDOT Planning cost estimate. This estimate was updated in 2013, and subsequent planning cost estimates included inflation rates to the anticipated 2022 construction start date. This project was included in a FY19 CIP request for \$5,804,000 which was 50% of the estimated project cost of \$11,608,000.

Due to concerns associated with a rapidly changing and fluctuating construction market, particularly on projects of this nature, County staff requested that VDOT perform a preliminary review of the cost estimate prior to final grant submission. VDOT completed this review and provided two (2) conceptual estimates in late September 2019. These updated VDOT estimates projected total costs for the roadway between \$15.5 million and \$17.2 million; potential routes and bridge lengths account for the difference in the two estimates.

After receiving the VDOT estimates that showed a significant increase in project costs, the County Executive office requested that staff meet with a transportation engineering firm to determine the

scope of an engineering and conceptual design study that would provide a more thorough analysis of potential design options by providing cost estimates for three (3) conceptual road alignment and bridge options. The proposed location and design engineering study would include a location analysis; environmental review; surveying; traffic engineering / analysis; conceptual structural design; drainage design; and roadway design for the Eastern Avenue South Connection in Crozet. Staff is currently reviewing and finalizing the scope of this study and does not anticipate the final cost to exceed \$275,000.

This study will assist staff in analyzing options and alternatives to reduce costs and enable the County to move forward with this high-priority project. It would include an engineer's opinion of probable construction cost and 30% complete design plans which would enable the County to submit preliminary plans to VDOT for review. CDD is in the process of procuring a regional traffic study as part of the Crozet Master Plan update which will include traffic counts and traffic projections for Eastern Avenue. The timing of this work could potentially reduce costs associated with this proposed study

There is no budgetary impact. If approved, funding for this study would be appropriated from the Transportation Leveraging Program in the Capital Improvement Program

Staff recommends approval of this engineering study

**By the above recorded vote, the Board approved the Eastern Avenue South Connection Design and Engineering Study.**

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Item No. 8.4. Conveyance of Small Pieces of Land to Virginia Department of Transportation for Bridge Replacement in Totier Creek Park.

The Executive Summary forwarded to the Board states that the Commonwealth of Virginia, acting by and through its Department of Transportation (VDOT), requested the conveyance of portions of Tax Parcel 13600-00-00-02900. The request includes 735 square feet of prescriptive right-of-way, 2,083 square feet of fee simple land, and 6,744 square feet of temporary construction easement.

The Board held a public hearing and authorized the conveyance by motion on November 20, 2019. VDOT has requested that the Board's action be by resolution.

A resolution authorizing the conveyance is included as Attachment A. The executive summary prepared for the November 20, 2019 public hearing is included as Attachment B.

The County will receive \$400.00 in consideration for this conveyance and VDOT will maintain the bridge. There are no other budget impacts associated with this request.

Staff recommends that the Board adopt the attached resolution (Attachment A) authorizing the County Executive to sign the deed of conveyance after it is approved as to substance and form by the County Attorney.

**By the above recorded vote, the Board the attached Resolution (Attachment A) authorizing the County Executive to sign the deed of conveyance after it is approved as to substance and form by the County Attorney:**

**RESOLUTION TO APPROVE CONVEYANCE OF REAL PROPERTY  
TO THE COMMONWEALTH OF VIRGINIA, ACTING BY AND THROUGH  
THE VIRGINIA DEPARTMENT OF TRANSPORTATION**

**WHEREAS**, the Board finds it is in the best interest of the County to convey portions of Tax Parcel 13600-00-00-02900 (735 square feet of prescriptive right-of-way, 2,083 square feet of fee simple land, and 6,744 square feet of temporary construction easement), located at 9290 Totier Creek Road (the "Property"), to the Commonwealth of Virginia, acting by and through the Virginia Department of Transportation ("VDOT"), for the purpose of VDOT's replacement of a bridge in Totier Creek Park.

**NOW, THEREFORE, BE IT RESOLVED**, that the Board of Supervisors of the County of Albemarle, Virginia, hereby approves the conveyance of the Property to the Commonwealth of Virginia, acting by and through VDOT, for the above purpose, and authorizes the County Executive to execute a Deed of Conveyance on behalf of the County after it is approved as to substance and form by the County Attorney.

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Item No. 8.5. Authorization to Schedule a Public Hearing for Ordinance to Amend County Code Chapter 4, Animals (Dogs – 5 acres).

The Executive Summary forwarded to the Board states that County Code § 4-319 provides that it is unlawful and a nuisance for an owner or custodian of an animal to allow the animal to frequently or for a continued duration howl, bark, or make other excessive or continuous sounds which are audible on the property of a complainant in the County. There are four classes of animal sounds that are exempt from Section 4-319, one of which applies to sounds "created by any animal located on a parcel five acres or more in size that is zoned Rural Areas district." The Board has recently received complaints from constituents about nearby dogs barking incessantly, where the dogs are located on parcels larger than five acres in the Rural Areas zoning district and, therefore, Section 4-319 does not apply.

The attached proposed Ordinance (Attachment A) would amend County Code § 4-319, Frequent or continuous sounds by animals are prohibited, to eliminate the exemption for sounds from animals located on parcels five acres or more in size in the Rural Areas zoning district.

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 scheduled a public hearing to consider the adoption of the attached proposed Ordinance (Attachment A).**

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Item No. 8.6. Resolution to accept road(s) in the Stillhouse Ridge Subdivision into the State Secondary System of Highways (Samuel Miller Magisterial District).

**By the above recorded vote, the Board adopted the Resolution to accept road(s) in the Stillhouse Ridge Subdivision into the State Secondary System of Highways (Samuel Miller Magisterial District):**

The Board of County Supervisors of Albemarle County, Virginia, in regular meeting on the 18th day of December 2019, adopted the following resolution:

#### **R E S O L U T I O N**

WHEREAS, the street(s) in **Stillhouse Ridge Subdivision**, as described on the attached Additions Form AM-4.3 dated **December 18, 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 **Stillhouse Ridge Subdivision**, as described on the attached Additions Form AM-4.3 dated **December 18, 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 December 18, 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 Stillhouse Ridge

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 Statute: 33.2-705, 33.2-334

Street Name and/or Route Number

Stillhouse Ridge Lane, State Route Number 861

Old Route Number: 0

- From: Route 689, Pounding Creek Road  
To: 0.34 Miles South to CDS, a distance of 0.34 miles.  
Recordation Reference: DB 3159: PG 92-94  
Right of Way width (feet) = 0

Item No. 8.7. Resolution to accept road(s) in the Berkshire Landing Subdivision into the State Secondary System of Highways (Jack Jouett Magisterial District).

**By the above recorded vote, the Board adopted the Resolution to accept road(s) in the Berkshire Landing Subdivision into the State Secondary System of Highways (Jack Jouett Magisterial District):**

The Board of County Supervisors of Albemarle County, Virginia, in regular meeting on the 18th day of December 2019, adopted the following resolution:

RESOLUTION

WHEREAS, the street(s) in **Berkshire Landing Subdivision**, as described on the attached Additions Form AM-4.3 dated **December 18, 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 **Berkshire Landing Subdivision**, as described on the attached Additions Form AM-4.3 dated **December 18, 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 December 18, 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 Berkshire Landing

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 Statute: 33.2-705, 33.2-334

Street Name and/or Route Number

◆ North Berkshire Road, State Route Number 1431

Old Route Number: 0

- From: Route 1430, Solomon Road  
To: 0.04 Miles North, a distance of: 0.04 miles.  
Recordation Reference: DB 3414, PG 659-665  
Right of Way width (feet) = 0

Item No. 8.8. Resolution to accept road(s) in the Woodlawn Subdivision into the State Secondary System of Highways (Jack Jouett Magisterial District).

By the above recorded vote, the Board adopted the Resolution to accept road(s) in the Woodlawn Subdivision into the State Secondary System of Highways (Jack Jouett Magisterial District):

The Board of County Supervisors of Albemarle County, Virginia, in regular meeting on the 18th day of December 2019, adopted the following resolution:

RESOLUTION

WHEREAS, the street(s) in **Woodlawn Subdivision**, as described on the attached Additions Form AM-4.3 dated **December 18, 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 **Woodlawn Subdivision**, as described on the attached Additions Form AM-4.3 dated **December 18, 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 December 18, 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**    Woodlawn Subdivision

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 Statute:                      33.2-705, 33.2-334

<u>Street Name and/or Route Number</u>	
◆	Starlight View Lane, State Route Number 1044
	Old Route Number: 0
●	From: Route 676, Woodlands Road
	To: 0.17 Miles South to CDS, a distance of: 0.17 miles.
	Recordation Reference: DB 4933, PG 199-208
	Right of Way width (feet) = 0

**Item No. 8.9. Resolution of Intent to Amend Design Standards for Land Disturbing Activities.**

The Executive Summary forwarded to the Board states that, during a May 3, 2017 work session, the Board of Supervisors endorsed a Natural Resources Program for the County, including a review of stream buffer requirements of the Water Protection Ordinance. After a review of the Water Protection Ordinance, County staff determined that both the Water Protection Ordinance and the Zoning Ordinance would require amendment in order to implement the proposed stream health protections. County staff presented the findings of that review to the Board on November 6, 2019.

At a work session on January 9, 2019, staff proposed the implementation of the County’s steep slope design standards for all land disturbing activities that require a Virginia Stormwater Management Program (VSMP) or a Virginia Erosion and Sediment Control Program (VESCP). The Board directed staff to proceed with this proposal, as well as eight additional proposals. The proposed zoning text amendment (ZTA) would expand the design standards from the Steep Slopes Overlay District to any regulated land disturbing activity in either the Development Areas or the Rural Area.

Staff estimates this proposal will require an increase in staff time approximating a 0.5 full time equivalent position in engineering plan review, to be performed by a Civil Engineer I. The ZTA process to implement this proposal will include an analysis of impacts to staff.

Staff recommends that the Board adopt the attached Resolution of Intent (Attachment A).

**By the above recorded vote, the Board adopt the Resolution of Intent to Amend Design Standards for Land Disturbing Activities:**

**RESOLUTION OF INTENT  
ZONING TEXT AMENDMENT  
DESIGN STANDARDS FOR GRADING**

**WHEREAS**, an objective of the Comprehensive Plan is “Ensure clean and abundant water resources for public health, business, healthy ecosystems, and personal enjoyment by preventing shortages and contamination”; and

**WHEREAS**, protecting natural resources and healthy ecosystems is part of the stated Albemarle County strategic vision; and

**WHEREAS**, grading activities may result in adverse impacts to the natural resources, including water resources of the County.

**NOW, THEREFORE, BE IT RESOLVED THAT** for purposes of public necessity, general welfare, and good stewardship, the Albemarle County Board of Supervisors hereby adopts a resolution of intent to consider amending Albemarle County Code § 18-4.2, § 18-30.7.5, and any other sections of the Zoning Ordinance deemed to be appropriate to achieve the purposes described herein; and

**BE IT FURTHER RESOLVED THAT** the Planning Commission shall hold a public hearing on the zoning text amendment proposed by this resolution of intent, and make its recommendations to the Board of Supervisors, at the earliest possible date.

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Item No. 8.10. Resolution of Intent to Amend Procedures for Review of Zoning Text Amendments, Zoning Map Amendments, Special Use Permits, and Special Exceptions.

The Executive Summary forwarded to the Board states that, on September 5, 2018 the Board of Supervisors amended the zoning ordinance provisions regulating the review of zoning text amendments, zoning map amendments, special use permits and special exceptions. The revisions were intended to provide reliability in decision-making timeframe, clarify submittal requirements, and improve public participation.

The amendment adopted in September 2018 have not had the desired impact. The ordinance changes have resulted in increased administrative burdens for both the development community and staff without resulting in the desired improvements. Re-adoption of the prior ordinance will restore the previous review process. Necessary revisions to the review and submittal process will be evaluated with the Economic Development Strategic Plan. Staff does not propose any work sessions or organized public outreach for processing this text amendment. The amendment will be scheduled for public hearings as soon as possible.

No direct budget impact is anticipated.

Staff recommends that the Board adopt the attached Resolution of Intent (Attachment A).

**By the above recorded vote, the Board adopt the Resolution of Intent to Amend Procedures for Review of Zoning Text Amendments, Zoning Map Amendments, Special Use Permits, and Special Exceptions:**

**RESOLUTION OF INTENT  
ZONING TEXT AMENDMENT  
PROCEDURES FOR REVIEW OF ZONING TEXT AMENDMENTS, ZONING MAP AMENDMENTS,  
SPECIAL USE PERMITS AND SPECIAL EXCEPTIONS**

**WHEREAS**, the Albemarle County Code includes regulations pertaining to legislative zoning actions such as zoning text amendments, zoning map amendments, special use permits, and special exceptions in Albemarle County Code § 18-33; and

**WHEREAS**, revisions to this section were adopted on September 5, 2018; and

**WHEREAS**, the revisions have not resulted in the desired improvements to the review process; and

**WHEREAS**, amending the review process to re-establish the prior review process is desired to reduce the administrative burdens imposed by the current regulations.

**NOW, THEREFORE, BE IT RESOLVED THAT** for purposes of public necessity, convenience, general welfare, and good zoning and development practices, the Albemarle County Board of Supervisors hereby adopts a resolution of intent to consider amending Albemarle County Code § 18-33 and any other sections of the Zoning Ordinance deemed to be appropriate to achieve the purposes described herein.

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Item No. 8.12. SDP201900052 W4 Development Car Wash – Special Exception Request.

The Executive Summary forwarded to the Board states that, the owner/applicant (W4) has submitted a special exception (SE) request to vary the approved building footprint and supporting parking layout from that shown in the approved Application Plan for ZMA198700007 Jefferson Square Shopping Center. The Application Plan for this rezoning was approved with the conditions that were later addressed by the site plan for SDP198800001 Rio Hill Shopping Center Final.

In order to redevelop this parcel and modify the building footprint and supportive parking layout, the applicant needed to request a variation pursuant to County Code §18-8.5.5.3.a.2.

With regards to the findings contained in the Staff Analysis (Attachment B), inclusive of the criteria to be considered pursuant to Albemarle County Code §18-8.5.5.3.c, staff recommends approval with conditions of this request for a special exception.

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

**By the above recorded vote, the Board adopt the attached Resolution (Attachment D) to approve the special exception request:**

**RESOLUTION TO APPROVE SPECIAL EXCEPTION  
TO VARY THE APPLICATION PLAN APPROVED IN CONJUNCTION WITH**

**ZMA198700007 JEFFERSON SQUARE SHOPPING CENTER AND THE SITE PLAN APPROVED IN CONJUNCTION WITH SDP198800001 RIO HILL SHOPPING CENTER**

**WHEREAS**, the Owner of Tax Parcel 04500-00-00-093C0 filed a request for a special exception to vary the Application Plan approved in conjunction with ZMA198700007 Jefferson Square Shopping Center (now Rio Hill Shopping Center) and with the site plan approved in conjunction with SDP198800001 Rio Hill Shopping Center, which addressed the Board's required changes to the ZMA198700007 Application Plan, to allow the modification of the building footprint and supportive parking layout, in conjunction with SDP201900052 W4 Development Car Wash.

**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 Application Plan approved in conjunction with ZMA198700007 Jefferson Square Shopping Center (now Rio Hill Shopping Center) and the site plan approved in conjunction with SDP198800001 Rio Hill Shopping Center, as requested, subject to the conditions attached hereto.

\* \* \*

**Special Exception to Vary  
the ZMA198700007 Jefferson Square Shopping Center  
Application Plan and the SDP198800001 Rio Hill Shopping Center Conditions**

1. Adjacent to Route 29, the final site plan must:
  - a. Provide a shared use path that is at least 14 feet wide.
  - b. Include a landscape strip that is at least 8 feet in width between the shared use path and the travelway, to buffer pedestrians from vehicular travel.
2. Adjacent to Woodbrook Drive, the final site plan must:
  - a. Provide a shared use path that is at least 10 feet wide.
  - b. Include a landscape strip that is at least 6 feet in width between the shared use path and the travelway, to buffer pedestrians from vehicular travel.

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Item No. 8.13. Q1 FY 20 Quarterly Financial Report, General Fund Revised Financial Projections Report, and Q1 FY 20 Quarterly Economic Indicators Report, ***was received for information.***

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Item No. 8.14. 2019 Growth Management Report, ***was received for information.***

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Item No. 8.15. Albemarle County 2019 3rd Quarter Certificate of Occupancy Report, ***was received for information.***

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Item No. 8.16. Albemarle County 2019 3rd Quarter Building Report, ***was received for information.***

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Item No. 8.17. CCP2019-3 UVA Encompass Health, ***was received for information.***

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**Agenda Item No. 9. Work Session: Five Year Financial Planning (Long-Range).**

The Executive Summary forwarded to the Board states that, in accordance with the budget development schedule, the Board of Supervisors holds a series of work sessions in the fall to review long-range fiscal planning information prior to the annual budget process.

The first work session, held on November 13, was a joint work session with the School Board. During the November 13 work session, the Board of Supervisors and School Board reviewed and discussed information on five-year revenue projections, the Capital Improvement Plan (CIP) Advisory Committee's recommendations for the FY 21- FY 25 CIP, major operational expenditure assumptions, and the School Division's five-year financial forecast.

At the second work session, held on December 4, the Board of Supervisors received and discussed information on General Government's five-year financial plan.

Long-range financial planning is an important component of the County's fiscal processes. It brings together three major components of the County's budget development processes: Schools, General Government and Capital. It also provides a venue for discussion regarding important longer-term priorities and creates a framework within which the next fiscal year's budget development will take place.

During the December 18 work session, the Board will complete its discussion on the five-year financial plan and will be asked to provide guidance on the next fiscal year's budget development process.

Long-range financial planning connects long-range fiscal planning with strategic priorities and provides an important context for the annual budget process.

Staff recommends that the Board of Supervisors discuss longer-term priorities and provide direction to staff that will inform the upcoming budget process.

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Ms. Lori Allshouse, Director of the Office of Management and Budget, presented. She said Mr. Andy Bowman, Budget Manager, was there with her as well to answer any questions.

Ms. Allshouse said there had been a lot of discussion about financial planning in the last few work sessions. She said it was a time for the Board to consider the CIP program, the Schools' long-range financial plan, and the Operating Budget long-range financial plans in the same context. She said this is a critical process for the County's AAA bond ratings, and that it was important to note that their information in the long-range financial plans were based on assumptions made in November. She said as they get closer to the budget development process, those assumptions will be fine-tuned as they get into the annual budget.

Ms. Allshouse said this was the third meeting they have had on long-range financial planning. She said on November 13, there was a joint meeting between the Board of Supervisors and the School Board where they talked about revenues, the CIP, and the School Division's five-year financial plan. She said on December 4, they reviewed General Governments' five-year financial plan.

Ms. Allshouse said they would talk about the alignment of the plans, including the CIP with the Strategic Plan. She said they would talk about the FY 19 end-of-year fund budget, and then staff would begin seeking initial guidance from the Board for the annual budget.

Ms. Allshouse said they would return again to the Board on January 15 to continue that discussion for guidance for the annual budget, and also to bring back a request that the Board had for a work session on Fire Rescue service challenges.

Ms. Allshouse said the desired outcome for that day was the review the alignment with the Strategic Plan, consider strategic uses of the FY 19 end-of-year funding, and obtain some initial guidance from the Board.

Ms. Allshouse said since they were starting late, she would move through the presentation more quickly to allow the Board to catch up on time. She said they would still follow their general agenda, but move more quickly.

Ms. Allshouse said on November 13, the Board received information from the School Division on their long-range financial plan. She said she was told by School Division staff that they are scrubbing and looking closely at the Governor's budget that just came out and that they think the information is positive. She said there would possibly be some more positive news from the State as far as what is in the recommended budget from the Governor. She noted that though the plan was from November 13, information is changing.

Ms. Allshouse said the Board saw the General Government's five-year financial plan on December 5. She said by policy, the County is required to balance the first two years, so it looked slightly different. She noted there was still a gap in the out years.

Ms. Allshouse said staff had also shared with the Board the primary expenditure drivers. She said Compensation and Benefits were discussed with the Board, as well as obligations that are met in budgeting and the five-year plan, and that they had discussed other items that are drivers of the five-year plan and talked about maintaining current level of service. She said they were challenged to do that, in some ways, and that staff had shared with the Board some of the details about the Fire Rescue system challenges they are seeing.

Ms. Allshouse said they also shared with the Board the CIP Advisory Committee's recommendation. She said it does include an additional \$55 million for four projects, and it includes a reserve in Year 3. She said it also has an estimated additional equivalent to pennies on the tax rate of 5 cents or, a penny per year. She said it also includes some year-end funding being sent over to capital as part of balancing the model, a total of \$5.5 million, of which they had added \$1.5 million earlier on in the five-year planning model to make that work.

Ms. Allshouse said the main thing staff liked from the work sessions is the Board's discussion. She said staff had a discussion on November 13 with the School Board and also shared more information with staff on December 5. She presented a slide capturing some of the major areas that staff heard from the Board.

Ms. Allshouse presented the alignment of the long-range financial plans and the CIP with the Board's Strategic Plan. She recalled there are nine goals or priorities in the Strategic Plan, and that the plan is a two-year plan from FY 20 to 22. She said she would walk the Board through some of the areas where staff finds that the CIP and long-range financial planning supports those particular priorities, noting that this was new information.

Ms. Allshouse said the Climate Action Planning, the Board's number one ranked priority, had \$100,000 for the ongoing program that is built into the operating budget. She recalled that the Board appropriated an additional \$500,000 in one-time funding for FY 20 for the Climate Action Program during the last few months. She said the CIP includes \$6 million in bike-ped projects, and the Board would see over the course of the nine priorities that she would be discussing the Transportation Leveraging Program, as this supports many areas of the Strategic Plan.

Ms. Allshouse said the CIP Advisory Committee recommendation also included some additional funding for transportation revenue sharing, of which many of those also support bike-ped projects.

Ms. Allshouse said the next item was school space needs. She said the FY 20 capital budget includes funding for many items for the School Division. She said the CIP Advisory Committee recommended including funding for Crozet addition improvements and for Cale expansion and site improvements.

Ms. Allshouse said the Court Complex Expansion Upgrade full project is included in the CIP. She mentioned staff is in the process of hiring a design firm for this.

Ms. Allshouse said the next slide shared information about three more Board priorities. She said that for the Outdoor and Recreation's Park and Amenities priority, the FY 20 budget includes funding for those items: Biscuit Run, Phase 1A; Buck Island Creek Park; Rivanna Reservoir; and Darden Towe athletic field improvements.

Ms. Allshouse said infrastructure planning is only focused on water resources. She said there is bridge year funding that was put in place in FY 19, and an additional \$741,000 was added a few months ago with some savings. She said with FY 19 funding, any funding that is left over is carried forward to continue the projects.

Ms. Allshouse said that for the Rio29 Area Redevelopment, the CIP Advisory Committee recommendation includes the Transportation Leveraging Program, which includes funding for the Rio29 area in FY 23, 24, and 25 in that proposal.

Ms. Allshouse presented the last three areas of the Strategic Plan. She said for Economic Development, the CIP Advisory Committee recommendation includes \$2 million in FY 22, and \$2 million in FY 24, for public-private partnerships. She said the CIP Advisory Committee also includes the Transportation Leveraging Program that supports many Economic Development projects in the out years, FY 23 through 25.

Ms. Allshouse said that for the Board's priority to revitalize aging urban neighborhoods, the CIP includes \$6 million in bike-ped projects in FY 21 as well as other Transportation Leveraging Program supporting the revitalization of aging urban neighborhoods in FY 23, 24, and 25.

Ms. Allshouse said the last priority was broadband, noting there is grant funding for it and FY 19 contributions to the Broadband Authority to support that priority.

Ms. Allshouse mentioned that at the bottom of the slide, there was some funding available, or a reserve called Advancing Strategic Priorities that the Board put in place as they developed a CIP in the past. She said it is currently budgeted in FY 20, the current year, with a \$2 million reserve. She said for the Board's consideration, and as staff receives guidance from the Board through the process, she wanted to make them aware that there is an additional \$2 million the Board had set aside to remain nimble and be able to support different priorities.

Ms. Palmer asked if Ms. Allshouse wanted questions about what she had presented, or conversation in general.

Ms. Allshouse answered that she would like general conversation. She said this was newer information she had presented, so any comments about the Strategic Plan at that time would be good.

Ms. Palmer said looking at the Climate Change strategic initiative and being a high priority, she hoped that solid waste planning can get in there somewhere. She said the bike-ped initiative also relates to climate change, in many ways, as it enhances quality of life but also has great potential to decrease emissions from cars. She said she hoped that the next year, they would try to work something in. She said there have been conversations on the side about how it could work as a public-private partnership in that category.

Ms. Palmer said over the break, before January 15, she would try to be more articulate and press for how they can work solid waste back into the budget over the next couple of years, recognizing that there are many priorities.

Ms. Palmer said she had mentioned her next point to some Board members, but not all. She said hopefully, there would be better information to share with the Board and from staff. She said at least some staff members were aware that for the Yancey Community Center, the Health Department has said that, in the coming year, they will need some help with funding for half of an administrative position to support the nurse that they will have at the center. She said they have to have specific information for the Board in the coming year for that for them to consider. She said she didn't know if January 15 was the appropriate time to bring this up, but that it did need to be brought to the Board for discussion next year.

during the budget session.

Mr. Bowman said they have received a request from the Health Department and are currently following up with them to get more information on that request. He said this would be an item that would come back in the budget process.

Ms. Mallek asked if, for the Climate Action Planning, they have any details on the second item that is currently in the FY 20 budget as far as where that is being used, what its proposals are, or perhaps a timetable for when things will begin.

Ms. Allshouse replied that it had to do with the timing of the Climate Action Plan being completed and that information would be brought back to the Board before any decisions would be made on how they would expend those funds.

Ms. Mallek said it was then sitting in a nest egg at that time.

Mr. Dill said as far as the \$2 million improvement and the strategic money available there, with climate change and low-income housing, there is a good combination there as they are working much more actively with AHIP to provide low-income people who live in dilapidated housing with options for making those houses not only more livable, but also much more energy efficient. He said doing two things with the same amount of money is helping low-income people, improving low-income housing, and helping with environmental considerations. He said some of that \$2 million could be used for that.

Mr. Randolph thanked Mr. Dill for bringing this up because the County is heavily skewed at the moment with new construction and the affordable housing spectrum outside of the proposal to turn over the property in Ms. McKeel's district from AHIP to PHA. He said the biggest bang for the buck is in the rehabilitation area, and so Mr. Dill was absolutely right and that he would echo this sentiment.

Mr. Dill said it was somewhat analogous to buying a used car, as it is usually a better value than buying a new car when one can rehabilitate or upkeep an old one.

Ms. Palmer said when they did have this in the Board packet that included the \$500,000, this was one of the possibilities that was listed in the staff report for that \$500,000. She said she suspects there is heavy support for that, and that staff did include it in the packet.

Ms. Mallek said as a follow-up to the LEAP program, there is a pilot going on at Southwood to perform some energy efficiency on trailers that cannot be moved right away. She said those people who will be there for several more years are benefitting from that program through LEAP right now.

Ms. McKeel said she would put transit on the table because when talking about affordable housing and other issues, much of it comes back to the need for transit. She said the Partnership will be meeting that week, and one of the discussions between the City and the County at the Partnership will be the need for a technical study through DRPT to actually determine where transit is appropriate and where it is needed. She said in other words, detailed work needs to be done to help figure out the transit problem and that DRPT can be a great help with this.

Ms. McKeel said there would certainly be dollars associated with that study, even though it is DRPT. She said there is sharing with the City and that the Board needs to consider that.

Ms. McKeel said she believes there is an ongoing study of County facilities, as they are renting space in the City as they have outgrown the County Office Building. She asked at what point this study would be coming back to the Board.

Mr. Richardson asked Mr. Henry to give the Board a quick update on the current status of the facility space study.

Mr. Henry said the consultants are working on a draft report, and staff expects to have this at the beginning of year, likely in January, for staff to review. He said there would likely be a couple iterations done. He said it would likely be late in the first quarter that the report would be presented to the Board with initial findings and recommendations.

Ms. McKeel noted this would be long-term and not something that would happen quickly. She said that as an outcome of that facility study, the County may be able to look at some land and space for a recycling center. She said she didn't know at that point, but that it opens the possibility.

Ms. McKeel asked if the Board did not have to spend or target the \$2 million immediately. She said she was happy to have the money sitting in savings.

Mr. Richardson replied that they were not asking for a target that day. He said staff is very diligent to, on occasion, remind him that the Board has set a Strategic Initiative Reserve. He said there are no strings attached, nor a timeline. He said the Board also recently spoke with him about working together to continue to try to maintain capacity, and this is capacity with one-time funding as well as ongoing funding so they have margins that are adequate to face turbulence with the economy and the unpredictability that sometimes happens. He pointed out they had seen this occur last year in the budget with several things that swung late in the budget process that made the budget process a little less painless than it otherwise would have been.

Mr. Richardson said staff is continuing to be diligent with that, and that it was prudent. He said that any time staff reminds the Board of these things, they were not trying to appreciate the Board. He said he appreciated the question, as he likes to have some capacity and reserve.

Mr. Richardson said there are also emerging opportunities with communities that the Board faces, and it is looking to thread the needle for what is really the timing, the return on investment, and the greatest problems it faces that it has an opportunity to fix. He said this was another reason for the capacity. He thanked Ms. McKeel for her question, reiterating that there is not a timeline associated with the reserve.

Ms. McKeel said this was great, as she was hoping that there will be some emerging opportunities.

Ms. Mallek said there are many projects where they are in third-round design and trying to now wind things down to the core, essential, small, affordable element rather than the unachievable big one. She said more information would be forthcoming.

Ms. Palmer said she had some good news. She said there had been discussion about landfill diversion and the biggest bang for the buck, which is food composting. She said at Rivanna, there was a study as to what it would take to have a composting facility there. She said that at the last SWAAC meeting, the new owner of Panorama Paydirt came in to give an update on their efforts to start a food composting facility at Panorama. She said they are getting closer, are now permitted, and as recently as the week before, they expressed that they hoped to be up and running by next summer.

Ms. Palmer said they have been waiting patiently to hear what the tipping fee might be, as this was the big question. She said Panorama gave Rivanna a range at the meeting the week before, and though it was not in writing yet and was not known for sure, it was a very competitive and reasonable rate. She said the good news was that it wouldn't be a CIP item that the County and City would have to pay for at Rivanna at the Ivy Landfill, which is what they were considering to begin with, if a private entity is willing to do it.

Ms. Palmer said the other discussion they had at the SWAAC meeting was that this idea was great, but the question was if they were going to first try to address the schools and get them involved with their cafeterias and how this would be coordinated. She said she and Mr. Phil McKalips from RSWA met with people from the School Division about a week earlier to discuss this. She said some think it may require a new position. She said she just wanted to supply a good piece of information that there is a local, private company that would hopefully do the job that was previously going to be done publicly.

Mr. Randolph said that to follow up on Ms. McKeel's comments, if doing a content analysis of the three pages of charts that are provided for the Strategic Plan alignment with the FY 21 - 25 financial plan and CIP, there is one single expenditure that is listed in three different places under Rio29 Area Redevelopment, Economic Development, and Revitalizing Aging Urban Neighborhoods. He said this item was, "including Transportation Leveraging Program."

Mr. Randolph noted that, in light of the fact they would be talking about this issue in a public hearing after 6:00 p.m. that evening, regulation and licensure of certain portable mobility devices, they also see twice-listed in the report the bike-ped projects. He said the County is weighted very heavily on the pedestrian end of the bike-ped spectrum. He said one of the issues they are trying to deal with is lacking the infrastructure to have people safely ride in the roadway.

Mr. Randolph said they could not be dismissive of the issue because if they think it's not a problem, he would welcome those people to ride a bike on certain roads in the County at certain times of day, as they would be taking their lives in their hands in doing so. He said the roads are narrow, there is no shoulder available, people speed, there are distracted drivers, and it is dangerous. He said the County needs to enhance the bicycle infrastructure and need to keep this in mind when they talk about Item #20 that evening, as the infrastructure is currently behind the curves for the needs within the community.

Ms. McKeel said when Georgetown Road was widened and the bike lanes were cut out that had been scheduled, she wished she could relive this and insist that the bike lanes go in. She said this was the kind of opportunity that the Board needs to be grabbing onto when they can. She said those bike lanes were cut out and that the County was paying for that today.

Ms. Mallek said the only blessing was that the road is 35 mph.

Ms. Allshouse thanked the Board for its comments. She said she would now transition from the long-range financial plan to discussion about the annual budgeting process. She said in summary, there were three meetings. She said they know that revenues will likely continue to grow, but at a reduced rate of increase. She said in the report, the first quarter economic indicators indicate some positive information and news, so they will keep their eyes on the revenues and the Finance Department will continue to update this as they move into annual budgeting.

Ms. Allshouse said the General Government's plan is balanced on the first two years but includes, however, a revenue gap in the outyears.

Ms. Allshouse said the School Division's long-range plan provides information and does include a



gap for all five years. She said they knew that numbers were also changing in that area from the State.

Ms. Allshouse said plans include increasing minimum wage to \$12.75 in both School's and Local Government's plans. She said FY 21 - 25 CIP includes the CIP Advisory Committee's recommendations and associated resources, and that this was something to consider moving into the capital budget process.

Ms. Allshouse said she would move the thought process forward into keeping the long-range plan in context as they begin to think about the FY 21 budget and next year's process. She said first, they would look at the strategic uses of FY 19 year-end funding. She said there was a yellow page in front of the Supervisors that provides this on one sheet, and that she would work through and animate it on the slides for the audience.

Ms. Allshouse said it was important to move from the audited coffer and then forward into some potential one-time money that could be useful as they move into the next part of the process.

Ms. Allshouse said the first section of the yellow sheet is how the process starts. She said they start with an audited fund balance of FY 18, and that there are revenue and expenditure activities that occurred. She said there is also a net change in the fund balance, and this is only the General Fund, but the major fund. She said there is an audited General Fund fund balance as of June 30, 2019 of \$55.8 million. She said this was the starting point for the discussion.

Ms. Allshouse said the first thing that Finance does is shore up, per the Board's approved financial policies, fund balances that they always have on hand as per what a good AAA locality does. She said there is a 10% unassigned fund balance reserve of the General Fund budget and School budget, minus the transfer between them. She said this increases every year, based on the budgets increasing. She said this is \$36.4 million.

Ms. Allshouse said the School also has a reserve fund, per policy, which is \$3.3 million.

Ms. Allshouse said they have an inventory in prepaids. She said this is funding they cannot use, and it is \$362,000. She said there is also a 1% stabilization reserve that the Board set up years ago, which is 1% of the General Fund.

Ms. Allshouse said the policy use of fund balance, the total of all the items she just mentioned, is \$43.2 million.

Ms. Allshouse said she would move forward to the next category. She said there is fund balance funding already appropriated, so the Board has approved appropriations, and there are also obligations that are to be used by those funds as well. She said that based on the appropriations and obligations, this is another \$5.9 million.

Ms. Mallek asked if the transfer to CIP for next year is in that box on the slide, or if it was somewhere else.

Ms. Allshouse replied there was some information coming about the CIP, but the general transfer to CIP that starts at the beginning of the fiscal year, as part of the formula, is not included in the year-end. She said they would discuss CIP in a moment.

Ms. Mallek asked if CIP was not one of the appropriated or obligated uses.

Ms. Allshouse replied that it was not, at that point, unless they were to send some funding over from the General Fund to capital as one of those lines of things they do throughout the year.

Ms. Allshouse said the next section discusses capital. She recalled that in the Board's policies, there are several places that mention how important it is to use cash for the CIP and not just depend on borrowed funding. She said there is a policy that 3% of the revenues should go to equity, also known as "pay go", every year, at the beginning of the year. She said they were slightly short on it, however, by about \$800,000 for that particular year. She said there is a recommendation to supplement this to get it closer to the 3% to be able to stay with the policy. She said this was one suggestion Finance has.

Mr. Randolph asked if this was one-time money.

Ms. Allshouse replied yes.

Ms. Allshouse said the next section of the slide was doing the math. She said they could see the audited June 30, 2019 fund balance in the top box, and that there were policy uses of fund balance. She said the first thing they do is follow the policies, then they have the appropriations and obligations of the fund balance, and then there is the recommendation of the \$800,000 of CIP equity supplement, which brings it to a balance of \$5.9 million.

Ms. Allshouse said the \$5.9 million is called the Unobligated General Fund Fund Balance. She said the page lists its potential recommended uses, noting that these were not set in stone and were simply things to start a conversation.

Ms. Allshouse said in the Budget office, they are already thinking about the FY 21 budget and

about things that they see on the horizon. She said the Board could potentially put \$1.5 million to the CIP. She recalled she had mentioned that the CIP Advisory Committee suggested some year-end funding to shore up the model, and that it was \$5.5 million over the course of five years. She said this added \$1.5 million from the base model, and so if the Board would like to consider this, it would put the \$1.5 million in place there. She said this is an addition to the \$800,000 for CIP.

Ms. Allshouse said the next item is a topic that Finance has been seeing some information coming across their desk is that there are community initiatives and leveraging opportunities coming forth, and the Board has seen some things provided to them, including something that was recently seen as the Thomas Jefferson Community Land Trust request, Boys and Girls Club, AHIP one-time funding, and in late summer, the Claudius Crozet Aquatic Park facility.

Ms. Allshouse said there have been several opportunities for leveraging community initiatives and, if there is a request for one-time funding, this would be a potential time when the Board could consider those types of items. She said Finance theorized that the Board could set \$1.8 million aside for those kinds of conversations.

Ms. McKeel asked if those initiatives would be discussed later and not that day.

Ms. Allshouse replied yes.

Ms. McKeel said the Board still needed information on those items.

Ms. Allshouse said Finance was only trying to think ahead about things the Board might be interested in talking about.

Ms. Mallek pointed out they also have to develop protocol and criteria of how they would even decide to begin with.

Ms. Allshouse said this was just for information. She said other potential places was a Climate Action Plan reserve, noting that there is funding in place for Climate Action but that this could be another place. She said the money could be for any of the Board's priorities. She said the Economic Development fund is also something they always think about as an option.

Ms. Allshouse recalled that when the annual budget is recommended to the Board each year, there are one-time costs routinely included. She cited a police car as an example, noting it is a good use of one-time money. She said Finance requested that the Board consider about \$2 million or so to be available as the budget is developed for one-time funding.

Ms. McKeel asked if this was an additional \$2 million over what they had discussed earlier.

Ms. Allshouse replied yes. She said some things could be done in the current fiscal year and that it was not so rigid that the Board has to wait until FY 21. She noted, however, that Finance would like to hold some funding for FY 21 so they can put this in place for part of the recommended budget.

Mr. Richardson acknowledged that they moved through the information quickly and that the numbers sometimes are very similar. He said regarding the potential FY 21 uses where they have the placeholder amount of money, Ms. Allshouse had reminded him that over the course of years, it is a standard of the organization to earmark the money changes each year, and that it has been between \$1-2 million each year of flagging one-time money to jumpstart the next year's budget process. He said it is very helpful for the organization to do this where they are anticipating that it will be a challenging process with competing interests. He said this has been protocol in the past and that it has paid dividends for the organizations.

Ms. Allshouse reminded that it was not a time for decision making, but it was to provide the additional information, which is done after the audit.

Mr. Randolph credited staff and Mr. Richardson for coming in below the anticipated level of expenditure so that revenues exceed expenditures for General Government. He said this puts them at \$2.3 million, or slightly below the positive variance on the budget alone, which is critical moving forward. He said he would make a strong case for additional funding of the CIP. He said one thing they continue to talk about is how many dimensions of infrastructure in the County are behind the mark of where they need to be, considering the level of growth that the County has experienced over the course of the last decade or two, without the commiserate investments in public infrastructure.

Mr. Randolph said the Oversight Committee talked about the value of selling the public on the necessity, over the next five years, of having additional funds dedicated to the CIP. He said the only way that the public views this issue as credible is to have the Board act on that as well by deeming it a priority. He said in the Unobligated General Fund Balance of that fiscal year, they will be prepared to put money aside for the CIP so that it was not just out of everyone's pocket that will pay in future taxes. He said the fact is, in terms of solid fiscal management, they are using some of the positive variance from the past year and applying it to help produce the overall level of money and funds that they will need in the CIP, going forward.

Mr. Randolph said the work Ms. Allshouse has done over the past two years in altering the Board's understanding of the CIP, and its primacy within the overall operation of General Government,

and the necessity of funding it, which now, the School Board is on the same page about it, after some differences, he attributes to her leadership and the work she and her team has done. He said it was now the Board's opportunity to move that standard forward on the CIP and try to dedicate perhaps not \$1.5 million, but at least \$1.2 million to be credible.

Mr. Gallaway said the leverage capacity for community initiatives was a good idea, but that when they set up the reserve for strategic priorities, if money gets expended from that, it will be justified through the Strategic Plan and they will be able to draw the thread to it. He said this was the intent behind this, when the Board set it up last budget season.

Ms. Allshouse agreed this was the intent that it was related to strategic planning.

Mr. Gallaway said when he sees leveraging capacity for community initiatives and hear some of the examples, he thinks he would like to see that money go into that reserve to build up the Strategic Plan reserve. He said this way, if people are asking the Board for the funds, they are connecting it to the Strategic Plan versus saying that they will open up or put aside a pot of money for community initiatives.

Mr. Gallaway said he was not saying that this was an inappropriate use, but in terms of land use, for example, he could draw a thread to a strategic priority and the Board's interest in affordable housing very easily for that. He said any time they add new lines, it sets up a whole new expectation for what the request could be made of it, whereas he thinks the Strategic Priority reserve puts a discipline to it based on the intent that was there when the Board set it up.

Ms. Mallek said this lays out the discussion the Board would have to have.

Ms. McKeel agreed. She asked if the Board would be receiving more information about the community initiatives in January, when they start to discuss more budget details.

Mr. Richardson replied that this was a good question. He recalled Ms. Mallek's mention that there is not currently a formal process about how community project consideration comes forward. He said the Board has had a recent track record of partnering on several community initiatives in the past five years. He said the Board has looked at those things on a case-by-case basis and made the alignment to what they are trying to accomplish in the broader community.

Ms. McKeel asked for clarity in that they were talking about things such as the YMCA and The Center, for example.

Mr. Richardson replied that these were exactly what comes to his mind, and were both very recent examples. He said staff was looking for Board guidance on this and that this was one of the reasons why staff is coming back to the Board in a two-part process. He said after the discussion that day, they would be coming back in January for several reasons, and that it gives the Board time to think about it between then and January, as it was so much information. He said some of the information is new and that some of it was moving from the prior process.

Mr. Richardson said staff will look for Board guidance and that Mr. Gallaway had mentioned taking a look at combining it in with the nine strategic initiatives, as there is long thought and discussion that goes into identifying those initiatives. He said staff was open for that direction from the Board knowing that, on any day, community groups can come forward with what they think is something the Board needs to consider. He said when they do this, the Board will handle this the way they do.

Mr. Richardson said he hoped the Board would give some thought to this and provide staff with direction on what they do want, as they move towards January 15 and into the budget process related to the potential for those community partnerships.

Ms. Mallek said that from her perspective, "leveraging" is the most important word; that \$200,000 of the County's money makes \$1.5 million somewhere else. She said this was math she could get behind. She said that simply heading to \$1 million was not always the answer.

Ms. Mallek said the reason she heartedly supported the two elements Ms. Allshouse described was that they have no operation obligation going forward, so it is saving \$1 million a year, every year, indefinitely after it is built and that they may own it someday. She said their citizens and taxpayers are very well protected in that kind of investment.

Ms. McKeel said she was confused as to if Mr. Richardson was looking for guidance as to how to do that today, or if he wanted the Board to simply think about it.

Mr. Richardson replied that he wanted them to think about it. He said the reason he leaned in on that question was that Ms. McKeel was asking if the Board would see more information on those projects. He said his answer was that he would need the Board to tell staff if it wants them to get more information on those projects, they are aware of, or if they want to talk about process first.

Ms. Palmer commented that they have to look at the different organizations very carefully because there are many, very wealthy people in the community who want to give back. She said looking at some of the organizations, some of them were much better able to fundraise than others. She said there are projects on the list that they know that no one is going to fund. She said to keep this in mind, going forward, when thinking about leveraging.

Mr. Gallaway said he did not dispute any of the points about leveraging and that the Board has set up specific things up for this. He reminded that there are things that come up that are not necessarily organizations bringing them to the Board. He said there is a safety issue that could pop up somewhere around the County and they know it will take at least ten years to even attempt to get it through VDOT and if they want to attack it locally, that money is there for them to do this. He said they are so used to looking at \$2-8 million and must remember that the \$150,000 project doesn't rise to the top through the normal funding pieces.

Mr. Gallaway said in the past, the Board has not had something set up for it to be able to go to quickly and be able to use the money for something like that. He said much of the intent behind the \$2 million that was parked there was that this was a place they can go to if the project aligns with the strategic priorities. He said the project doesn't have to come from an organization coming to the Board and asking for it, but that it could simply present itself as something that needs to be handled and that the Board can tackle it using that reserve.

Ms. Palmer said this was her point as well, that they need to be putting the money where they know no one else will be able to do it.

Ms. Mallek said this was the category she had in mind when she was talking about the projects being continually refined and that haven't quite made it to completion yet. She said there are many projects that focus on safety and preventing people from getting killed.

Ms. Allshouse continued her presentation, expressing her appreciation for the Board's comments. She said Finance is thinking about the recommended FY 21 budget and presented information included in the five-year plan. She said she would ask the Board members which of the following areas they expect to be included in the recommended FY 21 budget. She said they had heard Finance talk about it in the long-range planning context, and what might require additional information or what may be missing.

Ms. Allshouse said this would be the same kind of conversation they would have again on January 15, encouraging the Board members to share anything that might stand out for them. She said the next slide would theorize about if there was additional funding and what they might consider. She said the first question was about what Finance had already put forth to see if the Board had any comments about the items.

Ms. Mallek asked if "existing services and agency partners" included local government departments. She said regarding Fire Rescue service challenges, they have been discussing for the past ten years different models of service. She said they now have some agencies losing their day staff so that that staff can go to some other house to provide services, yet they haven't made the structural changes that other counties use to be able to allow people to volunteer and come from home to a scene, which may allow more volunteers to participate. She said those discussions are important to make sure they aren't doing the same things that cost much more.

Ms. McKeel noted that the Board had agreed to have a work session around Fire and Rescue, and that this was coming up.

Ms. Allshouse said this would be on January 15 as well.

Ms. McKeel said for her, that work session would help inform the discussion.

Mr. Randolph said he thinks those issues warrant a "dot" exercise, as Ms. Allshouse has carried out before, because this would help the Board determine the priorities and give the two new Board members an opportunity to weigh in. He said perhaps the Board members would be given four dots in order to rank the top four priorities and based on what is omitted, they automatically know they are further down the list and could be included for funding if funding is there. He said otherwise, they get into a tug-of-war over the most favorite issue status within certain magisterial districts. He said the "dot" exercise has worked very well in the past.

Ms. Mallek said she could be missing the point, but that she assumed that all the projects listed were going forward.

Ms. McKeel said she thought the same, adding that she would never say that they shouldn't meet their obligations, such as revenue sharing.

Mr. Randolph clarified that he was talking about the amount of money. He said they need to rank them and then determine how much money they truly want to commit to each one of those, going forward.

Ms. McKeel said Mr. Randolph was right but that the question was which ones do they want included, and she had thought all of them were.

Mr. Randolph said the Board was really good in not prioritizing and they push back against it all the time.

Ms. McKeel said she understood this.

Ms. Mallek said she didn't have enough information until February to know how much to associate to those, anyway.

Ms. McKeel said that, for instance, she couldn't say at that moment that she wanted to take out "Competitive Market Salary" because she was very interested in this. She asked if Ms. Allshouse didn't want the Board to go through and slash items.

Ms. Allshouse replied no. She said she wanted to be very mindful of the Board's time that day and that she knew there was another time to have that conversation. She asked the Board to simply think about it at that point.

Ms. Allshouse presented the next slide which asked, "What if revenue growth is better than currently projected?" She said one thing about scenario planning and long-range planning is that they need to think about if the projections are different than actual. She said the slide was used last year and was found to be very beneficial. She said if revenues got better than what they thought they would be back in the fall, they would have some of those conversations about if there are general areas to address. She said Finance included some items on the slide to serve as conversation starters to get the Board's thoughts.

Ms. Allshouse encouraged the Board to share thoughts, especially those Board members who were there today for the last time.

Mr. Randolph said one observation he would make about "address departmental and agency operational needs related to population workload growth" is they have experience, as an organization, over the past two years significant organizational creep. He said this means they have added a lot of worker power to the organization. He said what they also need to focus on, for the public especially, is demonstrating where the efficiencies are as they are adding new capabilities, which supposedly enable the County to operate more effectively in providing services to customers.

Mr. Randolph said the County needs to demonstrate those efficiencies because when looking at the private sector, as population grows, demand grows, and they do not necessarily add personnel but try to find a way that they provide more efficiency so that the cost of whatever services they are providing does not have to go up. He said given Mr. Allshouse's suggestion and the discussion about when the market correction would come, they have an economy that is "operating on steroids" and that it can only last so long. He said sooner or later, it would correct.

Mr. Randolph said he would hate seeing the County adding more personnel without making the argument that it is operating more efficiently in moving forward. He said he didn't think the case had been made as well as it needs to be for the citizenry to understand the changes that have occurred. He said there are increased efficiencies that have arisen, especially in terms of marking hours of employees when departments were able to get them up. He said things like this were very positive, but that his point would be his one cautionary note, moving forward.

Mr. Dill said that regarding the job market, it was more than just a money issue. He said there is the issue with the \$15 minimum wage that the City of Charlottesville and UVA is doing and very low unemployment, so it is hard to find good people and keep them. He said it is not just a budget issue, but a need for having programs that will entice people to work for the County. He said he was just talking to someone that day who is working on a project for the County to learn how to facilitate meetings and other ways that people get together, such as Zoom. He said this was for people both internally and with suppliers.

Mr. Dill said this was just one small example, and that it may take money to attract and keep good people, but it may not be all in the salary aspect of it, as younger generations are looking for more knowledge, training, and ability to be effective. He said there is no one program that fits into the budget and that this was something that limits the effectiveness of the budgeting process is that they do not actively think as much as they could. He said they do think about good programs for the staff, but to expand that even more as time goes on was important.

Mr. Randolph added that providing flexibility was important as well.

Mr. Dill agreed, citing childcare and other benefits as examples.

Ms. Mallek said having suffered through the 2009-2012 when nothing was built, her first priority for any extra pennies is to put it in capital so that they can move the line a little further down the long list. She said this would have some management issues where they will have to figure out how much a project can be properly supervised, as having staff oversight every day is incredibly important and keeps them out of all sorts of trouble. She said they would be catching up for 100 years unless they make some significant jumps in that category.

Mr. Gallaway said his remark was about bullet one, noting that he didn't think this was up for consideration, as it was done as a policy directive two years before. He said if it is up or down, the redistribution by formula to local government, schools, and CIP is going to follow suit. He asked them not to put it up for consideration, as the slide suggests that the Board could consider not doing that in favor of something else, which was precisely what the Board did not want to do when they set it up two years before.

Ms. McKeel agreed.

Ms. Mallek said they also wouldn't want to have someone saying they want more. She asked for it to be taken off the list.

Ms. Allshouse said they would remove it.

Mr. Gallaway said they could have that debate and conversation, but not around the revenue changing.

Mr. Dill said this may need to be done at some point and that he didn't know what the magic was of 60%. He said he was not saying it should be higher or lower.

Mr. Gallaway said this was a formula in place where the money is distributed out based on the projection in the fall. He said if the projection improves or goes down, then they keep the formula in place for it to distribute just as it would have, based on the original projection.

Ms. Allshouse said this was correct.

Mr. Gallaway said if they are going to have a philosophical debate about a 60-40 split or further funding beyond the formula, they could do that, but that this was a different piece than what the Board had set up as policy, based on the revenues they are projecting.

Mr. Dill agreed.

Ms. Mallek said they have other fights to have.

Ms. McKeel agreed. She said she had thought that was why the Board had established it that way, as policy.

Ms. Allshouse said they were wrapping up the long-range financial planning. She thanked the Board for its comments and involvement in the process. She said it was great working with the Schools on that process as well.

Ms. Allshouse said the Board had two work sessions lined up for January 15. She said guidance for the annual budget will continue, so the conversation will continue, adding that she appreciated the comments so far. She said there will be a work session on the Fire Rescue service challenges as well.

Ms. Allshouse said that on February 19, the Board will receive the County Executive's recommended FY 21 budget, and the work sessions will be started in accordance with the budget calendar approved by the Board.

Ms. Allshouse thanked the Board, adding that she has enjoyed working with Mr. Randolph and Mr. Dill.

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**Recess.** At 3:02 p.m., the Board recessed and reconvened at 3:17 p.m.

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Agenda Item No. 10. **Work Session:** 2020 Crozet Master Plan Update: Guiding Principles & Goals.

The Executive Summary forwarded to the Board states that, On September 4, 2019, the Board of Supervisors adopted a Resolution of Intent to update the Crozet Master Plan. Following the conclusion of community engagement events in Phase 1 of the update process, the Planning Commission reviewed feedback, proposed Guiding Principles & Goals, and a draft Work & Engagement Plan (Attachment A), and provided input to staff at its meeting on November 19, 2019.

Future community engagement events will be designed around the Master Plan's Guiding Principles & Goals, which align with its chapters and content focus areas. During these events, participants will refine Guiding Principles and Goals and develop specific recommendations. No revisions to the proposed Guiding Principles & Goals have been made at this time, however, staff will use feedback to suggest potential revisions for community input & review during the relevant workshops.

Feedback opportunities for the proposed Guiding Principles & Goals closed on November 22, 2019 (Attachment B). The questionnaire asked respondents to indicate how well the draft Guiding Principles captured their vision for Crozet's future, which Goals/topics should be discussed, and allowed opportunities for comment. Topics highlighted in the questionnaire as well as Planning Commission feedback are included below.

Connectivity

Guiding Principle: Create a multimodal transportation network that is safe and accessible for all residents, regardless of age, race, income, and ability. *(73% of respondents said this principle accurately or very accurately captures their vision).*

Goals: Network connectivity (50%); safety and access for all users (66%); local and regional

transit (58%). *(Percentages reflect the frequency of respondents who felt that this topic should be discussed while developing this chapter).*

Feedback Themes: Walkability/sidewalks, bike paths, traffic issues, neighborhood connectivity, shuttle service & transit alternatives, regional commuter options, parking, acknowledge gender in Guiding Principle

#### Character

Guiding Principle: Support Crozet's "small town" character through development that is compatible in scale and design, offers housing choice, and respects its history. (68% of respondents said this principle accurately or very accurately captures their vision).

Goals: Housing variety and choice (42%); appropriate design and scale (72%); mixed-use activity centers (44%); rural edges (47%); placemaking, arts, and culture (34%). *(Percentages reflect the frequency of respondents who felt that this topic should be discussed while developing this chapter).*

Feedback Themes: Affordable housing, homogeneity/lack of diversity, mountain viewsheds & natural setting (see also Conservation), development that is sensitive to scale, increased business options & thriving Downtown, include history in Goals

#### Conservation

Guiding Principle: Enhance Crozet's natural beauty and the surrounding rural areas with an integrated network of parks and gathering spaces, trails, and greenways that support outdoor recreation and natural resource conservation. (86% of respondents said this principle accurately or very accurately captures their vision).

Goals: Community parks & outdoor recreation opportunities (54%); trail & greenway connectivity (65%); access to rural & regional amenities (31%); natural resource conservation and sustainability (66%). *(Percentages reflect the frequency of respondents who felt that this topic should be discussed while developing this chapter).*

Feedback Themes: Include preservation of current resources, walking & biking trails/greenways connecting current parks, mountain viewsheds, stream health & low-impact development, maintaining tree canopy and native plants & vegetation

#### Implementation

Guiding Principle: Provide strategic & timely support for community partnerships, local economic development, policy changes, and capital investments to support a changing Crozet. (78% of respondents said this principle accurately or very accurately captures their vision).

Goals: Community partnerships (39%); economic development initiatives (45%); zoning & policy updates (60%); capital improvements (51%); project prioritization (50%). *(Percentages reflect the frequency of respondents who felt that this topic should be discussed while developing this chapter).*

Feedback Themes: Addressing concurrency of infrastructure & capital investment (schools/transportation), improving local business climate, ensure projects are prioritized and realistic

#### General Feedback Themes

Broaden diversity of engagement & representation, ensure language is Crozet-specific, use data to strengthen performance reporting and capital planning

Staff recommends that the Board review the provided background information and provide input to staff on the proposed Guiding Principles, Goals, and 2020 Work & Engagement Plan.

Mr. Andrew Knuppel, Neighborhood Planner, presented. He said this was an opportunity for staff to check back in with the Board at the conclusion of the Phase I community engagement process, share some information about where they have been so far and the progress of the plan, and where they are looking next for Phase II of the community engagement process, as well as the guiding principles and goals identified so far that they will continue to develop throughout the rest of the process in drafting the Master Plan.

Mr. Knuppel said he would provide a recap of the Phase I engagement process, which has taken place since early September, when staff last presented to the Board for the Resolution of Intent to initiate the Master Plan update. He said he would present the Phase II engagement timeline and what they are looking forward to over the next six months, as well as next steps for the Board including a quick discussion question.

Mr. Knuppel said regarding the Master Plan update timeline, staff just completed Phase I, which is the community envisioning phase of the process. He said they started September 29 which their first community workshop following the Resolution of Intent adopted by the Board at the September 4 meeting. He said they were at a turning point where they are wrapping up the envisioning phase and start to look forward to more focused area input and design strategies to flesh out the Master Plan recommendations.

Mr. Knuppel said the goals of Phase I were to have a community envisioning process, which is

focused on checking back in with the 2010 Master Plan's vision and principles, making sure that with a changing community, the County is on the right track and is addressing the needs in the community. He said they were catching up a number of new residents of Crozet that may not have participated in prior plans about how Master Planning is done and the importance of documenting the quality of life the community enjoys.

Mr. Knuppel said Phase I was also about identifying, affirming, and updating the Master Plan's guiding principles, starting with the community input they heard in 2010 and other input heard from the community survey, to make sure needs are revised and align with current best practices.

Mr. Knuppel presented photos from the workshops staff had held with the community. He said there were three, which were the larger events throughout the process. He said the first community workshop on September 9 had over 120 Crozet residents and stakeholders in attendance and focused on hopes and concerns. He said they checked in with the 2010 Master Plan's vision and guiding principles and started conversations about where they are today, hopes and concerns, and opportunities in Crozet's future. He said this was the first chance to unpack the Master Plan at a very high level and initiate discussion about where they are heading for the next 20 years.

Mr. Knuppel said the second workshop, in October, responded to some of the concerns they heard from the first workshop. He said they heard a lot about small-town feel being a very important part of Crozet's identity and the Master Planning process.

Mr. Knuppel said staff had the question about how to define small-town feel and plan for this effectively. He said they took a step back to dig into the details about the visual characteristics and centers that are important in the community, as well as to have a conversation about the housing needs that have emerged in Crozet. He said there was discussion about affordability and economic development in a way that is consistent with the County's evolving policies, Crozet's small-town feel, and current best practices. He said there was good attendance at this workshop as well.

Mr. Knuppel said there was a third workshop in November, where staff brought out the goals and guiding principles, in the Board's packet. He said there was good attendance at the three workshops and great opportunities for small group dialogue and engagement. He said the feedback staff has heard so far has been helpful as they look forward to framing the discussions they will need to have with the community in the coming months.

Mr. Knuppel said staff also held a pop-up event at the Crozet Trails Crew 5K and brought out the giant map from the October workshop to try to engage people who didn't make it to the workshop and share their thoughts on important places and connections in Crozet.

Mr. Knuppel said staff also carried out a set of "character and connectivity" tours in late October that focused on Crozet's history and historic preservation; the architecture and design aspects that define Crozet; and bike-ped connectivity, trails and transit. He said the character tour rode on the Crozet Trolley, and the connectivity tour rode on a Crozet Connect shuttle. He presented a picture of the connectivity tour at the Crozet Connector Trail Underpass of Eastern Avenue. He said staff enjoyed the chance to engage with the community in the process and received good feedback that would carry forward through the process.

Ms. Palmer asked if the tunnel was lit.

Mr. Knuppel replied no.

Ms. Mallek said it was 50 feet long.

Mr. Knuppel said Phase II takes the vision and principles staff heard throughout the community and will start to flesh out the site-specific recommendations about land use, transportation projects, and capital projects. He said they would be updating the land use maps and transportation plans as part of the process.

Mr. Knuppel said Phase I focused on identifying a first set of guiding principles aligned with the chapters of the Master Plan, rough goal areas, and focus topics, included in the staff report. He said the guiding principles are the vision statements for each chapter, about connectivity, character, conservation, and implementation as seen in some of the more recent plans, such as Rio29 and Pantops. He said the goals broadly identify the focus and topic areas that are known and community concerns that need to be addressed throughout the planning process.

Mr. Knuppel said from the goals, they will continue to develop them and make them into firmer statements through the Phase II process and, from there, develop site-specific recommendations about improving an intersection or designating a certain parcel of land as a land use.

Mr. Knuppel said for connectivity, the vision is having a multi-modal transportation network. He said some of the different goals and focuses include network connectivity, interconnected streets, ensuring they have the missing links become constructed, safety and access for cyclists and pedestrians as a major component of creating safety, and transit as an emerging theme that needs to be addressed with the planning process.

Mr. Knuppel said character covers a wide range in Crozet such as affordable housing, variety in



choice, designing a scale of architecture to fit the environment in Crozet, building forms, mixed-use activity centers, such as Downtown Crozet, rural edges, aesthetic qualities of the community, and placemaking, arts, culture, and history, that defines Crozet's identity.

Mr. Knuppel said conservation includes parks, outdoor recreation, greenway trails, natural resource conservation and sustainability efforts.

Mr. Knuppel said implementation could include different areas or goals focused around continuing community partnerships, economic development strategies, and initiating the zoning and policy updates to implement the plan's vision.

Mr. Knuppel said staff is hoping to kick off Phase II in January with the next set of workshops, continuing through early June. He said this is where they will be designing projects and policies with the community. He said they heard the community's feedback and got some ideas, and now staff needs to find the best way to achieve the goals, as informed by the community's input. He said they will have opportunities to workshop specific focus areas or topics through focus groups and other conversations. He said ultimately, staff will determine how to make the vision become a reality by updating the current implementation framework, land use plans, connectivity and transportation plans, and so on.

Mr. Knuppel said staff has been updating the Work and Engagement Plan that was included as an attachment. He said he would zoom into the engagement timeline for Phase II. He said they are planning to have five monthly community workshops, which are the largest engagement activities anticipated with high staff involvement, as well as small group facilitation.

Mr. Knuppel said they plan to do two workshops focused in on the character and land use discussions, starting in January, by discussing commercial centers and development area boundaries as critical components of the Crozet vision. He said in February, they would continue the conversation with a focus on housing and residential land use. He said staff thought it was appropriate to split up these two areas, as they are complex topics, particularly in Crozet with some of the issues they face about bringing a downtown to life with continued work there, as well as the unique challenges around architecture and historic preservation.

Mr. Knuppel said in April, they would continue the conversation about connectivity and transportation.

Mr. Knuppel said in May, they would workshop around conservation, parks, and green systems.

Mr. Knuppel said they would wrap up the workshops in early June with discussions about implementation and capital project prioritization.

Mr. Knuppel said staff is complementing the workshops with a number of focus group conversations. He said this will include housing focus groups in February and March, including housing affordability, land use recommendations, aging in place in Crozet. He said they will also discuss architecture and preservation discussion focused on the Crozet Historic District, which is currently an honorary designation, potential design guidelines undertaken as part of the Downtown Crozet Revitalization Project, and adaptive reuse of existing structures in Crozet.

Mr. Knuppel said the late January Downtown Crozet focus group will be done by the consultant that staff is working with, as part of the market study that was in the Crozet Newtown Associates performance agreement. He said they hope to have a completion of March 31 as part of the agreement with the Barnes Lumber project. He said this would be brought back in April for a chance to review it with the community and bring in the consultant working on the parking study also ongoing.

Mr. Knuppel said the timeline provides a good opportunity for staff to do some work in March, firm up some of the sensitive land use issues in Crozet, then come back and make sure that the connectivity and conservation workshops are informed by this progress.

Mr. Knuppel said this was the very high-level overview of Phase II and the direction they are headed. He said over the next six months, they will continue a monthly engagement, with a high-intensity and high-staff commitment in Crozet to engage the community and make sure that they are addressing their concerns. He said they still plan to stay on track for adoption hopefully by the end of 2020, and that they were front-loading more of the staff work in the process in the hopes that by having the community engagement upfront, they will have a smoother process at the backend.

Mr. Knuppel said staff plans to come back to the Board with work sessions in the fall and would be providing updates as needed.

Mr. Knuppel said staff had one question for the Board that day. He said there was a good amount of information in the packet about the schedule so far and the guiding principles and goals. He asked if the Board had any questions or feedback as staff moves into Phase II.

Mr. Randolph commended Mr. Knuppel and the team for their outstanding work in putting the information together graphically in a way that invites people to read it and to participate.

Mr. Randolph said with the vision and guiding principles on page 2, Mr. Knuppel said he heard concepts that were relevant. He said he was struck by the disconnect between the highest-rated and

lowest-rated concepts. He said he wanted to talk about the underlying issue as he looks at the Crozet community, which is racial diversity, especially as represented in the School Division. He said the number one concept says, "Crozet will continue to encourage a sense of community," and then what are cited are a series of what he would refer to as "external" factors (history, diverse activities, institutions, and interests).

Mr. Randolph said that unfortunately, the lowest-scoring concept involves people from many social and economic backgrounds, which he referred to as what is "internal" to the community and who those people are. He said part of the challenge going forward is to keep in mind the disconnect, as perceived with citizen participation, between the external goals and the internal reality that there is apparently less interest in terms of actually seeing a diverse Crozet. He said when he says "diverse," he means racially diverse.

Mr. Randolph said this is an ongoing challenge for staff, moving forward, and that they cannot ignore it but needs to be open about it. He suggested having discussion about it because it would be healthy, especially vis-à-vis the other high schools, which are much more racially diverse than Western Albemarle.

Ms. McKeel agreed with Mr. Randolph. She said they could look at the diversity levels of the schools in the Crozet area and see a real lack of diversity. She said she was reading from the comments from Commissioner Bivins in the document and that she agreed completely with him. She said this was also part of what Mr. Randolph was getting at as far as figuring out how to reach out to people of color and bring in more diversity to the discussions. She said Mr. Bivins provided good suggestions in the document of how to do that.

Ms. McKeel said her questions was around interconnectivity. She said there is a lot of discussion about interconnectivity between neighborhoods and while everyone recognizes how important this is, at the end of the day, it is an area where the Board receives a lot of pushback when plans come to them because neighborhoods and cul-de-sacs don't want to be hooked together. She said people tend to resist connectivity. She said she didn't know how to get at this and that she sees it happening everywhere not just in Crozet. She said Woodbrook had some huge issues with it. She said it was great to talk about, but to get it into practice was more difficult. She asked for staff's thoughts about it.

Ms. Rachel Falkenstein, Principal Planner, said she completely agreed, but that the Master Plan is the starting point with language in the plan that stresses the importance of interconnectivity. She said they could show some key interconnections on the transportation map where the community agrees that interconnectivity is important and will buy into the plan. She said hopefully when the development comes, they could educate the community about what the plan says. She agreed that this is challenging.

Ms. McKeel said everyone thinks it's great for everybody else. She said in some communities, they have had trouble with getting interconnectivity and have actually put ordinances in place to say it will happen. She said she was not suggesting that they do this at that point, but that it was a real concern.

Ms. Falkenstein said there is language in the Subdivision Ordinance that calls for interconnectivity with adjacent developments, but there is a Special Exception process where people can ask for an exception from this.

Ms. McKeel said when people actually have this, they recognize the benefits, but it is trying to see the vision and how it will benefit that is challenging. She said they thought the interconnectivity in Canterbury Hills, which people now love, but their first inclination was against it.

Ms. Falkenstein said perhaps staff could use this as an example of a success story.

Mr. David Benish, Chief of Planning, said staff also tries to make sure that the interconnections get built and stubbed out to property lines. He said that way, when people buy into the development, they actually see the stubbed-out road as opposed to a cul-de-sac. He said there is still pushback, but at least there is that hard message that that road is supposed to continue to go on. He said they are doing more diligence to make sure they are built as opposed to just the land being reserved.

Ms. Mallek said Cory Farm is a great example. She said in 2007, there was discussion about where the bridge had to go, and fortunately for that neighborhood, the sign was there first before the lots were that said, "Future Road Connection." She said there is a sign like that in Foothills Crossing as well. She said the County has learned a lot over the last 20 years about how to set the stage for success, and the trail people have benefited tremendously when all those trails are located on the lot before anything happens. She said then, people are aware of it and are less apt to be territorial.

Ms. Mallek said there have been great successes, such as Foothills Crossing all the way to the Western Ridge to the square connection. She said it really works and takes a lot of traffic now that they have to deal with in putting in more stop signs and slowing the traffic down to protect the people who have been there. She said the completed one is working, and then there is another example that has been on the books for 25 years but is slowly moving towards implementation. She said the topography is the problem, and when there is a ravine requiring a bridge to get to the other side, she doesn't see those happening, as Brook Hill and Sparrow Hill would never come together due to a cliff and a waterway there. She said it would have to be done on foot instead.

Ms. McKeel said she was talking more about the Brook Hill piece and the neighborhood behind it.

Ms. Mallek said it is always a concern because people like the safety of their kids being able to play in the cul-de-sac.

Ms. McKeel asked if they were using cul-de-sacs much less than they used to. She said even VDOT said at one point that they were not interested in many cul-de-sacs.

Mr. Benish replied that staff tries to do interconnected streets as opposed to dead-end streets, as there is hilly terrain and some of the land left to develop is fingers of land that they prefer to be small interconnections. He said the development community is generally on this track as well and that they are starting to see less cul-de-sacs.

Ms. Mallek commended Mr. Knuppel and the team for their engagement with the citizenry. She said she knew people in the audience would take back to their constituency groups that it is time to step up January through April, as there will be meaty discussions. She said they have almost done the easy things and now it is time to move on to the harder tasks.

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Agenda Item No. 11. **Work Session:** Rio29 Form Based Code Framework Recommendations.

The Executive Summary forwarded to the Board states that, on December 12, 2018, the Board adopted the Rio29 Small Area Plan, which envisions Rio29 as a “vibrant and diverse mixed-use community with interesting character and a human-scale built environment.” The Character Chapter includes recommendations to: “update the zoning ordinance to allow for the desired form and mix of uses,” “pursue form-based code as a mechanism to promote the desired form,” and “find the appropriate balance between regulation and flexibility...”

On March 6, 2019, the Board adopted the Resolution of Intent and project work plan for the Rio29 Form-Based Code. This Resolution of Intent directs staff and the Planning Commission to develop a draft code that enables development consistent with the vision outlined in the Rio29 Small Area Plan through a by-right development review process.

Since the adoption of the ROI, staff has held: five (5) Steering Committee meetings with a diverse cross-section of community stakeholders, three (3) public open houses with online engagement opportunities, a series of three focus groups with Rio29 property owners and the development community, one (1) joint work session with the Planning Commission and Board of Supervisors, and four (4) subsequent work sessions with the Planning Commission.

At the November 12, 2019 Planning Commission work session, staff presented background information, research and recommendations on the Draft Rio29 Form-Based Code Framework. This framework is a content outline for a Rio29 form-based code zoning district.

Staff brought five questions to the Planning Commission for consideration. These questions and corollary staff recommendations are summarized in the November 12 Staff Report (Attachment A). The Commission’s responses are summarized in the November 12, 2019 Planning Commission Discussion Summary (Attachment B). The Commission was generally supportive of the Draft Framework and recommended that the form-based code be implemented as an optional overlay zoning district.

Staff recommends that the Board review the attached information and provide input to staff on the Draft Rio29 Form-Based Code Framework (Attachment C) and preferred zoning type (optional overlay versus base zoning).

Staff is also seeking the Board’s feedback on its preferred 2020 scope of work and schedule (Attachments D and E).

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Ms. Rachel Falkenstein, Principal Planner, and Michaela Accardi, Senior Neighborhood Planner, presented.

Ms. Accardi said this was a work session to discuss the Rio29 form-based code framework, which is an outline of the content for a Zoning Text Amendment to the Rio29 area. She said before staff moves into the Code writing phase in 2020, they would like to ensure the framework aligns with the Board’s vision and goals for the project.

Ms. Accardi said they allotted roughly an hour for the work session, and in the first 20 minutes, she and Ms. Falkenstein would provide an overview and background on the project. She said they had also outlined a couple questions for the Board regarding the type of

Code and how it may be adopted, as well as the general framework. She said to conclude, they would discuss the 2020 work plan.

Ms. Falkenstein said before they get into the details of framework, they thought it would be a good time to give the Board and audience a quick reminder of how they arrived at that point on form-based code for Rio29.

Ms. Falkenstein presented a map showing the area around the Rio Road and Route 29 intersection. She said when they did the planning effort for the Small Area Plan, they drew a half-mile

radius around that intersection and then removed areas of single-family residential from the plan boundaries. She said this was the area they are talking about when they reference Rio29.

Ms. Falkenstein said she would discuss the planning history and how Rio29 came to be. She said it dates back to the Places29 Master Plan, adopted in 2011, which recommended a Small Area Plan for the area and also identified it as an area of priority investment for the County. She said in 2014 and 2015, there were Solutions 29 projects moving forward and being added to the transportation improvement program, then funded subsequently by VDOT, to construct the great separated interchange at Rio Road and Route 29.

Ms. Falkenstein said around that time, the Board also directed staff to move forward with the Small Area Planning effort for the Rio29 area, which they began in 2016 and concluded with a Comprehensive Plan update called the "Rio29 Small Area Plan" at the end of 2018.

Ms. Falkenstein said in early 2019, the Board directed staff as an early implementation step to begin the process of drafting a form-based code for the Rio29 area. She said staff has come back to the Board to talk about that and provide a check-in on where they are.

Ms. Falkenstein presented a screenshot from one of the recommendation pages of the Small Area Plan. She said the Small Area Plan recommends a form-based code as a possible implementation mechanism to support the desired form. She recalled the plan calls for a mixed-use community that supports walkability and bikeability, with a connected network of streets, which was why staff was undertaking the process to update the zoning for the area to support the desired form.

Ms. Falkenstein said that in July, staff had a joint work session with the Board and the Planning Commission where they established project goals for the form-based code projects, and that there are four goals. She said the first goal is to support and incentivize development to align with the Small Area Plan vision, and allow so through a by-right process that takes into account where the area is in its present-day form but also thinks into the future on how they want the area to look.

Ms. Falkenstein said the second goal is to establish clear expectations for all stakeholders, meaning residents, property owners, developers, as well as the County, for new development that will be coming forward.

Ms. Falkenstein said the third goal is to find a balance between regulation and flexibility, which was something staff heard was important to the development community and property owners is the need to respond to the market. She said they would then allow some flexibility, in uses especially, to allow for that response and also to be clear about what the desired form is for the area.

Ms. Falkenstein said the last goal is to ensure there is an inclusive and transparent community engagement process throughout the drafting of the code to give people the opportunity to weigh in on what they would like to see in the zoning update.

Ms. Falkenstein reminded that staff has been working since March, when the Board adopted the Resolution of Intent, in four categories of work: internal staff work, a steering committee, broad community engagement and education, and Board and Planning Commission engagement.

Ms. Falkenstein summarized the work done so far by explaining they had nine staff groups working on subject areas specific to the content of the form-based code. She said they have had five steering committee meetings made up of stakeholders and property owners in the area, as well as three public workshops, three focus groups, which was focused specifically on the development community, property owners, and real estate professionals, and four Planning Commission work sessions that covered each topic of the framework.

Ms. Accardi said the next portion of the presentation would be referencing Attachment C, which is the draft Rio29 form-based code framework. She reminded that form-based code is different than the County's current zoning ordinance in that it may include use elements, but that it prioritizes the look and form of the building and the way it meets the street over what exists inside the building. She said the framework itself is a content outline for a zoning ordinance, and the first section includes a regulating plan or map of the area, as well as permitted uses in the area, and references affordable housing.

Ms. Accardi said the second section, General Standards, is the bulk of the form-based code in that it includes all of the standards that apply to each property.

Ms. Accardi said the final section is related to incentives, which are additional components or site design elements that may be added for additional development rights.

Ms. Falkenstein said they would go through the framework and give a quick overview of what is in it, allotting time at the end for discussion. She said the first section is the regulating plan, on page 3 of the framework. She said this is essentially the proposed zoning map for the Rio29 area and is based on the character areas that came out of the Small Area Plan.

Ms. Falkenstein said they identified three main character areas: Core (central, highest-intensity area), Flex (lower-intensity transition zone with a high degree of flexibility), and Edge areas (adjacent to existing single-family residential neighborhoods with less intensity). She said the green areas on the map are amenity spaces, which are intended to be public spaces such as parks, plazas, and outdoor spaces

members of the public can use and take advantage of in the area.

Ms. McKeel asked staff to help the Board and audience locate the areas on the map.

Ms. Falkenstein explained that in the center is the intersection of Rio Road, which runs northeast and southwest through the property. She indicated on the map to Rio29, Fashion Square Mall, Albemarle Square, Rio Hill Shopping Center, Northside Library, and 29th Place Shopping Center.

Ms. McKeel said this was helpful in framing the area.

Ms. Accardi said that, following the regulating plan itself, the framework on pages 4-6 references uses. She said they would talk about the engagement, staff research, and rationale for how they arrived at recommendations in the framework. She said across all of the engagement opportunities, they heard a desire for greater flexibility in a range of permitted uses than are currently allowed. She said this also aligns with the Rio29 Small Area Plan's vision for a mixture of uses. She said staff heard a desire for further definition of Light Industrial, as there may be some uses that currently fit within that category that are compatible with other commercial or residential uses.

Ms. Accardi said the Small Area Plan also contemplates active uses on the ground floors, meaning uses where people can come and go. She said that instead of requiring those uses specifically, staff heard feedback that the design elements of the first floor of buildings should be incorporated, such as taller ceiling heights and transparency. She said this would allow for greater flexibility in a transition of the area, over time.

Ms. Accardi said the recommendations in the framework utilize a broad category approach reflecting this feedback. She said there are also new and updated use categories for some uses such as artisan manufacturing and temporary uses.

Ms. Falkenstein said that also within Section 1, the framework talks about affordable housing at the bottom of page 6. She said the feedback staff heard from the community was broadly supportive of an affordable housing requirement with new development in the Rio29 area. She said they also engaged the development community and property owners on the question, and they were somewhat more mixed, mostly because of the financial feasibility of an affordable housing requirement. She said the property owners and developers supported the goal, but had some concerns about making projects potentially difficult, financially, with an affordable housing requirement.

Ms. Falkenstein said staff engaged with the Planning Commission on the question as well, and again, there was overall support, but that the Commission wanted to understand what the appropriate threshold was to make projects financially viable with an affordable housing requirement.

Ms. Falkenstein said that within the framework, staff is recommending that if the form-based code is adopted as an optional overlay, that there be an affordable housing requirement on the sliding scale presented. She said those numbers came from Ms. Stacey Pethia, Housing Planner), and that the 15% requirement is what the County currently has in its policy when it does legislative reviews, so they know it is financially feasible, to some extent. She said the other numbers are based on best practices in communities across the State and country.

Ms. Falkenstein said staff would continue to track with the ongoing affordable housing policy update and if the numbers need to be tweaked based on further engagement and research, staff would make sure it is consistent.

Ms. Mallek said when staff had feedback from the builders and stakeholders, she didn't know if they had the authority to have some kind of delayed assessment values, or something that would help to bridge the financial differences between their lowered return and the construction costs. She said this may be something completely outside the parameters of what staff was talking about. She said it was somewhat like the Brookdale idea, but that this was smaller projects and that she didn't know what the Board's capability was.

Mr. Kamptner said the delayed assessment would be problematic under State law, but that the County does have other tools available they have not used yet to offer some opportunities to consider how it could be done. He said they have the ability to experiment with the affordable housing statute identified and that there also may be other ways.

Ms. McKeel said she understood the recommendation and percentages for affordable housing, but when the units are sold, they are going to lose the affordable housing.

Ms. Falkenstein said they would have to build in the requirements for a length of time.

Ms. McKeel asked if they could do this to keep the affordable housing affordable, as in the past, they have lost it.

Mr. Kamptner said the approach that was taken with proffers, going back to 2004 or 2005, applied to the first sale. He said that idea has continued on. He said if this is provided as part of a rezoning or it is part of incentive zoning, to get the benefit, the developer can commit to a period of years. He said with Southwood, it varies with the "flex structures" from 10-40 years.

Ms. McKeel said her point was that they will want to make sure, when they implement the project, that the housing stays affordable.

Ms. Mallek said if they are putting in money, they might get the option to do that.

Mr. Randolph said what they are talking about are criteria all the way through where they could potentially establish a points system, which would incentivize with points for the determination of the worthiness of the application. He said affordable housing would be part of it, and there could be higher points for a longer time period of a commitment of affordable housing. He said there could be additional points for height. He said they could talk about the tradeoff that the Planning Commission didn't recognize between amenity space and height. He said the more height there is, the more amenity space is available, and so this could be another criterion.

Mr. Randolph said innovative architecture could also earn points, as well as a green design project. He said he thinks the entire project should be established as a green design project, as they need to be looking to the future. He said he worried that if they are not careful, they could end up with another Stonefield where they are building something that measures the past, not where they are going in the future. He said multi-modal access within the site and capacity for people to be able to ride to work on a bicycle, shower, and park their bike was important and could be potential performance criteria for incentivized zoning so that the more they have those dimensions, the greater the likelihood that the project will be approved.

Mr. Randolph encouraged the Board, going forward, to be bold and creative, as this would be the project by which the County is measured over the course of the next 30 years, and much more so than Old Trail, as so much of that is residential. He said much of the project will have to be business carefully integrated with residential.

Ms. Palmer echoed Mr. Randolph's interest in green infrastructure in the plan, and that she was struck with how little was actually in it. She said she did not understand how, in the form-based code, regarding the streets and what they would look like, what they are actually putting in with respect to green infrastructure and street trees. She said perhaps this is worked into the form-based code as to what the street looks like, and that this was on her list of questions to understand.

Ms. Accardi said Ms. Falkenstein would be talking about streets after she talks about building standards. She said what they are doing now is moving through the second section, which is theoretically the portion that would be required for a developer or property owner to meet all of those standards, and then the incentives section would be above and beyond those standards. She said they could discuss how to modify this, based on the Board's feedback.

Ms. Accardi said the building standards section is arguably the most important section of a form-based code, given that it is about the building location, mass, and place on the site. She said the Small Area Plan includes some preliminary building form recommendations, and staff leveraged the work that had already been done by staff and community members and worked to refine those recommendations.

Ms. Accardi said staff heard that in the Core area, there is a preference for smaller block sizes and taller heights. She said when they talk about smaller block sizes, staff heard between 200-foot and 300-foot blocks, which is closer in size to the blocks of the Downtown Mall, as a local example.

Ms. Accardi said those recommendations were brought to the Planning Commission in an August work session and heard interest in preserving views and vistas in the area. She said the Commission wanted to think about the height recommendations that staff had put forward, so staff had September focus groups with the development community and talked about, for mixed-use buildings, what the appropriate height would be to make it financially feasible and also work well with the Building Code.

Ms. Accardi said they heard from the focus groups that 5-6 stories are the most appropriate for the denser, more urban area in the Core. She said when staff followed up with the Planning Commission, due to the debate on height, in a November work session, they heard Planning Commission support for five stories by right in the Core area, up to six stories for bonus factors (incentive), and up to seven stories by both special exception and bonus factors.

Ms. Accardi said the draft framework talks about the Core area and height, but that more broadly, the Building Standards portion includes specific standards based on the property's character area within the Core, Flex, or Edge and has corollary height, block length, build-to lines, and stepback recommendations.

Ms. Falkenstein said Section 2 also talks about streets. She said the Small Area Plan already lays out a framework for streets that staff was able to build off of that recommends a network of complete streets that not only accommodates automobile traffic, but also more safely accommodates bicycle and pedestrian traffic as well as transit.

Ms. Falkenstein said that with the community, staff identified some key street amenities that people wanted to see on certain street types within the Rio29 area. She said with the development community, staff had a robust discussion about the cost of development, with streets coming up as one of the most expensive elements of new development. She said the developers felt that County infrastructure investment would be one of the more meaningful things that the County can do to incentivize or catalyst development. She acknowledged that this was somewhat outside of form-based code but that she

wanted to share it.

Ms. Falkenstein said that with the Planning Commission, there was support for reaffirming the street sections from the Rio29 plan and the street network, along with the amenities that the community identified.

Ms. McKeel asked when talking about street standards, if they were talking about streets that are up to VDOT standards, or streets that the developers leave to the neighbors.

Ms. Falkenstein replied that the standards envision a public street network, meaning VDOT.

Ms. Falkenstein said the plan recommends four street types: Boulevard (e.g., Rio Road), Avenue, the Local streets (the majority), with Route 29 being the through corridor that they are not identifying many improvements for. She said the plan also contains a street sections components table which talks about lane width, which streets should have bike lanes, and street trees on all streets. She said there is also a street amenities table, which contain the things that go above and beyond the essential street components, e.g., lighting, green infrastructure, additional stormwater features, that make streets more of a place that people want to be.

Ms. Palmer said she had a question about the building height related to the streets. She asked how to avoid not having a situation akin to a dark wind tunnel. She cited the Downtown Mall as a wind tunnel, though not necessarily dark, but that if the buildings were even taller, she expected it would be.

Ms. McKeel agreed it is a wind tunnel.

Mr. Randolph said West Main has become a dark wind tunnel.

Ms. Palmer said she wanted to understand how the County can avoid that with the building heights.

Ms. Falkenstein said staff did not get into this detail but that within the framework, they have recommendations for stepbacks above certain heights. She said on the widest street, the stepbacks are slightly higher, e.g., on the Boulevard, with four lanes, but the local street has a stepback that is lower to try to prevent the tunnel feeling.

Ms. Accardi said regarding architecture, façade treatment can be used so that the plane of a building doesn't have a blank wall, but changes and has an interesting look. She said there is feedback locally on recent development that sometimes feels like a wall, and so architectural components can be included that are not too prescriptive, but that would prevent the tunnel feeling that isn't desired.

Ms. Accardi said regarding the streets section, there is also parking incorporated in the framework on pages 15 and 16. She noted that about 40% of the surface area is dedicated to surface parking lots. She said staff knows that there is currently a lot of parking in the area, and form-based codes, like the current ordinance, incorporate parking, but they typically look at where it is located on a site in addition to how much.

Ms. Accardi said staff saw this as an opportunity to pilot an update to parking standards. She said they began by working with community members to identify appropriate parking types by each street type. She said they also discussed a market-driven approach versus an approach closer to the ordinance, where there is a minimum parking requirement. She said a market-driven approach puts the developer or property owner more in charge of identifying how much parking they would need based on their tenants or uses, as opposed to administratively requiring a certain parking requirement.

Ms. Accardi said staff heard mixed support for the market-driven approach based on the transit and bike-ped infrastructure currently there, but that it could change over time in interest for that. She said with the Planning Commission, staff heard they were in favor of updating the parking standards and encouraging shared or district parking, but not moving all the way on the spectrum.

Ms. McKeel said the current state was horrifying.

Ms. Accardi said staff research included looking at precedents and other form-based codes and localities that have implemented it, and that they have similar maps that look that way.

Ms. McKeel said she was sure it was not just Albemarle. She said it was one thing to work on.

Ms. Accardi said the draft framework includes a table that dictates parking type by the character area of where a property is located, as well as an updated parking standard of a minimum parking requirement of one space per 1,000 gross square feet; and half a space per hotel room. She said this is a change from the current ordinance, with a maximum of 150% of that parking minimum. She said parking that is on site and surface lots cannot exceed 150% of the minimum requirement.

Ms. McKeel said it would be interesting to take those standards to the current map and show the difference of what it would look like if the County had those standards. She said she didn't want staff to have to do much more work, but that it would be interesting to see the side-by-side of the recommendations.

Ms. Accardi said that as the area redevelops, staff can look at parking standards and modify as appropriate. She said for transit-oriented development, there could be some modifications made for a site. She said there is a desire for the area to have more transit access and walkability, and that they could reconsider that portion of the ordinance.

Ms. Mallek asked if staff was considering phasing the parking changes along. She said when the form-based code in Crozet in 2010, in retrospect, it seems they went too far. She said there were some people at the time who were concerned that the parking regs were being dropped too low, and now that they are beginning to have more activity in Downtown Crozet, half of the larger area that will soon be the plaza at Barnes Lumber is providing parking for everything else. She said they will have to do some quick catching up out there. She asked if staff could start with something more conventional and then, as parking structures become available, they shrink it down.

Ms. Accardi replied this would be possible. She said staff's recommendation with a minimum and maximum was an attempt to update the current parking standards without moving too far on the spectrum. She said they did hear feedback that people don't want to move too far and then not have parking available.

Ms. McKeel said there is a balance because if they never reduce, they won't get anywhere.

Ms. Mallek said the 1,000 to 1 was based on restaurants and retail as opposed to employment. She said the mix of the uses will make the difference, and who is there in the daytime versus nighttime.

Ms. Falkenstein said staff knew they should check back on this periodically and keep an eye on how it goes. She said once they adopt the form-based code, she imagines they will be back for refinement over time.

Ms. Falkenstein said the next section talks about architectural standards on page 17 of the framework. She said with the community, staff looked at different architectural styles and did a high-level visual preference survey to hear what the community wants to see in the area. She said people seem to prefer architecture with façade articulation, high levels of transparency or windows, and high-quality materials.

Ms. Falkenstein said in the development community, they talked about process. She said currently, Rio Road and Route 29 are entrance corridors that bisect the area, so the majority of the property, if and when it develops, has to go through the Architectural Review Board process. She said staff received strong feedback that there is a preference to provide a by-right process where there is some certainty and the development community wouldn't have to go through the ARB if they met certain architectural criteria for the area.

Ms. Falkenstein said staff engaged with the Planning Commission on this topic, and there was support from the ARB to pursue a by-right approach for Entrance Corridor guidelines. She said the Planning Commission was generally supportive of the concept, but had some concerns that if they go too far and provide architectural requirements in a code or zoning ordinance, it might be too prescriptive, could stifle creativity, and could create sameness and lack of architectural diversity in the area.

Ms. Falkenstein said they discussed an interim measure where they could identify a new County-wide Certificate of Appropriateness, or ARB approval that development has to go through, that could be staff-approved, and that staff would develop guidelines and criteria for that with the ARB, specific to the Rio29 area, that projects could meet if they decided to go through the by-right process.

Ms. Falkenstein said the topics that arose as important ones to implement the Entrance Corridor guidelines were transparency in materials, façade manipulation, and lighting. She said the recommendation in the framework is to develop the new County-wide Certificate of Appropriateness with the ARB, then have a staff-approved process to do a by-right process.

Ms. Accardi said the final section of Section 2 is about amenity standards, which refers to green space, public space, and open space. She said the Small Area Plan had recommended amenity space types, but staff has further work to do on what those should look like and the components of them. She said staff worked with community members to identify their priorities for each space type.

Ms. Accardi said with the development community focus groups, they talked about cash-in-lieu options, since they heard strong feedback for shared community amenity spaces. She said as opposed to being distributed all across the sites, in small portions, they discussed how they can build support for shared, open green spaces. She said staff heard support for this.

Ms. Accardi said that based on the regulating plan they had at the time, staff heard from the Planning Commission feedback for more of the amenity space on the plan, and that the Commission highlighted the importance of design standards to prevent grassy lots without any programming and ensure there is activity and use of spaces.

Mr. Randolph said the track record with cash-in-lieu on affordable housing has not been particularly productive. He said his concern is that cash-in-lieu for the amenity spaces would result in a lack of those spaces. He said this was to Ms. Palmer's point about ensuring that they do not see a dark corridor because of tall buildings, and the answer to that is to ensure that on a taller building, e.g., seven stories, the curtilage around the building is wide enough that there is open space there that cuts down on



massification and create a space where workers can recreate directly beside the building on the grass provided.

Mr. Randolph said if they do cash-in-lieu, they are going to lose this, and it is going to be concentrated architectural construction without the kind of walkability and human-centered focus. He said what they would end up with in dealing with massification at the expense of open space. He said this would be his only cautionary note about cash-in-lieu, that though it seems appropriate, they could be losing one of the attributes everyone sees as being valuable, which is ensuring that there is amenity and open space for people to enjoy.

Ms. Mallek said that with the constructed wetland in Crozet, three quarters of it was built with grant funds, and the rest from local money. She said when projects develop, they buy into it and help to offset the cost over the future time. She said this was possibly a different way to go about the open space, that the plaza gets built, and then everyone who renovates after that gets to buy their share.

Mr. Randolph agreed, adding that incentives can be provided for that to happen.

Ms. Falkenstein said this was similar to the recommended approach. She said if a property develops that has one of those amenity spaces shown on their property, they would be required to provide that with their development. She said future projects that are nearby could contribute funds to develop the space and provide playgrounds, trails, or facilities the community says it wants.

Ms. Mallek said if there was to be, for example, a plaza or bigger gathering place, this was not something they could take to the bank because there was no income return on it. She said this was what they learned in the other projects and it may be something where it takes more creative financing to get that larger scale or half-acre built.

Ms. Accardi said one of the challenges in the area is that there are massively different parcel sizes in that some are very large, and some are very small. She said staff has more work to do to think about other options regarding how a smaller property owner can contribute to a centralized green space, and how other properties must dedicate a minimum area to on-site amenity space. She said the draft framework references the regulating plan, and all of the green spaces shown on the plan are the amenity spaces that would be required.

Ms. Accardi said staff incorporated additional space based on Planning Commission feedback. She said there is an additional green area in the Rio Hill Shopping Center to the north end, and then an additional space on the south side of Fashion Square Mall.

Ms. Accardi said what the regulating plan doesn't show is that, as street network would theoretically be built out and parcels redevelop, those on-site smaller amenity spaces would be built as well as bike-ped areas. She said this was just one layer that would be built upon.

Ms. Falkenstein said the last area of the framework speaks to incentives. She said what they just covered would be required elements of the form-based code, but that there are additional things that staff knows the community wants, things the Small Area Plan calls for, and things that the Board's Strategic Plan, e.g., Climate Action Plan, affordable housing, call for. She said they want to provide an incentive program where they can encourage people to go beyond what is required.

Ms. Falkenstein said staff engaged with the steering committee on the topic of incentives and brought the concept of a points-based system to them where different site design elements would be assigned a point and then, based on how many points the site receives cumulatively, the developer can receive certain incentives.

Ms. Falkenstein cited a framework for incentives on page 22 of the draft framework. She noted it needs more vetting to ensure there are the right point values assigned to each of the incentives. She said staff wanted to bring it to the Board as a concept to see if the Board supported it, noting that the stakeholder committee thought it was overall a good concept. She pointed out things such as additional affordable housing, additional amenity space, green building design, and low-impact development. She said if a developer achieves a total point value, they can get bonus height or certain relaxed standards from the form-based code.

Ms. Falkenstein reiterated that the points system needed more vetting, but that it was a concept they wanted to explore. She said it could help get some of the extra things for site projects in the area.

Ms. Mallek asked what an example would be of a relaxed standard.

Ms. Falkenstein replied that perhaps reduced stepback requirements would be an example, so if someone did extra architecture, they could get out of a stepback requirement.

Ms. Accardi said stepbacks were the primary area they were looking at. She said stepbacks typically are in the ordinance in order to address creating human scale design, but staff has found through other form-based codes that they can accommodate that goal of having it be an interesting street without physically moving back the buildings. She said this can present challenges for building, e.g., a hotel would see a change to its room size. She said this would consider how standards could differ while still achieving the same goals.

Ms. McKeel said the key was to achieve the same goal.

Ms. Mallek said they will want to avoid a slippery slope.

Ms. Falkenstein said the main incentive and most appealing one would be additional height.

Mr. Randolph complimented staff for indicating that for projects exceeding \$250,000, there are bonus points if they include 1% or more for art and cultural activities. He said incorporating in the arts in the area will be critical to its long-term success as it will create a unique living space that people will gravitate to because of the art being there. He said this is what is resurrecting community after community. He said there was an article weeks ago about Waco, Texas which made their investment in the arts and are seeing positive results not only because Baylor is located there, but unaffiliated people are coming in because they want to see the art that is there.

Ms. Mallek said if this could also somehow finance a performing arts space, this would be terrific. She asked if it could also include structural in addition to decorative.

Ms. Accardi replied they have seen examples of other ordinances using a museum or arts gallery space that could satisfy that, in addition to physical art.

Ms. Accardi moved the work session into the discussion portion. She said the first question staff had for the Board regarded zoning type. She said the question is, "Should the Rio29 form-based code be implemented as an optional overlay, or should it replace the current base zoning in the area?" She said that as a quick overview of those options, the overlay district means that property owners would be able to opt into the form-based code overlay district or develop under their existing by-right zoning. She said this is typically Highway Commercial or Commercial in the area. She said if a property owner chose to opt into the overlay district, they would then be required to meet all of the standards that were outlined as recommended.

Ms. Accardi said alternatively, the base zoning option is a rezoning of a property's current district to the form-based code area shown on the regulating plan. She said current development may be nonconforming until redevelopment occurs, and if this was chosen by the Board, staff would need to work on the threshold at which a property would need to conform with the form-based code.

Ms. Accardi said staff's recommendation is the optional overlay district option, as this provide property owners with additional uses and development rights that are not currently allowed in the area, and would likely serve as an incentive to development under the form-based code. She said this also is consistent and enables mixed-use development through a by-right review process, which was one of the project's goals.

Ms. Accardi said a nuance of the optional overlay district option is that affordable housing can be required, since this is incentive zoning. She said a property owner is opting into all the form-based code, and so affordable housing may be required. She said this additionally enables flexibility while also not putting any properties into a nonconforming category and is consistent with the overall goal to develop an ordinance that allows the area to transition over time.

Mr. Randolph said when he originally looked at the form-based code, he was extremely skeptical about any of it being optional. He said the more he thought it through, the more he saw the value of allowing the developer to determine which approach they want to follow. He said the great advantage with the overlay district is that there is clarity and predictability for a builder. He said there is clarity because the County's expectations are clearly spelled out in terms of the performance measures or the incentives, or bonus points.

Mr. Randolph said there is certainty about the process because if a developer does "x," they know "y" will result. He said they would all love to be in a world where government doesn't have to regulate, and all it has to do is ask for certain things to be done, allowing people to go forth and benefit the community. He said the more he thought about this, the more he saw positive benefits of permitting both regimes to be operational, understanding the fact, as in the Columbia Pike in Arlington, that most of the developers will gravitate to form-based code and, with time, it will become the standard in the County anyway.

Mr. Randolph said it was well thought through and that staff had done an excellent job on the project.

Ms. Palmer asked staff to remind her how high the buildings could be built by right.

Ms. Accardi replied it is 65 feet.

Ms. Palmer asked how many stories this equates to.

Ms. Falkenstein replied that it depends on the use, and that it could be 5 or 6 stories if residential or a hotel.

Ms. Palmer asked if it could be 6 stories currently, by right.

Ms. Falkenstein replied it potentially could be.

Ms. Palmer said she was wondering if building height is what developers want, what the incentive is to go with form-based code other than what was just said.

Ms. Falkenstein said they are limited to just commercial uses and couldn't do residential currently. She said some of the properties are also limited by plans of developments, and the shopping centers are Planned Development Shopping Center zoning. She said if they want to do anything significant on their site, beyond what they have, they would have to go through a rezoning process.

Ms. Palmer asked if for commercial buildings, this would be 4 or 5 stories at 65 feet.

Ms. Falkenstein replied it would likely be about 5 stories, depending on the uses. She said for commercial ground story, it is usually 15 feet, floor to floor, but if they are doing residential above or office, they have lower ceiling heights for those upper stories.

Ms. Mallek asked if the "carrot" was that no zoning is required and it is known what will happen, so things are basically ministerial. She said this should be a huge incentive for people, and if time is truly money, it saves them the time taken by hearings and other things. She said this would hopefully make the math work out for many things that may end up being more expensive because they are getting a better product out of it with many more features.

Ms. Mallek said she was confused, at first, about the alternatives. She said either they go in, or do exactly what they are doing now, or they rezone. She said there were actually three layers and not just two. She said when she had thought there were only two layers, she was trying to figure out where the rezoning fits in. She asked if her understanding was correct.

Ms. Falkenstein replied that a property owner could always request a rezoning of their property to something different. She said the form-based code would become a floating overlay, and if someone wants to opt in, they can do so at any time without having to go through a rezoning process. She said it will be staff approved if they meet all the requirements.

Ms. McKeel said they were really getting at optional, or replace.

Ms. Falkenstein replied yes.

Ms. McKeel said those were the two operative words, more or less.

Ms. Palmer mentioned status quo.

Ms. McKeel said she didn't see status quo being a part of it.

Ms. Mallek said she didn't see them choosing to do this because they would want to keep up with the neighbors. She said she was hoping this would be the case. She said the framework was amazing as far as what staff had accomplished.

Ms. McKeel said it was a great report.

Mr. Gallaway said to look at what has been presented to the Board, it has been a wonderful job of taking what staff has heard and trying to figure out the balance of addressing it. He said it was all commendable.

Mr. Gallaway said some of the high areas, for him, would be that with the flexibility of use, size, block space, and height, he heard loud and clear from those who will be doing the redeveloping that much of this could be driven by the market, and they have to have the flexibility to be able to react to that. He said he didn't want to go in with a cookie cutter approach,

Mr. Gallaway said his biggest area of concern are the Edge areas next to the two established residential areas that are single-family, Woodbrook, and diagonally over. He said this is where the way the Small Area Plan is positioned, where the heights go, and how it eases down to those two areas will be important to keep their eyes on, and it is likely riskier near Woodbrook Drive, as there are already established commercial elements there.

Mr. Gallaway said he was very supportive of the optional overlay. He said there have been concerns from the current property owners of being able to transition from where they are currently to something else. He said just as the County has spent so much time trying to figure it out, the property owners are going to struggle with what will exist for them. He said giving them the flexibility to go at their pace and ease into it is something that must be afforded to them.

Mr. Gallaway said that when it comes to height and space, the code of appropriateness was the right approach. He said there will have to be room for everyone to learn as they grow, both on the development side and on the County side.

Mr. Gallaway said at one of the last steering committees he attended, he heard that as they do this, there is an opportunity for the County to start thinking about what they will invest into the area to help be an anchor, whether this is with roads and streets, a facility, something transit-related, or something else they haven't thought of. He said the County doing something to help provide the public commitment

to the whole vision would rightfully be looked at from those who would be developing in the area, making it clear that the County is serious about it. He said he didn't know where this would come up as a conversation, but that they were at a point in the process where the County has to seriously give thought to it.

Mr. Gallaway said regarding amenity space, he had concerns about it being sufficient. He mentioned a small, wooded area next to Agnor-Hurt, noting it was not a good spot due to the topography. He said there is a cut-through that would run between CMA and down to Route 29, which is a sliver by the library. He said some of the green spots are in the middle of the parking lot, and so there will have to be flexibility. He said watching the process play out, and from what the community and Planning Commission said, those who are redeveloping know that they would be completely missing the park if they didn't bring public amenity space to the area.

Mr. Gallaway said if there is a way to build affordable housing's longevity into the points-based piece, they should go there with incentives to help keep it affordable and not just 50, 60, or 80% AMI. He said he appreciated all the work staff has done on the project.

Ms. McKeel said since they are looking at some new models for transit, and as it relates to affordable housing, she would encourage thinking about exploring transit.

Ms. Mallek said under the 2016 proffer law, transit-oriented development got to use the old rules, and that this was another bridge to get the County even more production than they have had. She said Arlington has seen huge benefits with this.

Mr. Gallaway said he understood why there were concerns about height versus viewsheds and vistas. He said at some point, however, with a limited development area, height has to be part of the solution. He said while he would appreciate balance in getting the height and keeping the views, at some point, one priority is going to have to win over the other. He said if they have a limited development area and a place where they want to see increased density, the height may have to be the priority.

Ms. McKeel agreed.

Ms. Mallek said the way it is done can solve that. She said if it is with breaks so that wherever the prime view spot is, from the high ground, if they get a shot of the mountains, many things are possible.

Ms. McKeel said Ms. Mallek was talking about avoiding the tunnel effect.

Ms. Palmer said she would not replace it with the current base zoning but would make it optional in agreement with staff.

Mr. Gallaway asked if anyone disagreed with having an optional overlay and heard none.

Mr. Gallaway said he was in support of the draft framework. He asked if anyone was not in support of it.

Ms. McKeel said it was an excellent report.

Mr. Gallaway said he knew that areas that needed focus would continue to have the same amount of scrutiny the rest of it has.

Mr. Richardson said that Ms. Mallek talked about, with the height, it would depend on how it is done. He said he would mention two things. He said the first is that increased height is increased tax base, and when there is a limited development area, this is a big deal, as it relates to the County planning for its future with its revenue growth. He said the second thing is that density and increased height means lower cost for services. He said those two things play very well into the County's revenues, expenditures, and what they are able to do long-term. He acknowledged that what it looks like matters, but with a limited development area, they need to maximize the ROI on those corridors.

Ms. McKeel said these were good points. She said she was seeing in many of the development areas, especially in Crozet and Old Trail, and in the schools, they are all talking about wanting people to ride bicycles. She said they have no bike racks anywhere, however.

Ms. McKeel said she didn't know what the answer was or how to get at it, asking if they could start to brainstorm where to have people to put their bikes if the County wants them riding them. She said it is currently a challenge with the commuter service that people are riding their bikes to the bus, but there is nowhere to leave their bikes. She said they perhaps need to look at retrofitting some bike racks. She said there are kids who want to ride bikes to school, but there is no bike rack there, and they cannot take them inside.

Ms. Falkenstein said this was something staff thought about. She said they could require bike parking with the parking requirements, and that this was recommended in the draft framework.

Ms. McKeel asked if there is a bike rack in front of the County Office Building.

Ms. Falkenstein replied yes.

Ms. Mallek said they are located in the front and back.

Ms. McKeel said it has been a real challenge with some of the transit pieces as to how to handle the bike storage issue. She said another thing she wanted to mention, noting it was complicated as it involves the schools, was that it would be worthwhile to talk with the School Division about parking. She said it was no longer appropriate for parking lots to be built for three or four events a year. She said they heard at Western Albemarle that when they have open house, the parents don't have parking spaces. She said she was not calling out Western Albemarle but stressed that there are school buses and other options to be able to move people 2-4 times a year to one place.

Ms. McKeel said there needs to be different thinking about this, and that perhaps it could mean meetings between the School Division and staff. She said the thinking needs to be more in sync between the two sides of the house, as opposed to one side doing one thing and the other doing another.

Ms. Mallek said some of the students may be coming to some businesses in the areas for parts of their internships and that this was another way to look at the question.

Ms. McKeel said they talk about bicycling all the time but asked if they are really allowing for storing their bikes. She said sometimes, it means space and a pad.

Ms. Falkenstein said this was a great point. She said staff had one more question for the Board. She said staff is assuming that they will turn the framework into a zoning ordinance, noting that there is a lot of work needed to get it to that point. She said she heard broad support, so that would be the next step on the project. She said they wanted to engage the Board on two alternative processes to get there. She said she would share two timelines.

Ms. Falkenstein said the first timeline was the one that staff felt was the quickest they could get to an adopted ordinance, which anticipates a possible July adoption, if there could be joint public hearings. She said this approach focuses internally, with staff doing a lot of work drafting legal code language, working with the County Attorney's Office, partner agencies, VDOT, Fire Rescue, and others to make sure what they are doing works for those groups.

Ms. Falkenstein said the pro of Option 1 is that it gets them to adoption quickly. She said a downside is that it doesn't allow time for much internal engagement or engagement with the Board, the decision makers. She said it builds in an opportunity for public comment period on the final draft, as well as a quick focus group with the stakeholders and property owners to vet the draft with them, and then a work session.

Ms. Falkenstein said Option 2 is staff's preferred alternative, as they believe it will result in a better product. She said they do understand there is some urgency around it. She said the difference with the second timeline is that it builds in more community engagement and decision-maker or Board engagement, as well as with the Planning Commission, and additional opportunities for roundtables with property owners and stakeholders on different iterations of the draft, as it progresses along.

Ms. Falkenstein said Option 2 also builds in peer review. She said all the work has been done internally, but that none of staff has any prior experience writing a form-based code, and so they think there would be some value in reaching out to people who have done this across the State and country in order to get peer review on early drafts and recommendations or identification of red flags.

Ms. Falkenstein said Option 2 would also provide for site analysis, including mock development plans for a couple sites in the Rio-29 area to see what it would look like and make sure they are actually implementing the vision. She said this would involve consultant work. She said they have had early contact with consultants who do this work, who have estimated about \$20,000-30,000 for this work, noting that funding would be needed for that.

Ms. Falkenstein asked the Board how they would like to proceed, or if they had alternative thoughts.

Ms. Mallek said staff has already front loaded the engagement, which provides staff with much more knowledge about what people's feedback has been in the right stage to be able to put it more into the narrative form. She said there will probably be three new Planning Commissioners who may not be ready to be at prime time for a project like this. She said she was leaning towards Option 1, but asked staff to do what they need to do as opposed to saying they would definitely slow it down by six months. She encouraged staff to go ahead and do things that would be helpful, such as the peer reviews. She said she did not know if they will be getting new information from additional rounds of stakeholder meetings.

Ms. Palmer recalled Ms. Falkenstein's remark that staff understands there is urgency associated with the project, and that they prefer Option 2, though the Board may want Option 1. She asked what the urgency was.

Mr. Gallaway said the timeline they were looking to extend was brought to the Board before to extend. He said this was a second extension request, and that two of the Board members were very reluctant giving the first extension.

Ms. Falkenstein said she wanted to acknowledge that and say that staff is fully on board with

proceeding with Option 1 as quickly as possible.

Mr. Gallaway said that being one of those people who objected or had consternation about the first extension, he would say that staff's argument for the peer review would be a persuasive piece for him to be okay with it. He said the community engagement piece was thoroughly done, and everyone knew there would be continued conversations where input will be an ongoing part of the process as it develops, for years to come. He said staff's point about the peer review and site analysis was a good one and has not necessarily been part of the process before, so it could be a good opportunity.

Ms. McKeel said perhaps there was a balance in between so that they wouldn't push the timeline out too far but could make sure staff has time for the peer review.

Ms. Falkenstein said they could figure this out.

Ms. Mallek said the ultimate time constraint is the landowners who have been waiting for what seems like five years for the County to figure it out.

Ms. McKeel said they understand that this is new work.

Ms. Falkenstein said it was difficult to scope out something they have never done before, and it was hard to give the Board an exact timeline three years earlier.

Ms. Mallek said it was hard to predict even today, and she would absolve staff of worrying about missing the timeline by a little if they need to do more work. She said she would be fine with this.

Mr. Dill said given it's the first time staff is working with form-based code, the peer review may actually speed up the process if they get ideas on how to move more quickly and finish things up. He said he didn't think the two were incompatible.

Mr. Gallaway asked if everyone was okay with this.

Ms. Falkenstein said this was all staff had for the Board, unless they had other feedback.

Mr. Gallaway asked if staff had the answers they needed from the Board.

Ms. Falkenstein replied yes.

Ms. Mallek said she had a question to write down and think about for the future. She asked if they are making a sufficient focus on employment and businesses instead of simply putting in thousands more apartments there. She said across the County, they seem to be overrun with apartments and what they are looking for is office space because UVA keeps buying it all up. She said the number one priority for the residents in Crozet is to get jobs there so that people don't have to travel down Route 250 all the time to come to town to work. She said she would expect this is a prime location in the northern part of the urban ring to have a great focus on jobs and businesses.

Mr. Gallaway said the elements of the Light Industrial and manufacturing, as well as Mr. Randolph's point about the arts components, makes for this being built into the plan, but that it was certainly worth emphasizing.

Ms. Mallek said this needed to be the bold statement at the beginning of the plan, with the residential being almost accessory to that.

Ms. Falkenstein said staff has also been working very closely with Economic Development, and so they are aware of the code. She said there is also another incentives piece that they could explore.

Ms. Mallek asked if staff could try to get a sense, in working with VDOT, on those final things that will smooth the progress for the individual people, going forward, that all of a sudden when there is a new engineer in the seat, they don't decide to change the rules. She said there are now three different properties in the White Hall District that are experiencing difficulty because of staff changes, and the things they thought were approved 18 months ago are now not. She said she didn't know how to solve this, but perhaps the Commissioner would need to sign off.

Ms. Falkenstein said this will be a focus in the next phase of work, as staff is drafting final language, to make sure VDOT is on board with what street requirements are being put in. She said there may be additional planning efforts needed to get VDOT to allow for more urban street sections.

Ms. Mallek said it was difficult when it is not something that staff has control over.

Ms. Accardi acknowledged that they have approximately 17 staff involved across different departments and divisions who are working on the project. She said it has been diverse across staff subject matter experts, and that they have had significant contributions from the community and steering committee who have contributed a lot of their time and expertise.

Ms. Mallek said as they were talking about the incentive points, those parts could perhaps be outloaded to other rezonings to solve those sort of balances for other districts where there are projects going on.

Agenda Item No. 23. From the Board: Committee Reports and Matters Not Listed on the Agenda.

Ms. Palmer asked if the Board could address the Resolution in Support of Objectors of Champion Brewery Earlysville Road. She said there were four Board members who attended the public meeting, and that people are extremely aware of this issue. She asked if she needed to read the resolution into the minutes.

Mr. Kamptner replied that the resolution would be included in the minutes, as written, if adopted.

Ms. Palmer said this would be for Ms. Mallek, who is an official objector, to present her materials to the Hearing Officer at the ABC licensing hearing, when that occurs, noting the date was unknown. She said this resolution supports all the objectors in their effort to stop the brewery.

Mr. Gallaway said what was happening was that the ABC was in the process of hearing the granting of a license to Champion Brewery to do what they would like to do. He said there were 19 objectors that were in by the deadline they needed to be in, with Ms. Mallek being one. He said the process is that it is not a County piece, but it would be the Board supporting a portion of the local community, through Ms. Mallek, by objecting the issuance of the liquor license to the applicant.

Ms. McKeel asked if it was okay to approve the resolution that afternoon, even though the public hasn't seen it and it wasn't on the agenda.

Ms. Mallek said it was done by the deadline.

Ms. McKeel acknowledged that for the Board, it was, but from the public process, she was not used to simply getting things and approving them in this way. She said she understood there was a concern, but that she did not want to be accused of a "midnight vote."

Mr. Kamptner said people could accuse, but that it was timely submitted and distributed by the 5:00 p.m. Monday deadline.

Ms. McKeel said this was their own internal deadline.

Mr. Kamptner replied yes, noting that it does show up on the final agenda. He said it was not on the agenda that was posted last Tuesday or Wednesday.

Mr. Gallaway said it came to him prior to the Monday deadline and was asked to be done. He said he had mentioned they could modify the agenda in the meeting, but to send word out to make everyone aware it was coming, as they do with other items.

Mr. Gallaway said the timing piece that was important to understand was that the ABC board that will make the decision could, at any moment, decide to have their meeting the next day. He said that especially with the holiday season, the timing could be interesting over the next two weeks, and that they could go ahead and do it. He said the ABC could announce it and that only the objectors will get notified. He said as a Board of Supervisors, if they take action on this, it would give Ms. Mallek the ability to provide the Board's opinion to the ABC, or supportive documentation, as well as to the community members who were also notified.

Ms. McKeel pointed out that the Board does not have another meeting for a long time. She said she only wanted to clarify with Mr. Kamptner.

Mr. Kamptner said that with the resolution, the Board is not taking a position on its own regulations but is simply supporting the objectors under the ABC's own statutes.

Mr. Randolph said his only concern was that if the Board approves the resolution that day, there may be individuals planning to come at 6:00 p.m. to speak either in favor of or opposition to it, and they would find out that the Board would have already passed the resolution. He said it was good to have this discussion, but that he felt procedurally, they should vote on the resolution during the time period they established in the agenda.

Ms. McKeel said this was a good point that she felt better about.

Mr. Randolph said it was good they brought it up and discussed it, because then people can make comments and then the Board can vote accordingly.

Ms. Palmer said one thing about the item is that a member of the public did come before the RWSA Board the day before to bring this up, and mentioned the African-American community that was there prior to the flooding of the Union Mills area in 1966. She said this member of the public asked that RWSA take a position on this and actually buy the property. She said this was, of course, a much bigger issue, but that she wanted to make the Board aware.

Ms. Palmer said Ms. Kathy Galvin and Dr. Tarron Richardson, City Manager, were interested in seeing the resolution, after the Board passes it, if they pass it. She said after it is passed, she would

forward it to them so they would have that information.

Mr. Gallaway said they would come back to this item at the end of the meeting.

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Item No. 23. a. Resolution in Support of Legislation Improving Local Fiscal Impact Review Process.

Ms. Mallek said this came from VACO to help them, if the Board agrees that the legislature should take more time to look at the fiscal cost to local governments on things they decide to pass.

Ms. McKeel said this was a resolution to support legislation to improve the process for review of legislation that would have local fiscal impact.

Mr. Gallaway said this was something that used to be done.

Ms. McKeel said this used to be done routinely and that somewhere along the way, they stopped doing it.

Mr. Gallaway said it was a return to a past process.

Ms. Mallek **moved** to approve the resolution. Mr. Randolph **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

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#### **RESOLUTION IN SUPPORT OF LEGISLATION TO IMPROVE THE PROCESS FOR REVIEW OF LEGISLATION WITH LOCAL FISCAL IMPACT**

**WHEREAS**, each year the General Assembly considers thousands of pieces of legislation, many of which have a significant impact on local governments; and

**WHEREAS**, in recognition of the need for localities to have an opportunity to review and analyze legislation that may require additional expenditures of local funds or reduce local revenues, Virginia Code sets out a process for the Commission on Local Government to develop local fiscal impact statements for such bills, with the assistance of local volunteers; and

**WHEREAS**, under the current process, the large volume of bills and the rapid pace of the legislative session limit the time that is available for the review of bills with implications for local government finances; and

**WHEREAS**, the local volunteers who assist with the fiscal impact review process take on this responsibility in addition to their regular duties, often during the same time as local budgets are being finalized; and

**WHEREAS**, prior to 2010, legislation that had a local fiscal impact was required to be introduced by the first day of the General Assembly session, which allowed some additional time for the legislation to be reviewed by the Commission on Local Government and local staff, but this requirement was eliminated in the 2010 session, compressing the opportunity for review of legislation in subsequent General Assembly sessions; and

**WHEREAS**, additional time to review legislation would allow for a more thorough understanding of the potential ramifications of bills affecting local finances; and

**WHEREAS**, a robust analysis of legislation affecting local governments benefits policymakers, as localities work in partnership with the state to deliver critical services to Virginia residents;

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Supervisors of the County of Albemarle, Virginia expresses its support for legislation that would provide additional time for review and analysis of legislation with a fiscal impact on localities, as well as direct further consideration of additional ways to improve the review process.

**Signed this December 18, 2019**

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Item No. 8.11. Special Exception for Disturbance of Critical Slopes per 18-4.2 on TMP 63-19E.

The Executive Summary forwarded to the Board states that, on October 16, 2019, the Board of Supervisors referred this item to the Planning Commission. The Board requested that the Planning Commission review this request and directed staff to provide an analysis of the following information: a clearer timeline of when logging activities occurred, more information on the drainfield feasibility of the two possible building sites, more information on mountain resources per the Comprehensive Plan, and whether this parcel is within designated mountain resources per the Comprehensive Plan. This information is included as Attachment A7.



At its meeting on November 19, 2019, the Planning Commission voted to recommend approval of the special exception request with conditions. The Planning Commission staff report is attached (Attachment A).

The Planning Commission voted 6-0 (Commissioner Firehock absent) to recommend approval of the special exception request with the conditions set forth in the staff report. The Planning Commission did not request any changes. There have been no revisions to the application or the conditions.

The Planning Commission discussed County regulations for timbering, which is a by-right use in the Rural Areas Zoning District. Commissioners inquired about residential versus agricultural uses and disturbance of critical slopes in the Rural Area. Staff responded that residential uses, site plans, and building permits all are subject to critical slopes regulations. Agricultural uses and structures are not subject to these regulations.

A concern of the Commission was the potential for other parcels in the Rural Areas to invoke agricultural uses to clear land, and then construct dwelling units in critical slopes areas. Staff responded that this particular parcel has many unique features, including its topography, approval prior to the Water Protection Ordinance stream buffers, the loss of a building site after the parcel was originally approved, the availability of a location outside of critical slopes that is also at the top of a hill, and issues with drainfield suitability. Staff believes that this particular project does not set a precedent, and these types of applications themselves are uncommon.

Several Commissioners wanted to highlight that the applicant has been working with the County throughout the process for constructing their house, even prior to applying for the special exception request. Commissioners found it to be favorable that the applicant has coordinated with the County on erosion and sediment control measures (many of which are voluntary) and on the permits needed for approval to construct the house.

When the Planning Commission voted, three members (Spain, More, Bivins) recommended approval with no additional input. Three members (Keller, Riley, Dotson) recommended approval but noted concern for the potential of other parcels in the County to invoke by-right agricultural uses to disturb critical slopes to then build dwelling units there.

Staff recommends that the Board adopt the attached Resolution to approve the Special Exception Request (Attachment D).

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Mr. Gallaway noted that Item 8.11, Special Exception for Disturbance of Critical Slopes per 18-4.2 on TMP 63-19E, had been pulled from the Consent Agenda.

Ms. Mallek said Mr. David Powell, County Forester, had done research over the past week because she had reached out to her own forester to ask if he makes landings at the tops of mountains where logs aggregate, or if they are brought down the mountain with a skidder and loaded on the trucks closer to the public highway. She said that forester didn't have information about that, but that reached out to Mr. Paul Stoneburg, who is a retiring forester who was in charge of this particular timbering project from 2015 to 2017.

Ms. Mallek said Mr. Powell looked at all of the on-file area photographs of the property, going back to 2010, and it turns out that there was no landing at the top of the hill, nor a road made, during the forestry project. She said it is a small track that can be seen under the trees where the skidder would run up and down, and then the landing was near the buffer at the bottom.

Ms. Mallek said in 2018 from which there is the most recent aerial photograph from the Department Forestry, which was a year after the forestry operations closed out and final inspections were done, there was road building equipment on the property, including a bulldozer and earth mover in full view in the photograph.

Ms. Mallek said the reason she wanted to share this was that it gives her extra ammunition to be concerned about the way this has been occurring. She said there was no way for County staff to be out there during all the years of timbering to be able to find out this information about the fact that it did not seem to be accurate what they were told that the road was made during the timber operation, and it then wanted to be used as a driveway.

Ms. Mallek said she made a bit of a scene about this when the Board discussed it two weeks earlier, and that she was very concerned about the critical slope requirements and road-building approvals being ignored. She said it very much concerns her that forestry and agriculture are used and damaged in the process, as they are used for someone else's objective. She said the foresters are very concerned and always try to help people do the best job they can to meet the standards. She said they were very concerned that this was being used as an excuse for doing other things.

Ms. Mallek said she would be voting against Item 8.11, noting she didn't know if there was anything the Board could do about it at that point. She said going forward, however, they would need to figure out a way to prevent this from happening again.

Ms. Palmer asked what one would do with this kind of deception. She said they spoke the last time about a two-year period.

Mr. Kamptner said currently, there is a 24-month delay between the beginning of the construction of an agricultural road and submitting what, in Chapter 17, is called a Plan of Development. He said, looking at the staff report, the logging began between October 2015 and February 2018. He asked, based on the aerials, when it appeared and the agricultural road building equipment was observed.

Ms. Mallek replied it was in 2018. She said the logging operation signed off in 2017, according to Forestry's records. She said it was probably close.

Mr. Kamptner said it could be close, and that many of the facts and dates did not align with what was in the staff report. He said assuming they are talking about the road being built in February 2018, which is when the staff report says the timbering operation ended, they are 1.5 month away from reaching the 24-month period where they could legitimately do what they are saying.

Ms. Mallek said if they built it in 2018 without waiting the two years, and without any public process, this is not in compliance with what they should be doing.

Mr. Kamptner said if they built the road as part of the logging operation in 2018, then they have to wait 24 months to get approval for a Plan of Development. He said he could not put all the dates and facts together to give a definitive answer.

Ms. Mallek said it was an example of why they need to figure out a better process to keep track of these things and receive signoffs from Forestry and verify their records before they get into snares such as this. She said if there is a better paper trail, people will not do what happened at Advance Mills Farm back in 1995 that changed the direction of the north fork of the Rivanna River because of all the erosion.

Ms. McKeel asked if there was a reason to delay the item.

Ms. Mallek said that based on what Mr. Kamptner said, it sounded as if the applicant is within two weeks of getting what they wanted.

Mr. Kamptner replied that this was a maybe. He said if they assume what is in the staff report is correct, it would be the case.

Mr. Randolph said they couldn't verify the information.

Ms. Mallek agreed, saying staff couldn't either.

Mr. Randolph said Ms. Mallek's point was that the Board could not approve the item without verification. He said they should have verification and put responsibility on the parties who did the work to verify.

Mr. Benish said he couldn't help with verification of the dates, unless Mr. Frank Pohl could do this. He said he wanted to make sure the Board understood one aspect about the proposal. He said this is a lot that was approved in 1984 with a building site that the WPO ordinance, when it was enacted, essentially eliminated the building site. He said this particular property actually no longer has a building site, and there needs to be reasonable use available to the property for that first building site.

Mr. Benish said at some point in time, this property will have to deal with an amendment or a waiver from the County's building site and critical slope requirements for a building site on the property, because there essentially is none. He said it is either critical slope or stream buffer.

Mr. Benish said the way staff looked at this particular situation was allowing one building site on the property to either be in critical slopes or in a stream buffer, or an often wet area nearby the stream buffer. He said this decision ultimately will have to be made, whether there was a logging operation or not. He said he understands the issue about the logging operation and the end run that appears to happen, but that there are some unique circumstances about the parcel where a building site needs to be found either on critical slopes within the stream buffer.

Ms. Mallek asked if "reasonable use of the property" was not a variance standard where they are denying them all use of the property. She said if it has been timber property, it can stay timber property. She asked why they have to guarantee someone can build on something that is either wet or steep. She said they bought something with constraints for likely very little money, and now, they want to make it into a million-dollar building lot.

Mr. Benish replied that in the time the lot was created, it was built lawfully under the ordinance with a building site, and that the subsequent ordinance change took that building site away.

Ms. Mallek countered that they did not act on it at all, stating that she understands that when rules change in zoning, people have to meet the new rules unless they are vested in it. She said they don't just go back to 1920 because someone didn't do something between 1920 and 2019. She said she didn't know how they would connect those.

Mr. Benish said he would defer to Mr. Kamptner.

Mr. Kamptner said the concept of allowing a reasonable use is to ensure there is not a taking of

the property. He said generally, what the County has done is provide for a building site on every property, even in situations where there are regulations that evolve over the years, partially because the parcels were created before the regulations were put in place. He said if the County wants to look at this on a case-by-case basis, he couldn't answer whether or not preventing a home being built on the site would be a taking. He said it is a 55-acre parcel and there are other things that one might be able to make of the property. He said he couldn't make that decision at that moment because it required an individualized assessment that considers many factors.

Ms. Mallek said she would hope that some kind of process could be developed that would not be onerous but would make it very clear how people make these kinds of transitions going forward. She said if it is a true farm road, two years will not make any difference at all. She said if it is not a true farm road but a development road in disguise, the applicant will have to wait, and there should be some amount of penalty.

Mr. Benish said he understood that aspect of it, but that there was a fundamental baseline aspect to that particular property. He said he wanted to make sure the Board was clear on that it is not just about what could be perceived as an end run on using a logging operation, but that there is a site issue.

Ms. Palmer said she hated the thought of moving to approve the item, but given what Mr. Benish had just explained, she would make the motion.

Ms. Palmer **moved** that the Board approve Special Exception for Disturbance of Critical Slope per 18-4.1 on TMP 63-19E. Ms. McKeel **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

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#### **RESOLUTION TO APPROVE SPECIAL EXCEPTION FOR DISTURBANCE OF CRITICAL SLOPES AND MODIFICATION OF A BUILDING SITE FOR TMP 63-19E**

**WHEREAS**, the Owner of Tax Parcel Number 06300-00-00-019E0 (TMP 63-19E) filed a request for a special exception for disturbance of critical slopes and modification of a building site.

**NOW, THEREFORE, BE IT RESOLVED** that, upon consideration of the foregoing, the Transmittal Summary 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 exceptions in Albemarle County Code §§ 18-4.2.3, 18-4.2.5, 18-33.48, and 18-33.49, the Albemarle County Board of Supervisors hereby approves the special exception for disturbance of critical slopes and modification of a building site for TMP 63-19E, as described above, subject to the conditions attached hereto.

\* \* \* \* \*

#### **Special Exception for TMP 63-19E – Special Exception Conditions**

1. The area of land disturbance on critical slopes must be in general accord with the application plan, as shown on the plan entitled "Erosion and Sediment Control Plan TMP 06300-00-00-019E0", prepared by G.V. "Kirk" Hughes of Kirk Hughes and Associates, and dated May 24, 2019, last revised on October 31, 2019.

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Agenda Item No. 12. Closed Meeting.

At 4:56 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), to discuss and consider appointments to the Albemarle Conservation Easement Authority and the Architectural Review Board; and
- Under Subsection (7), to consult with legal counsel and briefings by staff members pertaining to actual litigation between the Board of Supervisors and the Scottsville Volunteer Rescue Squad.

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

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

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Agenda Item No. 13. Certify Closed Meeting.

At 6:05 p.m., Mr. Dill **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.

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

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

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Agenda Item No. 14. Boards and Commissions:

Item No. 14.a. Vacancies and Appointments.

Mr. Randolph **moved** to appoint the following people to Boards and Commissions:

- **Reappointed** Mr. Jay Fennell, Ms. Charlotte (Sherry) Buttrick, and Ms. Rose Emery to the Albemarle Conservation Easement Authority with said terms to expire December 13, 2022.
- **Appointed** Mr. Fred Missel to the Architectural Review Board to fill an unexpired term ending November 14, 2014.

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

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

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Agenda Item No. 15. From the Public: Matters Not Listed for Public Hearing on the Agenda.

Mr. Gallaway reminded the public that Item 21, Ordinance to Amend County Code Chapter 9, Motor Vehicles (Residential Parking), was pulled from the agenda but if anyone wished to speak to it, there would still be the opportunity to do so.

Mr. Gallaway invited public comment for matters not listed for public hearing on the agenda.

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Ms. Judy Freeman, Woodbrook resident, said she is a member of Sojourners United Church of Christ and has been asked by the church's governing council to speak to the proposal to make Albemarle County a Second Amendment sanctuary. She said Sojourners understand that the majority of Virginians, voters and responsible gun owners alike, averaging between 70-85% by recent polling outcomes support sensible gun safety legislation, i.e., ERPO laws, universal background checks, etc.

Ms. Freeman said the church understands that given the rise in accidental shootings, suicides, and shootings as a result of domestic violence, it is absolutely imperative that sensible gun safety measures be passed. She said it has been documented that more deaths by firearms happen in localities where Second Amendment sanctuaries have been established. She said that in Colorado, for example, of the 24 Colorado sanctuary counties for which suicide data is available, 22 counties (or 92%), as reported by the Gifford's Law Center data collection, had firearm suicide rates above the state average.

Ms. Freeman said that similarly, in Virginia, 36 of 51 localities that have adopted a resolution to date, and for which suicide data is available, have rates higher than the state median.

Ms. Freeman said that reasonable gun safety laws save lives. She said the community is made of sisters, brothers, daughters, sons, mothers, fathers, grandparents, and neighbors committed to making the world safer by working together for sensible gun laws. She said it is time for gun owners and non-gun owners, the NRA, and the Civil Defense League to put aside personal wants, a sense of entitlement, and fear mongering and pursue conversations and understandings that will ensure the safety and welfare of the residents of Albemarle County and the Commonwealth of Virginia, which is a common goal for all.

Ms. Freeman said therefore, Sojourners United Church of Christ, with many of its members being Albemarle County residents, has adopted a motion asking the Albemarle County Board of Supervisors to oppose the passage of the proposal to make Albemarle County a Second Amendment sanctuary county. She said as residents, she and her husband also ask the Board to oppose that proposal.

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Mr. Tom Sikes, White Hall resident, said he served in the military for 22 years, is a hunter, sportsman, and gun advocate. He said he is also a concealed carry owner. He said his purpose of coming to the meeting was to emphasize the importance of the Second Amendment. He read the amendment aloud, as well as the portion of the Virginia Constitution regarding militias. He said the Second Amendment specifically talks about the right of the people to bear arms, as does the Virginia Constitution.

Mr. Sikes said the Constitution, since 1607, has defined that every able-bodied person that can bear arms shall defend the State. He said it also states that in an attempt to put in place laws that interfere with the Constitution of the United States is illegal and unenforceable. He said in other words, if

the Governor puts in laws that are not constitutional, they are illegal and unenforceable. He said over 90% of all counties and numerous municipalities in the State are now Second Amendment sanctuaries.

Mr. Sikes said it has been noted that the Governor's attempt to infringe upon the rights of the citizens is illegal and unenforceable. He urged the representatives in Albemarle County to ignore the threats of the Governor to remove funding to the county if it passes sanctuary status and force registration of all weapons.

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Mr. Phil Woodson, Woodbrook resident, commended the Board on the work it is doing and to affirm the direction they have set for Albemarle County as its elected leaders. He commended and affirmed the Board's work that evening, stating that perhaps over the next few weeks and months, they would hear from people who are advocating for Albemarle County to become a Second Amendment sanctuary. He said he believes that path to be one of darkness, of fear, and in direct opposition to the legislative priorities the Board has set for 2020.

Mr. Woodson said it was his understanding that as part of the Board's list of legislative priorities for the upcoming year, the Board intends to initiate legislation that will amend Virginia Code to add Albemarle County to the list of localities in which carrying specified loaded weapons in public areas is prohibited. He said the Board is doing this because it understands that such a measure will improve public safety in public areas where many people may be present. He said guns do not save lives, but they end them.

Mr. Woodson said the Board's legislative priorities demonstrate that it knows this, but if the full community is unwilling to face that reality, they will continue to do irreparable harm to its friends, family, and specifically, its children.

Mr. Woodson said the children in this community alone have missed school days due to threats of unthinkable gun violence. He said their children learn to respond to the threat of gun violence before they can even read or count to 100. He said his three-year-old already knows how to hide in a corner at his preschool because of gun violence. He said the children practice cowering in corners, in closets, and under desks all because weapons of mass destruction are allowed into the hands of those who have been lost to the darkness.

Mr. Woodson said the community can no longer allow fear to grow and propagate in the community. He encouraged the Board to push back against the false narratives of self-protection and vague Constitutional distortion. He urged the Board to keep the course instead and to advocate and promote public safety through universal background checks on all gun purchases, establishing a minimum age of 21 years for any gun purchase or possession, banning large-capacity ammunition magazines and weapons designed to fire multiple rounds each time the trigger is pulled, and work toward ensuring that all guns are sold through licensed gun retailers.

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Mr. Andy Eckert, Esmont resident, said when he spoke to the Board two weeks earlier, he articulated a dilemma for the modern proponent of criminalizing ownership of certain firearms. He said specifically, he brought up Frederick Douglass' 1854 assertion that people ought to shoot down law enforcement officers and others who attempt to rekidnap runaway slaves in compliance with the nation's evil fugitive slave law.

Mr. Eckert said the dilemma he posited to modern gun grabbers was three-fold: one, support Douglass in his assertion of this justifiable use of force, and they will undermine the better part of their current ethical position on this subject; two, oppose Douglass, however, in a matter consistent with the Board's disdain for the private ownership of firearms that equip people to resist immoral state actors, and they will be explaining to constituents why disarming innocent black people is a higher priority for them than stopping evil white people from kidnapping them; or lastly, they can admit to believing that the standards of right and wrong, and good and evil, are simply subject to change across time and circumstances at the discretion of civil governments.

Mr. Eckert said that given the Board's complicity in the legislation that is pending from Richmond, his reasonable assumption that they are not racist and with his understanding of what Mr. Randolph wrote on Facebook a few weeks earlier, he is making an educated guess that each Supervisor would find its way out of this dilemma by way of the third option, namely, by contending that people live in a different time and in different circumstances than those of Frederick Douglass, and while they may have wanted him and other former slaves, among men and women, in general, to be at liberty to bear arms sufficient to oppose criminal threats from up to, and including, the civil authorities themselves, they either no longer believe that many such threats are credible, and/or they find it necessary to subordinate the affirmation of liberty to the now-supposed greater good of stopping mass murderers.

Mr. Eckert said it would take him months of three-minute speeches to properly articulate all that is unjust and erroneous about this viewpoint. He said he would start that day, where he thinks he should, by pointing out that God is the one who causes civil rulers to rise and fall, who appoints them for his purposes, and who also leaves no doubt that they are subject to his law, his word, his ethics, his justice, his definitions of good and evil, and so on, just as are the human beings called to every other station under heaven.

Mr. Eckert said in Romans 13:3-4, God says that the job of a civil magistrate is to be a minister to

the just for its good and likewise, a punisher of evil-doers, as God stipulates punishment and as he defines evil, also for the people's good. He said the Board's complicity with Richmond on the matter of the pending gun legislation will actually make them evil-doers in God's court, seeing as they will be judicially punishing, without cause, those to whom they are supposed to minister.

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Mr. Neil Williamson, with the Free Enterprise Forum, said this was the last meeting for Mr. Dill and Mr. Randolph. He said most of the people there, and those watching via livestreaming, know that those Supervisors and the Free Enterprise Forum haven't always philosophically agreed about things. He said this being said, each of those gentlemen have taken the time to listen to and read the Free Enterprise Forum's positions and understand its perspectives prior to making decisions. He said when they agree, it is really great, but when they have agreed to disagree, they have done so without being disagreeable. He said this is what makes democracy work, not speaking into an echo chamber filled with friends and supporters, but having that uncomfortable conversation in the marketplace of ideas where one's position is tested.

Mr. Williamson said that presently, local, state, and federal governments must continue to strive to be places where all positions are heard and considered. He said that perhaps due to proximity, local government offers the best opportunity for this civil discourse. He said when people know they will run into each other around town and recognize that regardless of politics, they will still be neighbors, it is wise to choose how they wish to disagree.

Mr. Williamson thanked Mr. Randolph for his years of service on the Board and on the Planning Commission, as well as for the continued expansion of his vocabulary with his loquacious monologues and soliloquies.

Mr. Williamson thanked Mr. Dill for his earnest service and honest chagrin at the enormity of time and process it takes to get things done in local government.

Mr. Williamson said the Free Enterprise Forum sincerely hopes that both Supervisors will be actively involved in the community beyond their service on the Board. He said to the balance of the Board, and to the two new members, the Free Enterprise Forum looks forward to complimenting, coaxing, criticizing, and cajoling the Board and its two new members in the new year.

Mr. Gallaway closed Matters from the Public.

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Agenda Item No. 16. **Public Hearing: Ordinance to Amend County Code Chapter 4, Animals (Dogs Running at Large)**. To receive comments on its intent to adopt an ordinance to amend Albemarle County Code Chapter 4, Animals, Article 2, Dogs, Section 4-225, Dog running at large is prohibited, to establish when a dog must be on a leash rather than merely be under its owner's or custodian's immediate control to not be deemed a dog running at large, and to provide exceptions to these requirements. *(Advertised in the Daily Progress on December 2 and December 9, 2019)*

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, public sidewalks, and other areas. 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 when the dog is not on the owner's or custodian's property. There are many public rights-of-way (e.g., roads, sidewalks, trails) in which the State, the County, or other public entities are merely easement holders, and there is the possibility that these easements cross the properties of dog owners or custodians. The proposed Ordinance would also apply the leashing requirement to dogs on these public rights-of-way, even if the dog's owner or custodian owns the fee simple interest in the property.

The proposed ordinance provides four exceptions to the leashing requirements under prescribed circumstances: (1) when hunting with a licensed hunter; (2) during field trials or training; (3) within a fenced dog park or exercise area; and (4) 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 adopt the attached proposed Ordinance (Attachment A).

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Mr. Greg Kamptner, County Attorney, presented. He said this was a fairly simple ordinance and that he had thought it would be a fairly simple process, as it was on an expedited schedule. He said it was a learning experience and that they would be making some process changes for ordinance development

and engagement, particularly for these seemingly small ordinances.

Mr. Kamptner explained that the slide before the Board was a summary of the draft that was distributed to the Board. He said that once it became public, the County did receive some public comment from some particular areas of the public, and that he has distributed some copies of a revised ordinance to address the comments that were received.

Mr. Kamptner said if there were no comments with the existing draft, the slide before the Board showed the proposed revisions. He said the first arrow was an existing provision, and the underlying text is needed. He said this was an inquiry from Mr. Randolph asking whether or not fox hunting was covered. He said the intention was that it would be included, but as Mr. Randolph was raising the question, it made sense to address it explicitly.

Mr. Kamptner said the second through fourth arrows are proposed changes that would address comments received from the public. He said the first one would deal with a comment from the fox hunting community, but that it could also apply to all types of hunting dogs for the off season, walking off, or exercise. He said the second new proposed exception would be to expressly provide for search and rescue and related public service training. He said the third was to address working farm dogs when they are guarding or herding.

Ms. Mallek said the most important question that needed to be clarified was that under "A," it says, "off the property of its owner." She said some people who contacted her were concerned that they had understood it was going to be required to be on a leash, even on their own property, and that she was swift to say that this was not the case.

Mr. Kamptner said that the draft that was before the Board during the public hearing back in October did not exclude, and included, dogs on the owner's or custodian's owned property, but that this was changed after that meeting. He said it now clearly provides it only applies to dogs that are off the property of the owner or custodian.

Ms. Palmer said she had some questions she had asked Mr. Kamptner before, via email, and that she would ask him to explain it. She said when they were discussing expanding this to the rural areas, she was balancing the fact that they have a lot of suburban areas in the rural areas, and that this was difficult to do, but then that there is a 725-square-mile County, with a huge percentage of that being very rural.

Ms. Palmer said that as a veterinarian, she knows of many ways that people walk their dogs off leash when they are very in control of those dogs, and that they are not necessarily hunting dogs. She said as the owner of a well-behaved dog, she herself would be doing some illegal things with this passage. She said she was trying to figure out the intent, and that was handling the nuisance dogs and dealing with dogs that are roaming in neighborhoods, barking a lot, and going after other animals that are on leash. She said since the County already has leash laws in its parks, which is a common place where people and dogs interact, this is already taken care of.

Ms. Palmer said she did some research online of what is done in other states and how they deal with this without having a county-wide leash law, and that she came across some examples of using a nuisance ordinance. She said she emailed Mr. Kamptner and asked him if there was any other way, other than a leash law, to get at this issue and take care of those problem animals but at the same time, not have a blanket law throughout the entire rural areas. She said Mr. Kamptner replied to her email and asked him to explain his reply to the Board.

Mr. Kamptner said his first reply was about Ms. Palmer's question as to whether or not there was a Dylan Rule issue with this. He said under the act that this particular regulation is enabled (being the same one as dogs running at large, dogs on a leash, vicious dogs, and dangerous dogs), the dogs running at large statute and the authority to require that dogs be leashed are two of the statutes that fall under another statute that allows localities to adopt more stringent regulations than those two statutes.

Mr. Kamptner suggested that if there is a middle ground, it would be something that is more stringent than the dog running at large provision, which requires that the dog be under the immediate control of the owner or custodian. He said he did not have an answer that day of what that middle ground is that balances the two. He said as to whether or not a nuisance regulation, as seen in a North Carolina statute, falls within the more stringent category than the dogs running at large statute, but is something less than the ordinance that was before the Board that night, he did not have an answer for that. He said the County Attorney Office would have to further research and analyze that issue.

Ms. Mallek said that under number 6 on the new sheet, Mr. Kamptner mentions, "...on other property where permission is given." She asked if this was something that can be applied to other properties as well, or just to people walking their dogs on shared trails or something amongst rural areas. She asked if it was best to leave that only for number 6, where it was stated.

Mr. Kamptner replied that it could be done. He said it may complicate enforcement, however. He said he spoke with Officer Crickenberger the evening before and talked about the two exceptions that have been added that allow the dogs to be on other properties with the owner's permission. He said Officer Crickenberger said this may or may not work in all cases, as sometimes permission is not given. He said what they spoke about was coming back after six months or a year to see how this is working.

Mr. Kamptner said to answer Ms. Mallek's question as to whether or not this kind of language could be added, the answer was yes, but that it could complicate enforcement.

Ms. McKeel asked Ms. Mallek for clarification about her question.

Ms. Mallek said this was about having the dog off leash off the owner's property, but on a neighbor's property where they have permission to walk with the dog, for example. She said this language was included in number 6 for the public service training, but that perhaps it could also be applied to other areas. She said she was happy to start with this, however.

Mr. Kamptner said it would be moving that concept from the exception into the general rule under Subsection A.

Ms. Mallek said she agreed, as many people say that they have permission to be somewhere, but when she asks them who the owner of the property is, they have no idea.

Mr. Randolph said one speaker remarked that government is cumbersome and lingers along. He said he was impressed with the alacrity with which Mr. Kamptner has added the new provisions in response to public concerns. He expressed appreciation to Mr. Kamptner and his staff.

Mr. Dill said he missed the meeting when this was initially discussed. He asked for a brief recap of the problem they are trying to address and if there was a specific issue that a lot of people have complained about.

Ms. Mallek said the rules that were adopted between 2010 and 2014 in the rural areas were due to people being knocked down at their own mailboxes by dogs running. She said this was not a new issue, though there were some new clarifications that have come along in response to new State laws.

Mr. Kamptner said the general leashing requirement is new. He said currently, they have the "dog running at large" standard, and they did have members of the public who came to speak during Matters from the Public to express concerns about dogs who were not under control.

Ms. McKeel said in the urban ring neighborhoods such as Hessian Hills and Canterbury Hills, there has been trouble with dogs being off leash with their owners walking them and people feeling very uncomfortable. She added that the dogs do not appear to be under voice command. She said she personally experienced a dog rushing at her recently, with its owner running down the road behind it yelling at it to stop. She said the owner assured her that the dog behaved better off the leash than on, but when the dog rushed her and her dog, who was on a leash, she picked up her dog to protect it. She said she was receiving calls from urban ring neighborhoods.

Ms. McKeel said she was not worried as much for the very rural areas. She said she gets calls from Hessian Hills because there is someone there with a pit bull mix and the owner insists the dog is under control, though the neighbors will say otherwise. She said they have had neighbors climb up on trash cans to get away from a dog.

Mr. Dill asked if this was not already covered under current laws.

Ms. McKeel said if the dog doesn't actually bite the person, it is hard to prove whether or not it was actually under voice command or control.

Ms. Palmer said it would be good to explain why the dogs running at large statute would not take care of this in the rural areas.

Mr. Kamptner said the direction from the Board was to have the ordinance to apply County-wide. He said the idea had been raised to have it apply only to the urban ring and non-agricultural districts.

Ms. Palmer said the dogs running at large statute was currently County-wide. She asked why that did not cover a dog that is bothersome or is a nuisance in the rural areas.

Mr. Kamptner replied that it is because it is not a fail-safe strategy. He said the comments from the public were that the owners may claim that the dog is under their control, but the anecdotal information received is that this is not the case.

Ms. Mallek said it was a matter of equal protection as well, and that people who live in the country should have the same rights and access to laws that people in the urban areas do. She said this was especially discussed about the barking dog issue more recently.

Mr. Dill said the other side to this is that when people live in the rural areas, they expect to have some inconveniences.

Ms. Mallek said this was a matter of public and personal safety when people are jumped and knocked down, for example, going down their driveway to get their newspaper. She said Burnley Station's whole neighborhood came to the Board talking about the dogs years ago and that they were very pleased to have better protection and have their rights recognized as well.

Mr. Dill said when a dog jumps and knocks someone down, that is when someone would call



Animal Control. She asked if Ms. Mallek was saying it was a preventative thing.

Ms. Mallek said it did not sufficiently help those people.

Ms. Palmer said the dogs running at large statute did not help them. She said with the particular situation at Burnley Station, they were unable to have it help them.

Ms. Mallek said it was a terrible management burden.

Mr. Dill said he feels sorry for dogs that are cooped up in a house all the time or are on a chain constantly. He said in so many rural communities, there are minimal houses and a lot of land around. He said that to say they all have to be on a leash or chain, or in a house, it seemed unnatural in a rural, farming area not to have the dogs running around. He said he has been bitten by dogs several times and knows it is an issue, but that it didn't seem life-threatening and that it seemed cruel to the dogs.

Mr. Dill said he grew up in the country in New York and that dogs always ran around. He said this was his first hearing about it and that it seemed like a cultural shift for the 725 square miles of country area where he didn't think dogs were a problem and that they should enforce it because of a few problems that could be covered with existing ordinances. He said he didn't want people to be knocked down at their mailboxes, but to have a County-wide rule about never letting dogs run outside the house seemed like overkill.

Mr. Gallaway opened the public hearing.

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Ms. Sherry Buttrick, White Hall, said she was there in opposition to the application of the dog ordinance, both in its present form and in the proposed amendments to the rural areas. She said she understood the need in the more urbanized areas but that in the rural areas, the Comprehensive Plan says they should have a lesser degree of services. She said although there are subdivisions in the rural areas, as someone who has espoused rural preservation for many years, this is a failing of the system and not a success.

Ms. Buttrick said she owns a pack of beagles and that she is a member of both of the foxhound packs. She said they hunt rabbits and not foxes and when she saw Mr. Kamptner's slide about fox hunting, this does not help because they are busy hunting rabbits.

Ms. Buttrick thanked the Board for working to address the idea that they exercise the hounds as well as hunt them, and that they exercise them off lead. She said they do this in the summer as well as in the hunting season. She said the ordinance, both present and amended, would punish a hound and make it a crime for the hound to go home early from a hunt if he is young, or an old hound who is slow, or a hound who is supposed to be hunting rabbits (not foxes, as the ordinance suggested). She said those hounds would be in violation of the ordinance, and this is a problem for those who are trying to have an organized pack of hounds but live in the real world.

Ms. Buttrick asked if the Board could look to changing the word "must" to the word "may" when it says that the dogs must be impounded if they should be breaking a law. She said there are many benign circumstances. She said a Supervisor could be walking down the road with a very well-behaved dog and her dog would have to be impounded. She said discretion is necessary, lest the law be tyrannically applied.

Ms. Buttrick presented some pictures of what the hounds do off-lead so that they could be entered into the record.

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Ms. Mary Kalergis said she was speaking on behalf of the Keswick Hunt Club. She said they have a pack of foxhounds in the Keswick area and that this club has existed for 126 years. She said they have never had their dogs on a leash and that no one has ever complained about it. She said it is a way of life and that it was not just foxhounds, but also included deerhounds, coonhounds, and rabbit hounds. She said it is woven into the fabric of Virginia history.

Ms. Kalergis said she knew that the law was written with the best of intentions and that she appreciated the 11th-hour efforts about walking the hounds and packs off-season without having to call 50 members of the club to come with a leash to help them do it every day. She said the dogs need to learn to listen to the huntsmen and that they are not leash dogs. She said she appreciated the changes and everything Ms. Buttrick said, especially about changing the language from "must" to "may." She said although the law was well-intentioned, it seemed punitive and harsh for a rural community.

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Mr. Patrick Butterfield said he represented the Farmington Hunt Club, which hunts in two-thirds of Albemarle County and has existed for a long time. He said he appreciated the changes to the proposal and seconded Ms. Buttrick's concerns. He said they are mounted hunting, meaning they are riding horses, whereas the beaglers hunt on foot. He said they all share the same purpose of enjoying the countryside in a sport that has been done for hundreds of years in Virginia. He said they would like to see it continue that way and appreciate the Board's concerns and efforts on their behalf.

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Mr. Bob Garland, Jr. thanked Mr. Dill and Mr. Randolph for their service over the years to the County. He said he represented the Canterbury Hills Neighborhood Association and was there to speak in favor of the proposed changes to Ordinance 19-4 regarding dogs running at large. He said dog owners in their neighborhood generally do a good job of controlling their pets. He said despite this, he and his wife can easily remember being charged by large dogs at least six times. He said this includes one incident in which his wife was knocked down and another where their own dog (on a leash) was bitten. He said there are incidents that the ordinance could address, particularly in the urban areas.

Mr. Garland said that over the years, when he owned dogs, he always had them on a leash when outside of their fenced yard and that it was never a problem or concern for them. He said they have no objections, as a neighborhood association, to the four exceptions, as well as the proposed exceptions from the comments shown on the screen and outlined by Mr. Kamptner.

Mr. Garland said this likely was another good example of the needs of the increased urbanization of Albemarle County versus the rural areas. He said he could see that perhaps this ordinance could be more pointed to the urban areas rather than the rural ones.

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Mr. Peter Taylor, Rivanna District, said he was sorry to see Mr. Dill and Mr. Randolph move on, expressing his appreciation for their time and efforts. He said he wondered, living in a very rural part of the County, why he was there and did understand that the urbanization of Albemarle County could affect people with unruly dogs. He said he wondered what remedy this proposal offers.

Mr. Taylor said it basically says, as he reads it, that any dog that is seen in a "public space" would necessarily be impounded and, as a practical matter, he was not sure how this would be enforced. He said the County is understaffed in many areas and cannot enforce some of the important regulations that exist. He noted this was no fault of anyone other than there are a lot of regulations, and the County is growing. He said he didn't see what is going to happen. He asked if someone would call the County Police and ask for dogs to be impounded, expressing that he would think the police would decline to do so.

Mr. Taylor said he had to believe there is remedy in the legal system in an urban or suburban environment where an unruly dog bites someone or knocks them over. He said it seemed like this would be the first course of action to stop this problem. He said he was not in favor of this, expressing it was an overreach, impossible to enforce, and that it would become extremely expensive with the need for additional dogcatchers and expenses.

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Mr. Gallaway closed the public hearing and brought the matter back before the Board.

Ms. Palmer asked about the suggestion to change the word "shall" to "may" relating to impounding.

Mr. Kamptner replied that the word "shall" is not proposed to be changed and is what is currently in the code. He said this is an existing provision.

Ms. Palmer asked if this was mirroring the State Code.

Mr. Kamptner said this is what he wanted to confirm and that this was what the Board adopted in November 2018.

Ms. Palmer recalled that Mr. Kamptner had told them it mirrored the State Code. She asked him to verify this.

Mr. Kamptner said if the Board is interested in entertaining the Rural Area versus Non-rural Area, he had already revised the ordinance.

Mr. Gallaway said they are running increasingly into more issues where refining the definition of rural versus development areas creates problems. He cited the Airbnb issue as an example, explaining that this was when they first started recognizing rural residential areas. He said he was sure the purists in the rural areas are saying this was the problem to begin with and that the County shouldn't have allowed the residential in the rural area. He said this distinction is repeatedly coming up across different issues and that they did start to make different definitions in terms of area, besides rural and development area, such as with the Airbnb issue. He said he could see how they could carve things out like this.

Ms. McKeel said she was going to ask the same question about using those same definitions. She said if the Jouett District, if they use "rural" and "development," they are spitting Georgetown Road down the middle with the same sorts of neighborhoods on both sides. She said this is why it doesn't really work in the urban ring to identify those areas. She suggested considering the neighborhoods in a way that is similar to how they were addressed with the Airbnb issue.

Ms. McKeel said where she is in the urban ring neighborhoods, they were having a lot of trouble with dogs that are not well-controlled. She said she was not saying that everyone is extremely at risk, but that it was not pleasant to go for a walk and have someone with a dog that is not well-behaved. She said she could think of one dog she knows that has had four calls about it running loose.

Ms. McKeel said she was happy to entertain some other wording, but that she was trying to get at the neighborhoods. She said Ms. Mallek has expressed some frustration in the rural areas as well.

Ms. Mallek said there are many places in the country where people also live close to each other.

Ms. McKeel said this gets more to what they were talking about with Airbnb.

Mr. Randolph said it also puts a unique responsibility on police, and that the K-9 core is notified, but they have to pull out the County's latest development area map. He said he could think of two parts of his magisterial district, including Riverside Village, which is actually in the development area but hasn't been built, and so it looks like rural area. He said parts of the Village of Rivanna were recently very much rural and now, in preparation for Rivanna Village, they have come down but as of three months earlier, they would have definitely been rural.

Mr. Randolph said they must be clear that it is not an easy line and is not as though they could easily delineate the areas. He said this was why they need to have one rule, and that he would favor applying it equally throughout the County.

Ms. Palmer said she was not debating that there was a problem in the urban neighborhoods and in some of the rural ones. She said she was still struggling with why, if there is a problem dog in the neighborhood who knocked someone down, someone cannot call Animal Control to come pick up that animal under the "dogs running at large" statute.

Ms. McKeel said there is someone who walks their pit bull in a neighborhood off of Hydraulic and Georgetown without a leash and that the dog tends not to behave very well. She said the woman says she can do that because the County's policy says the dog doesn't have to be on a leash, but has to be under her voice command. She said the neighbors are very frustrated and that she has received numerous calls.

Ms. Palmer said she understood and appreciated this example.

Ms. McKeel added that she was not disparaging pit bulls.

Ms. Palmer asked if someone called Animal Control or the Police Department and said there is someone who says they can control her dog, but that she is clearly not because it has chased them down the road, what the Animal Control Officer or the Police say to this person. She asked if they would go talk to the dog's owner.

Ms. McKeel said she could not respond to what the officer would say. She said she knows that the neighbors have called and haven't had much luck.

Lt. Terry Walls, Albemarle County Police Department, said regarding this situation, the police would respond. He said whether or not they would be able to determine if there was a violation of the leash law or whether or not the dog was under voice command would depend on several factors. He said one factor would be what the officer observes or what information they receive from witnesses. He said whether they would be able to enforce that would also be determined from what they saw, or what the witnesses would be willing to testify to. He said they may develop probable cause from the witness statement, but if they are not willing to testify, the police would not be able to charge someone with a violation in that circumstance.

Ms. Palmer asked if they had the leash law, how this would clear up the police's problem of addressing the issue if someone called about the dog not being on a leash.

Lt. Walls said this would take this out of the equation. He said if the law states the dog has to be on a leash, and it wasn't, it would be a clear violation.

Mr. Dill asked Lt. Walls how many Animal Control Officers there were.

Lt. Walls replied that they have two Animal Protection Police Officers and two Animal Control Officers, totaling four people dedicated to animal-related issues.

Mr. Dill asked Lt. Walls what he believes would be the effect of having the law cover the entire County. He said it sounds as if the officers work full-time every day as it is, and asked Lt. Walls if the law would affect their workload.

Lt. Walls replied that he didn't think it would be much of a change. He said this was something that the officers may occasionally observe while riding down the road or on patrol. He said most of the time, it would from a call for service, which they will respond to either as an Animal Control unit or from a police officer. He said much of the violations they observe are in the parks, which falls under a different section and would not experience a change.

Ms. Palmer noted there are already leash laws for the parks. She asked if the police often get called for situations about dogs not being on leashes in neighborhoods and bothering people.

Lt. Walls replied yes.

Ms. Palmer asked if this was common.

Lt. Walls replied they receive several calls, though he didn't have the numbers.

Ms. Palmer asked if the police find it difficult to determine whether or not there is a violation now.

Lt. Walls replied this is the case sometimes. He said many times, the police are called after the fact, and so they do not observe the dog off-leash. He said sometimes, they do not observe the dogs at all, but they are gathering facts from the caller, which makes it more difficult. He said many people will not want to come to court for this.

Ms. McKeel added that there are apartment complexes in the urban ring where people bring their dogs from those complexes into single-family neighborhoods to walk their dogs, and that sometimes when they get into the neighborhoods, they let them off leash. She said she knows of two people who put their dogs in the cars and drive them to the neighborhoods, then let them out to run. She told Ms. Palmer it is an urbanizing problem.

Ms. Palmer said the County needs more dog parks.

Ms. Mallek said one take-away, as they have found with other places where they have improved the rules, is that she predicted that a very large percentage of people would follow a rule if it existed, which would reduce the issue. She said this was true whether it's the geography that needs to be changed to have something that would help the most people right away, this was one way to go about it, if they could figure out a way that would be easily enforceable and describable so that the public will also understand. She said if they live in any kind of neighborhood, anywhere, it is probably not a legal description, but a more effective way to describe it.

Ms. McKeel asked how they described the Airbnb neighborhoods.

Mr. Kamptner replied it was done by zoning district. He said the rules applied when they were dealing with five or less acres in the RA Rural Areas District.

Ms. McKeel asked if they identified neighborhoods by zoning.

Mr. Kamptner replied that it was by zoning district.

Mr. Randolph said he didn't think they should go this route with the dogs and noted that it would make it very complicated and the police would have to find out what the zoning is on the property...

Ms. Palmer said her personal feeling was that if they have to look at the whole County, she would vote against the proposal at that point as she would like to see some education of citizens recognizing that there is a "dog at large" rule now that they can use. She said she was perfectly fine with trying to identify it as an urban neighborhood issue, if they could figure out a way to do that. She said she kept thinking of all the ways that people walk their dogs off-leash. She said she has a friend she walks with that has an obnoxious whistle, but that they are so far in the woods that it doesn't bother anyone, and the dogs come running back to them. She said there is so much rural area in the County.

Mr. Dill agreed with the point about education, adding that educating people about proper dog behavior is needed, as well as education about the dogs running at large issue being something that can be prosecuted, if violated. He said if someone is walking a dog that isn't under control, they should call Animal Control and attempt to at least try to address it without having a County-wide law that may not be enforceable and would be complaint-driven. He said it seemed like an overreach, to him.

Ms. McKeel said she didn't disagree about the 726 square miles, but that she wouldn't let go of the issue if she could help it, as they are having too much trouble in the urban ring. She asked Mr. Kamptner if it was possible for neighborhoods to apply the policy or put signage up. She said she was struggling to figure out what they could do. She said she has watched people walk by a sign in a neighborhood that says, "All dogs must be on a leash," and that they ignore it.

Ms. Mallek said there is no law to enforce it

Ms. McKeel said it was a quality of life matter for some of the neighborhoods.

Mr. Kamptner said the signs would have to be posted by the County, in order for the law to apply. He said when they do the law by broad zoning districts, it is easier for police to enforce. He said neighborhood by neighborhood, it would have to be posted because depending on what street the person is on determines which rules will be applied.

Mr. Gallaway said they could either take the vote and see how the votes go, or that there was enough conversation going on where perhaps it was worth going back and having further work done regarding the notion of the different areas. He said there was no reason the Board would have to take the action that evening.

Ms. McKeel asked Mr. Kamptner if he could work with the Animal Control Officers to determine if there is a way to identify some of the areas differently.

Mr. Kamptner replied yes. He said there are parcels that are less than an acre in size in the rural areas, and there are parcels that are zoned RA that are within the development areas. He said Hydraulic Road is a great example because if someone is on the reservoir side of that road, they are subject to different rules. He said he would be happy to work with Animal Control.

Ms. McKeel suggested as an alternative that they could take a vote, try the ordinance, and if it doesn't work, they try something else.

Mr. Kamptner said there were a couple comments, including Ms. Buttrick's, suggesting that perhaps some minor adjustments would address them. He said Ms. Buttrick spoke about rabbit hunting and asked if the reference to foxhunting was too narrow.

Ms. Buttrick said there are two recognized packs of rabbit-hunting dogs. He said beagles hunt rabbits, not foxes. She said she does foxhunting, but it is by mistake.

Mr. Kamptner asked if the exception was revised to be broadened to say, "...where the dog is participating in an organized fox or other game hunt," if it would suffice.

Ms. Buttrick replied that this would help. She said the impulse to look at the areas of the County is terrific and was applauded, and that they should also look at "must" versus "may."

Mr. Kamptner said he would be happy to look at these, if there was not urgency that evening to adopt something.

Ms. Mallek asked if it was the right term to "defer action" and see what revisions are made, then discuss them again another time.

Mr. Kamptner asked Ms. Borgersen if they could have a discussion January 15, or if a February date was needed.

Mr. Richardson said he didn't see January 15 being realistic because of pending workload issues and the sheer volume of workdays that they would lose between then and mid-January. He suggested more time was needed to do this justice and try to scour urban versus rural density and talk to enforcement experts. He said he understood the Board's tone and what the problems are in the urban and neighborhood areas, and that as they move out, the situation looks differently. He suggested looking more at the issue and bringing it back later, but that it would take longer than 30 days.

Ms. McKeel said she was told that the secondary road piece that they pulled that day would likely be able to come back on February 15, so perhaps both those issues could be looked at again in February.

Ms. Palmer commented that during hunting season, many times in her neighborhoods, there are gun shots fired and that she gets uncomfortable about walking her dog in the neighborhood area. She said she goes out to Mint Springs because this has the most area that people will not be hunting in. She said recently, she was walking down a path there and was jumped by a very large dog who was not trying to be vicious but was exuberant. She said a full five minutes later, the owner came by and she mentioned to that person it would be nice to have their dog on a leash. She said the owner was not even carrying a leash.

Ms. Palmer said this was one example where people ignore the laws in the parks. She said she was not going to call the police on that person, but it was an interesting issue of how many people don't believe in leashes. She said this was not a good thing and that the owner should have had her dog on a leash. She pointed out that they have the problem in the parks, too.

Ms. Mallek said the reality is that if someone's three-year-old grandchild is knocked down and hits their head on a rock because of that dog, someone will feel very differently, though the circumstances are exactly the same.

Ms. Palmer agreed, stating she thought the situation was terrible and that she was very annoyed with the dog owner. She pointed out that it was in the park where there is already a leash law.

Ms. McKeel said part of the problem in the urban areas is that many people are walking their dogs on leashes and then, when there is a dog that runs up that is not on a leash, then there is a dog fight.

Ms. Palmer agreed, saying she has had her dog attacked before.

Ms. Mallek asked what kind of wording they would need to use to defer.

Mr. Kamptner replied that they could defer the item to a Board meeting in February. He said they could re-advertise it to the public.

Mr. Gallaway asked if this needed to be done with a motion.

Mr. Kamptner replied yes.

Ms. Mallek **moved** to defer the attached proposed Ordinance to Amend County Code Chapter 4, Animals (Dogs Running at Large) to February 19, 2020. Ms. McKeel **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

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Agenda Item No. 17. **Public Hearing: SP201900010 Rivanna Solar.**

PROJECT: SP201900010 Rivanna Solar

MAGISTERIAL DISTRICT: Scottsville

TAX MAP/PARCEL(S): 09400-00-00-017A0

LOCATION: 2631 Buck Island Rd

PROPOSAL: Request to amend SP201700018 to extend expiration time by three years for approved solar-energy electrical generation facility, with solar panels occupying approximately 90 acres on a 149-acre parcel.

PETITION: 10.2.2.58, Solar energy systems. No new dwelling units proposed.

ZONING: RA Rural Area - agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots)

OVERLAY DISTRICT(S): Entrance Corridor, Flood Hazard Overlay District

COMPREHENSIVE PLAN: Rural Area – preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources; residential (0.5 unit/ acre in development lots)

POTENTIALLY IN MONTICELLO VIEWSHED: Yes. *(Advertised in the Daily Progress on December 2 and December 9, 2019)*

The Executive Summary forwarded to the Board states that the Applicant has submitted a request to amend SP201700018 Rivanna Solar to extend the expiration date by three years, from March 14, 2020 to March 14, 2023. At its meeting on November 12, 2019, the Planning Commission voted 6:0 to approve SP 2019-00010 with the conditions recommended by staff.

This request is only for an extension of the expiration date of the approved permit, and does not involve any changes to the plan for the approved use.

There have been no changes since the Planning Commission meeting.

Staff recommends that the Board adopt the attached Resolution (Attachment D) to approve SP201900010 subject to the conditions contained therein.

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Mr. Greg Kamptner, County Attorney, presented. He said this was a fairly simple ordinance and that he had thought it would be a fairly simple process, as it was on an expedited schedule. He said it was a learning experience and that they would be making some process changes for ordinance development and engagement, particularly for these seemingly small ordinances.

Mr. Kamptner explained that the slide before the Board was a summary of the draft that was distributed to the Board. He said that once it became public, the County did receive some public comment from some particular areas of the public, and that he has distributed some copies of a revised ordinance to address the comments that were received.

Mr. Kamptner said if there were no comments with the existing draft, the slide before the Board showed the proposed revisions. He said the first arrow was an existing provision, and the underlying text is needed. He said this was an inquiry from Mr. Randolph asking whether or not fox hunting was covered. He said the intention was that it would be included, and if Mr. Randolph was raising the question, it made sense to address it explicitly.

Mr. Kamptner said the second through fourth arrows are proposed changes that would address comments received from the public. He said the first one would deal with a comment from the fox hunting community, but that it could also apply to all types of hunting dogs for the off season, walking off, or exercise. He said the second new proposed exception would be to expressly provide for search and rescue and related public service training. He said the third was to address working farm dogs when they are guarding or herding.

Ms. Mallek said the most important question that needed to be clarified was that under "A," it says, "off the property of its owner." She said some people who contacted her were concerned that they had understood it was going to be required to be on a leash, even on their own property, and that she was swift to say that this was not the case.

Mr. Kamptner said that the draft that was before the Board during the public hearing back in October did not exclude, and included, dogs on the owner's or custodian's owned property, but that this was changed after that meeting. He said it now clearly provides it only applies to dogs that are off the property of the owner or custodian.

Ms. Palmer said she had some questions she had asked Mr. Kamptner before, via email, and that she would ask him to explain it. She said when they were discussing expanding this to the rural areas, she was balancing the fact that they have a lot of suburban areas in the rural areas, and that this was difficult to do, but then that there is a 725-square-mile County, with a huge percentage of that being very

rural.

Ms. Palmer said that as a veterinarian, she knows of many ways that people walk their dogs off leash when they are very in control of those dogs, and that they are not necessarily hunting dogs. She said as the owner of a well-behaved dog, she herself would be doing some illegal things with this passage. She said she was trying to figure out the intent, and that was handling the nuisance dogs and dealing with dogs that are roaming in neighborhoods, barking a lot, and going after other animals that are on leash. She said since the County already has leash laws in its parks, which is a common place where people and dogs interact, this is already taken care of.

Ms. Palmer said she did some research online of what is done in other states and how they deal with this without having a county-wide leash law, and that she came across some examples of using a nuisance ordinance. She said she emailed Mr. Kamptner and asked him if there was any other way, other than a leash law, to get at this issue and take care of those problem animals but at the same time, not have a blanket law throughout the entire rural areas. She said Mr. Kamptner replied to her email and asked him to explain his reply to the Board.

Mr. Kamptner said his first reply was about Ms. Palmer's question as to whether or not there was a Dylan Rule issue with this. He said under the act that this particular regulation is enabled, being the same one as dogs running at large, dogs on a leash, vicious dogs, and dangerous dogs; the dogs running at large statute and the authority to require that dogs be leashed are two of the statutes that fall under another statute that allows localities to adopt more stringent regulations than those two statutes.

Mr. Kamptner suggested that if there is a middle ground, it would be something that is more stringent than the dog running at large provision, which requires that the dog be under the immediate control of the owner or custodian. He said he did not have an answer that day of what that middle ground is that balances the two. He said as to whether or not a nuisance regulation, as seen in a North Carolina statute, falls within the more stringent category than the dogs running at large statute, but is something less than the ordinance that was before the Board that night, he did not have an answer for that. He said the County Attorney Office would have to further research and analyze that issue.

Ms. Mallek said that under number 6 on the new sheet, Mr. Kamptner mentions, "...on other property where permission is given." She asked if this was something that can be applied to other properties as well, or just to people walking their dogs on shared trails or something amongst rural areas. She asked if it was best to leave that only for number 6, where it was stated.

Mr. Kamptner replied that it could be done. He said it may complicate enforcement, however. He said he spoke with Officer Crickenberger the evening before and talked about the two exceptions that have been added that allow the dogs to be on other properties with the owner's permission. He said Officer Crickenberger said this may or may not work in all cases, as sometimes permission is not given. He said what they spoke about was coming back after six months or a year to see how this is working.

Mr. Kamptner said to answer Ms. Mallek's question as to whether or not this kind of language could be added, the answer was yes, but that it could complicate enforcement.

Ms. McKeel asked Ms. Mallek for clarification about her question.

Ms. Mallek said this was about having the dog off leash off the owner's property, but on a neighbor's property where they have permission to walk with the dog, for example. She said this language was included in number 6 for the public service training, but that perhaps it could also be applied to other areas. She said she was happy to start with this, however.

Mr. Kamptner said it would be moving that concept from the exception into the general rule under Subsection A.

Ms. Mallek said she agreed, as many people say that they have permission to be somewhere, but when she asks them who the owner of the property is, they have no idea.

Mr. Randolph said one speaker remarked that government is cumbersome and lumbers along. He said he was impressed with the alacrity with which Mr. Kamptner has added the new provisions in response to public concerns. He expressed appreciation to Mr. Kamptner and his staff.

Mr. Dill said he missed the meeting when this was initially discussed. He asked for a brief recap of the problem they are trying to address and if there was a specific issue that a lot of people have complained about.

Ms. Mallek said the rules that were adopted between 2010 and 2014 in the rural areas were due to people being knocked down at their own mailboxes by dogs running. She said this was not a new issue, though there were some new clarifications that have come along in response to new State laws.

Mr. Kamptner said the general leashing requirement is new. He said currently, they have the "dog running at large" standard, and they did have members of the public who came to speak during Matters from the Public to express concerns about dogs who were not under control.

Ms. McKeel said in the urban ring neighborhoods such as Hessian Hills and Canterbury Hills, there has been trouble with dogs being off leash with their owners walking them and people feeling very

uncomfortable. She added that the dogs do not appear to be under voice command. She said she personally experienced a dog rushing at her recently, with its owner running down the road behind it yelling at it to stop. She said the owner assured her that the dog behaved better off the leash than on, but when the dog rushed her and her dog, who was on a leash, she picked up her dog to protect it. She said she was receiving calls from urban ring neighborhoods.

Ms. McKeel said she was not worried as much for the very rural areas. She said she gets calls from Hessian Hills because there is someone there with a pit bull mix and the owner insists the dog is under control, though the neighbors will say otherwise. She said they have had neighbors climb up on trash cans to get away from a dog.

Mr. Dill asked if this was not already covered under current laws.

Ms. McKeel said if the dog doesn't actually bite the person, it is hard to prove whether or not it was actually under voice command or control.

Ms. Palmer said it would be good to explain why the dogs running at large statute would not take care of this in the rural areas.

Mr. Kamptner said the direction from the Board was to have the ordinance to apply County-wide. He said the idea had been raised to have it apply only to the urban ring and non-agricultural districts.

Ms. Palmer said the dogs running at large statute was currently County-wide. She asked why this did not cover a dog that is bothersome or is a nuisance in the rural areas.

Mr. Kamptner replied that it is because it is not a fail-safe strategy. He said the comments from the public were that the owners may claim that the dog is under their control, but the anecdotal information received is that this is not the case.

Ms. Mallek said it was a matter of equal protection as well, and that people who live in the country should have the same rights and access to laws that people in the urban areas do. She said this was especially discussed about the barking dog issue more recently.

Mr. Dill said the other side to this is that when people live in the rural areas, they expect to have some inconveniences.

Ms. Mallek said this was a matter of public and personal safety when people are jumped and knocked down, for example, going down their driveway to get their newspaper. She said Burnley Station's whole neighborhood came to the Board talking about the dogs years ago and that they were very pleased to have better protection and have their rights recognized as well.

Mr. Dill said when a dog jumps and knocks someone down, that is when someone would call Animal Control. She asked if Ms. Mallek was saying it was a preventative thing.

Ms. Mallek said it did not sufficiently help those people.

Ms. Palmer said the dogs running at large statute did not help them. She said with the particular situation at Burnley Station, they were unable to have it help them.

Ms. Mallek said it was a terrible management burden.

Mr. Dill said he feels sorry for dogs that are cooped up in a house all the time or are on a chain constantly. He said in so many rural communities, there are minimal houses and a lot of land around. He said that to say they all have to be on a leash or chain, or in a house, it seemed unnatural in a rural, farming area not to have the dogs running around. He said he has been bitten by dogs several times and knows it is an issue, but that it didn't seem life-threatening and that it seemed cruel to the dogs.

Mr. Dill said he grew up in the country in New York state and that dogs always ran around. He said this was his first hearing about it and that it seemed like a cultural shift for the 725 square miles of country area where he didn't think dogs were a problem and that they should enforce it because of a few problems that could be covered with existing ordinances. He said he didn't want people to be knocked down at their mailboxes, but to have a County-wide rule about never letting dogs run outside the house seemed like overkill.

Ms. Sherry Buttrick, White Hall resident, said she was there in opposition to the application of the dog ordinance, both in its present form and in the proposed amendments to the rural areas. She said she understood the need in the more urbanized areas but that in the rural areas, the Comprehensive Plan says they should have a lesser degree of services. She said although there are subdivisions in the rural areas, as someone who has espoused rural preservation for many years, this is a failing of the system and not a success.

Ms. Buttrick said she owns a pack of beagles and that she is a member of both of the foxhound packs. She said they hunt rabbits and when she saw Mr. Kamptner's slide about fox hunting, this does not help because they are busy hunting rabbits.

Ms. Buttrick thanked the Board for working to address the idea that they exercise the hounds as



well as hunt them, and that they exercise them off lead. She said they do this in the summer as well as in the hunting season. She said the ordinance, both present and amended, would punish a hound and make it a crime for the hound to go home early from a hunt if he is young, or an old hound who is slow, or a hound who is supposed to be hunting rabbits, not foxes, as the ordinance suggested. She said those hounds would be in violation of the ordinance, and this is a problem for those who are trying to have an organized pack of hounds but live in the real world.

Ms. Buttrick asked if the Board could look to changing the word “must” to the word “may” when it says that the dogs must be impounded if they should be breaking a law. She said there are many benign circumstances. She said a Supervisor could be walking down the road with a very well-behaved dog and her dog would have to be impounded. She said discretion is necessary, lest the law be tyrannically applied.

Ms. Buttrick presented some pictures of what the hounds do off-lead so that they could be entered into the record.

Ms. Mary Kalergis said she was speaking on behalf of the Keswick Hunt Club. She said they have a pack of foxhounds in the Keswick area and that this club has existed for 126 years. She said they have never had their dogs on a leash and that no one has ever complained about it. She said it is a way of life and that it was not just foxhounds, but also included deerhounds, coonhounds, and rabbit hounds. She said it is woven into the fabric of Virginia history.

Ms. Kalergis said she knew that the law was written with the best of intentions and that she appreciated the 11th-hour efforts about walking the hounds and packs off-season without having to call 50 members of the club to come with a leash to help them do it every day. She said the dogs need to learn to listen to the huntsmen and that they are not leash dogs. She said she appreciated the changes and everything Ms. Buttrick said, especially about changing the language from “must” to “may.” She said although the law was well-intentioned, it seemed punitive and harsh for a rural community.

Mr. Patrick Butterfield said he represented the Farmington Hunt Club, which hunts in two-thirds of Albemarle County and has existed for a long time. He said he appreciated the changes to the proposal and seconded Ms. Buttrick’s concerns. He said they are mounted hunting, meaning they are riding horses, whereas the Beagles hunt on foot. He said they all share the same purpose of enjoying the countryside in a sport that has been done for hundreds of years in Virginia. He said they would like to see it continue that way and appreciate the Board’s concerns and efforts on their behalf.

Mr. Bob Garland, Jr. thanked Mr. Dill and Mr. Randolph for their service over the years to the County. He said he represented the Canterbury Hills Neighborhood Association and was there to speak in favor of the proposed changes to Ordinance 19-4 regarding dogs running at large. He said dog owners in their neighborhood generally do a good job of controlling their pets. He said despite this, he and his wife can easily remember being charged by large dogs at least six times. He said this includes one incident in which his wife was knocked down and another where their own dog, on a leash, was bitten. He said there are incidents that the ordinance could address, particularly in the urban areas.

Mr. Garland said that over the years, when he owned dogs, he always had them on a leash when outside of their fenced yard and that it was never a problem or concern for them. He said they have no objections, as a neighborhood association, to the four exceptions, as well as the proposed exceptions from the comments shown on the screen and outlined by Mr. Kamptner.

Mr. Garland said this likely was another good example of the needs of the increased urbanization of Albemarle County versus the rural areas. He said he could see that perhaps this ordinance could be more pointed to the urban areas rather than the rural ones.

Mr. Peter Taylor, Rivanna District resident, said he was sorry to see Mr. Dill and Mr. Randolph move on, expressing his appreciation for their time and efforts. He said he wondered, living in a very rural part of the County, why he was there and did understand that the urbanization of Albemarle County could affect people with unruly dogs. He said he wondered what remedy this proposal offers.

Mr. Taylor said it basically says, as he reads it, that any dog that is seen in a “public space” would necessarily be impounded and, as a practical matter, he was not sure how this would be enforced. He said the County is understaffed in many areas and cannot enforce some of the important regulations that exist. He noted this was no fault of anyone other than there are a lot of regulations, and the County is growing. He said he didn’t see what is going to happen. He asked if someone would call the County Police and ask for dogs to be impounded, expressing that he would think the police would decline to do so.

Mr. Taylor said he had to believe there is remedy in the legal system in an urban or suburban environment where an unruly dog bites someone or knocks them over. He said it seemed like this would be the first course of action to stop this problem. He said he was not in favor of this, expressing it was an overreach, impossible to enforce, and that it would become extremely expensive with the need for additional dogcatchers and expenses.

Ms. Palmer asked about the suggestion to change the word “shall” to “may” relating to impounding.

Mr. Kamptner replied that the word “shall” is not proposed to be changed and is what is currently

in the code. He said this is an existing condition.

Ms. Palmer asked if this was mirroring the State Code.

Mr. Kamptner said this is what he wanted to confirm and that this was what the Board adopted in November 2018.

Ms. Palmer recalled that Mr. Kamptner had told them it mirrored the State Code. She asked him to verify this.

Mr. Kamptner said if the Board is interested in entertaining the rural area versus non-rural area, he had already revised the ordinance.

Mr. Gallaway said they are running increasingly into more issues where refining the definition of rural versus development areas creates problems. He cited the Airbnb issue as an example, explaining that this was when they first started recognizing rural residential areas. He said he was sure the purists in the rural areas are saying this was the problem to begin with and that the County shouldn't have allowed the residential in the rural area. He said this distinction is repeatedly coming up across different issues and that they did start to make different definitions in terms of area, besides rural and development area, such as with the Airbnb issue. He said he could see how they could carve things out like this.

Ms. McKeel said she was going to ask the same question about using those same definitions. She said if the Jouett District, if they use "rural" and "development," they are splitting Georgetown Road down the middle with the same sorts of neighborhoods on both sides. She said this is why it doesn't really work in the urban ring to identify those areas. She suggested considering the neighborhoods in a way that is similar to how they were addressed with the Airbnb issue.

Ms. McKeel said where she is in the urban ring neighborhoods, they were having a lot of trouble with dogs that are not well-controlled. She said she was not saying that everyone is extremely at risk, but that it was not pleasant to go for a walk and have someone with a dog that is not well-behaved. She said she could think of one dog she knows that has had four calls about it running loose.

Ms. McKeel said she was happy to entertain some other wording, but that she was trying to get at the neighborhoods. She said Ms. Mallek has expressed some frustration in the rural areas as well.

Ms. Mallek said there are many places in the country where people also live close to each other.

Ms. McKeel said this gets more to what they were talking about with Airbnb.

Mr. Randolph said it also puts a unique responsibility on police, and that the K-9 core is notified, but they have to pull out the County's latest development area map. He said he could think of two parts of his magisterial district, including Riverside Village, which is actually in the development area but hasn't been built, and so it looks like rural area. He said parts of the Village of Rivanna were recently very much rural and now, in preparation for Rivanna Village, they have come down but as of three months earlier, it would have definitely been rural.

Mr. Randolph said they must be clear that it is not an easy line and is not as though they could easily delineate the areas. He said this was why they need to have one rule, and that he would favor applying it equally throughout the County.

Ms. Palmer said she was not debating that there was a problem in the urban neighborhoods and in some of the rural ones. She said she was still struggling with why, if there is a problem dog in the neighborhood who knocked someone down, someone cannot call Animal Control to come pick up that animal under the "dogs running at large" statute.

Ms. McKeel said there is someone who walks their pit bull in a neighborhood off of Hydraulic and Georgetown without a leash and that the dog tends not to behave very well. She said the woman says she can do that because the County's policy says the dog doesn't have to be on a leash, but has to be under her voice command. She said the neighbors are very frustrated and that she has received numerous calls.

Ms. Palmer said she understood and appreciated this example.

Ms. McKeel added that she was not disparaging pit bulls.

Ms. Palmer asked if someone called Animal Control or the Police Department and said there is someone who says they can control her dog, but that she is clearly not because it has chased them down the road, what the Animal Control Officer or the Police say to this person. She asked if they would go talk to the dog's owner.

Ms. McKeel said she could not respond to what the officer would say. She said she knows that the neighbors have called and haven't had much luck.

Lt. Terry Walls, Albemarle County Police Department, said regarding this situation, the police would respond. He said whether or not they would be able to determine if there was a violation of the leash law or whether or not the dog was under voice command would depend on several factors. He said

one factor would be what the officer observes or what information they receive from witnesses. He said whether they would be able to enforce that would also be determined from what they saw, or what the witnesses would be willing to testify to. He said they may develop probable cause from the witness statement, but if they are not willing to testify, the police would not be able to charge someone with a violation in that circumstance.

Ms. Palmer asked if they had the leash law, how this would clear up the police's problem of addressing the issue if someone called about the dog not being on a leash.

Lt. Walls said this would take this out of the equation. He said if the law states the dog has to be on a leash, and it wasn't, it would be a clear violation.

Mr. Dill asked Lt. Walls how many Animal Control Officers there were.

Lt. Walls replied that they have two Animal Protection Police Officers and two Animal Control Officers, totaling four people dedicated to animal-related issues.

Mr. Dill asked Lt. Walls what he believes would be the effect of having the law cover the entire County. He said it sounds as if the officers work full-time every day as it is, and asked Lt. Walls if the law would affect their workload.

Lt. Walls replied that he didn't think it would be much of a change. He said this was something that the officers may occasionally observe while riding down the road or on patrol. He said most of the time, it would be from a call for service, which they will respond to either as an Animal Control unit or from a police officer. He said much of the violations they observe are in the parks, which falls under a different section and would not experience a change.

Ms. Palmer noted there are already leash laws for the parks. She asked if the police often get called for situations about dogs not being on leashes in neighborhoods and bothering people.

Lt. Walls replied yes.

Ms. Palmer asked if this was common.

Lt. Walls replied they receive several calls, though he didn't have the numbers.

Ms. Palmer asked if the police find it difficult to determine whether or not there is a violation now.

Lt. Walls replied this is the case sometimes. He said many times, the police are called after the fact, and so they do not observe the dog off-leash. He said sometimes, they do not observe the dogs at all, but they are gathering facts from the caller, which makes it more difficult. He said many people will not want to come to court for this.

Ms. McKeel added that there are apartment complexes in the urban ring where people bring their dogs from those complexes into single-family neighborhoods to walk their dogs, and that sometimes when they get into the neighborhoods, they let them off leash. She said she knows of two people who put their dogs in the cars and drive them to the neighborhoods, then let them out to run. She told Ms. Palmer it is an urbanizing problem.

Ms. Palmer said the County needs more dog parks.

Ms. Mallek said one take-away, as they have found with other places where they have improved the rules, is that she predicted that a very large percentage of people would follow a rule if it existed, which would reduce the issue. She said this was true whether it's the geography that needs to be changed to have something that would help the most people right away, this was one way to go about it, if they could figure out a way that would be easily enforceable and describable so that the public will also understand. She said if they live in any kind of neighborhood, anywhere, it is probably not a legal description, but a more effective way to describe it.

Ms. McKeel asked how they described the Airbnb neighborhoods.

Mr. Kamptner replied it was done by zoning district. He said the rules applied when they were dealing with five or less acres in the RA, Rural Areas District.

Ms. McKeel asked if they identified neighborhoods by zoning.

Mr. Kamptner replied that it was by zoning district.

Mr. Randolph said he didn't think they should go this route with the dogs.

Ms. McKeel noted that it would make it very complicated.

Mr. Randolph agreed, adding that the police would have to find out what the zoning is on the property.

Ms. Palmer said her personal feeling was that if they have to look at the whole County, she would

vote against the proposal at that point as she would like to see some education of citizens recognizing that there is a “dog at large” rule now that they can use. She said she was perfectly fine with trying to identify it as an urban neighborhood issue, if they could figure out a way to do that. She said she kept thinking of all the ways that people walk their dogs off-leash. She said she has a friend she walks with that has an obnoxious whistle, but that they are so far in the woods that it doesn't bother anyone, and the dogs come running back to them. She said there is so much rural area in the County.

Mr. Dill agreed with the point about education, adding that educating people about proper dog behavior is needed, as well as education about the dogs running at large issue being something that can be prosecuted, if violated. He said if someone is walking a dog that isn't under control, they should call Animal Control and attempt to at least try to address it without having a County-wide law that may not be enforceable and would be complaint-driven. He said it seemed like an overreach, to him.

Ms. McKeel said she didn't disagree about the 726 square miles, but that she wouldn't let go of the issue if she could help it, as they are having too much trouble in the urban ring. She asked Mr. Kamptner if it was possible for neighborhoods to apply the policy or put signage up. She said she was struggling to figure out what they could do. She said she has watched people walk by a sign in a neighborhood that says, “All dogs must be on a leash,” and that they ignore it.

Ms. Mallek said there is no law to enforce it

Ms. McKeel said it was a quality of life matter for some of the neighborhoods.

Mr. Kamptner said the signs would have to be posted by the County, in order for the law to apply. He said when they do the law by broad zoning districts, it is easier for police to enforce. He said neighborhood by neighborhood, it would have to be posted because depending on what street the person is on determines which rules will be applied.

Mr. Gallaway said they could either take the vote and see how the votes go, or that there was enough conversation going on where perhaps it was worth going back and having further work done regarding the notion of the different areas. He said there was no reason the Board would have to take the action that evening.

Ms. McKeel asked Mr. Kamptner if he could work with the Animal Control Officers to determine if there is a way to identify some of the areas differently.

Mr. Kamptner replied yes. He said there are parcels that are less than an acre in size in the rural areas, and there are parcels that are zoned RA that are within the development areas. He said Hydraulic Road is a great example because if someone is on the reservoir side of that road, they are subject to different rules. He said he would be happy to work with Animal Control.

Ms. McKeel suggested as an alternative that they could take a vote, try the ordinance, and if it doesn't work, they try something else.

Mr. Kamptner said there were a couple comments, including Ms. Buttrick's, suggesting that perhaps some minor adjustments would address them. He said Ms. Buttrick spoke about rabbit hunting and asked if the reference to foxhunting was too narrow.

Ms. Buttrick said there are two recognized packs of rabbit-hunting dogs. She said beagles hunt rabbits, not foxes. She said she does foxhunting, but it is by mistake.

Mr. Kamptner asked if the exception was revised to be broadened to say, “...where the dog is participating in an organized fox or other game hunt,” if it would suffice.

Ms. Buttrick replied that this would help. She said the impulse to look at the areas of the County is terrific and was applauded, and that they should also look at “must” versus “may.”

Mr. Kamptner said he would be happy to look at these, if there was not urgency that evening to adopt something.

Ms. Mallek asked if it was the right term to “defer action” and see what revisions are made, then discuss them again another time.

Mr. Kamptner asked Ms. Borgersen if they could have a discussion January 15, or if a February date was needed.

Mr. Richardson said he didn't see January 15 being realistic because of pending workload issues and the sheer volume of workdays that they would lose between then and mid-January. He suggested more time was needed to do this justice and try to scour urban versus rural density and talk to enforcement experts. He said he understood the Board's tone and what the problems are in the urban and neighborhood areas, and that as they move out, the situation looks differently. He suggested looking more at the issue and bringing it back later, but that it would take longer than 30 days.

Ms. McKeel said she was told that the secondary road piece that they pulled that day would likely be able to come back on February 15, so perhaps both those issues could be looked at again in February.

Ms. Palmer commented that during hunting season, many times in her neighborhoods, there are gun shots fired and that she gets uncomfortable about walking her dog in the neighborhood area. She said she goes out to Mint Springs because this has the most area that people will not be hunting in. She said recently, she was walking down a path there and was jumped by a very large dog who was not trying to be vicious, but was exuberant. She said a full five minutes later, the owner came by and she mentioned to that person it would be nice to have their dog on a leash. She said the owner was not even carrying a leash.

Ms. Palmer said this was one example where people ignore the laws in the parks. She said she was not going to call the police on that person, but it was an interesting issue of how many people don't believe in leashes. She said this was not a good thing and that the owner should have had her dog on a leash. She pointed out that they have the problem in the parks, too.

Ms. Mallek said the reality is that if someone's three-year-old grandchild is knocked down and hits their head on a rock because of that dog, someone will feel very differently, though the circumstances are exactly the same.

Ms. Palmer agreed, stating she thought the situation was terrible and that she was very annoyed with the dog owner. She pointed out that it was in the park where there is already a leash law.

Ms. McKeel said part of the problem in the urban areas is that many people are walking their dogs on leashes and then, when there is a dog that runs up that is not on a leash, then there is a dog fight.

Ms. Palmer agreed, saying she has had her dog attacked before.

Ms. Mallek asked what kind of wording they would need to use to defer.

Mr. Kamptner replied that they could defer the item to a Board meeting in February. He said they could re-advertise it to the public.

Mr. Gallaway asked if this needed to be done with a motion.

Mr. Kamptner replied yes.

Ms. Mallek **moved** that the Board defer consideration of Ordinance to Amend County Code Chapter 4, Running at Large, until February 19. Ms. McKeel **seconded** the motion to defer.

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

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

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#### **RESOLUTION TO APPROVE SP 2019-10 RIVANNA SOLAR**

**WHEREAS**, the Applicant submitted a request to amend a special use permit that was previously approved (SP 2017-18 Rivanna Solar) by extending the expiration date by three years, from March 14, 2020 to March 14, 2023, and the application is identified as SP201900010 Rivanna Solar ("SP 2019-10"); and

**WHEREAS**, on November 12, 2019, after a duly noticed public hearing, the Albemarle County Planning Commission recommended approval of SP 2019-10 with staff-recommended conditions; and

**WHEREAS**, on December 18, 2019, the Albemarle County Board of Supervisors held a duly noticed public hearing on SP 2019-10.

**NOW, THEREFORE, BE IT RESOLVED** that, upon consideration of the foregoing, the staff report prepared for SP 2019-10 and all of its attachments, the information presented at the public hearing, any written comments received, and the factors relevant to a special use permit in Albemarle County Code §§ 18-10.2.2(58) and 18-33.40, the Albemarle County Board of Supervisors hereby approves SP 2019-10, subject to the conditions attached hereto.

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Agenda Item No. 18. **Public Hearing – 19-03(3) – Agricultural and Forestal Districts - Ordinance to amend County Code Chapter 3, Agricultural and Forestal Districts, Article II, Districts of Statewide Significance, Division 2, Districts, to review certain districts, to make corrections to certain district regulations to identify all those tax map parcels within the districts, and to add lands to certain districts, as specified below:**

- a) **AFD 2019-03 Buck Mountain AFD – District Review.** The proposed ordinance would amend Section 3-209, Buck Mountain Agricultural and Forestal District, to continue the district for all parcels identified in the district regulations, to set the next district review deadline date of December 18, 2024, to identify TMPs 8-43A and 17-26C as no longer being in the district (land from TMP 8-43A was added to another parcel in the district, and TMP 17-26C was inadvertently

not deleted in Ordinance 09-3(2), adopted on September 2, 2009, when land from this parcel was distributed to TMPs 17-26C1, 17-26C2, and 17-26C3 as a result of a subdivision), to identify TMP 8-44A as being in the district (this parcel was created by subdivision of another parcel in the district), and to remove TMPs 71-31(part) and 71-32, as well as any parcels for which a request for withdrawal is received before the Board acts on the proposed ordinance. The review of the district will be reduced from once every ten years to once every five years, so that the next review of the district after the current review will occur prior to December 18, 2024; and

- b) **AFD 2019-04 Buck's Elbow Mountain AFD – District Review.** The proposed ordinance would amend Section 3-210, Buck's Elbow Mountain Agricultural and Forestal District, to continue the district for all parcels identified in the district regulations, to set the next district review deadline date of December 18, 2024, and to remove any parcels for which a request for withdrawal is received before the Board acts on the proposed ordinance. The review of the district will be reduced from once every ten years to once every five years, so that the next review of the district after the current review will occur prior to December 18, 2024; and
- c) **AFD 2019-05 Chalk Mountain AFD – District Review.** The proposed ordinance would amend Section 3-212, Chalk Mountain Agricultural and Forestal District, to continue the district for all parcels identified in the district regulations, to set the next district review deadline date of December 18, 2029, and to remove any parcels for which a request for withdrawal is received before the Board acts on the proposed ordinance; and
- d) **AFD 2019-06 Fox Mountain AFD – District Review.** The proposed ordinance would amend Section 3-214, Fox Mountain Agricultural and Forestal District, to continue the district for all parcels identified in the district regulations, to set the next district review deadline date of December 18, 2024, and to remove any parcels for which a request for withdrawal is received before the Board acts on the proposed ordinance. The review of the district will be reduced from once every ten years to once every five years, so that the next review of the district after the current review will occur prior to December 18, 2024; and
- e) **AFD 2019-07 Jacobs Run Mountain AFD – District Review.** The proposed ordinance would amend Section 3-222, Jacobs Run Agricultural and Forestal District, to continue the district for all parcels identified in the district regulations, to set the next district review deadline date of December 18, 2024, and to remove any parcels for which a request for withdrawal is received before the Board acts on the proposed ordinance. The review of the district will be reduced from once every ten years to once every five years, so that the next review of the district after the current review will occur prior to December 18, 2024; and
- f) **AFD 2019-08 Sugar Hollow AFD – District Review.** The proposed ordinance would amend Section 3-231, Sugar Hollow Agricultural and Forestal District, to continue the district for all parcels identified in the district regulations, to set the next district review deadline date of December 18, 2024, and to remove any parcels for which a request for withdrawal is received before the Board acts on the proposed ordinance. The review of the district will be reduced from once every ten years to once every five years, so that the next review of the district after the current review will occur prior to December 18, 2024; and
- g) **AFD 2019-09 Yellow Mountain AFD – District Review.** The proposed ordinance would amend Section 3-233, Yellow Mountain Agricultural and Forestal District, to continue the district for all parcels identified in the district regulations, to set the next district review deadline date of December 18, 2029, and to remove any parcels for which a request for withdrawal is received before the Board acts on the proposed ordinance; and
- h) **AFD 2019-11 Yellow Mountain AFD – Addition.** The proposed ordinance would amend Section 3-233, Yellow Mountain Agricultural and Forestal District, to add TMP 71-22C2 to the district. *(Advertised in the Daily Progress on December 2 and December 9, 2019)*

The Executive Summary forwarded to the Board states that localities are enabled to establish agricultural and forestal districts (AFDs) under the Agricultural and Forestal Districts Act (Virginia Code § 15.2-4300 et seq.). AFDs serve two primary purposes: (1) to conserve and protect agricultural and forestal lands; and (2) to develop and improve agricultural and forestal lands. Land within an AFD is prohibited from being developed to a more intensive use, other than a use resulting in more intensive agricultural or forestal production, without prior Board approval. In addition, the County is prohibited from exercising its zoning power in a way that would unreasonably restrict or regulate farm structures or farming and forestry practices in contravention of the Agricultural and Forestal Districts Act unless those restrictions or regulations bear a direct relationship to public health and safety (Virginia Code § 15.2-4312).

The consolidated public hearing and the proposed ordinance pertain to a proposed addition to one AFD and the periodic review of seven AFDs (including the AFD that is also the subject of the proposed addition).

**Additions:** A landowner may petition to add their land to an AFD at any time (Virginia Code § 15.2-4310). Virginia Code §§ 15.2-4307 and 15.2-4309 require that the Board conduct a public hearing on proposed additions to AFDs after they have been reviewed by both the Agricultural and Forestal District Advisory Committee and the Planning Commission for their recommendations.

**District Reviews:** Virginia Code § 15.2-4311 requires the periodic review of AFDs to determine whether they should continue, be modified, or be terminated, unless the Board determines that review is unnecessary. During the review process, land within an AFD may be withdrawn at the owner's request by filing a written notice with the Board any time before the Board acts on the review. Virginia Code § 15.2-4311 requires that the Board conduct a public hearing on AFD reviews after they have been reviewed by both the Agricultural and Forestal District Advisory Committee and the Planning Commission for their

recommendations.

**Addition:**

**Yellow Mountain AFD:** The Yellow Mountain AFD is located west of Crozet, near Greenwood. One landowner submitted a request to add one parcel (TMP 71-22C2), which consists of 14.56 acres and has 4 development right lots, to the District. The Advisory Committee and the Planning Commission reviewed this request and recommend approval of the proposed addition. The October 21, 2019 staff report to the Planning Commission is attached (Attachment B). The Yellow Mountain AFD is also undergoing its 10-year periodic review on December 18, 2019.

**Reviews:**

Pursuant to the Board's direction in November 2018, the proposed ordinance (Attachment A) includes a five-year renewal period for AFDs containing parcels enrolled in open-space use valuation that have no development rights, and a 10-year review period for districts that have no such parcels. The Advisory Committee and the Planning Commission reviewed the following districts and recommend renewal of the Buck Mountain, Buck's Elbow Mountain, Fox Mountain, Jacobs Run, and Sugar Hollow AFDs for five years, and the Chalk Mountain and Yellow Mountain AFDs for ten years. The October 21, 2019 staff reports to the Planning Commission are attached (Attachment C). See Attachment C for more details regarding this and other staff analysis of the following district reviews.

**Buck Mountain AFD:** The Buck Mountain AFD is located along Davis Shop Road and Markwood Road, and is undergoing its periodic 10-year review. One landowner submitted a request to withdraw two parcels (TMPs 17-31 and 17-32) consisting of a total of 151.28 acres from the AFD. This AFD was created in 1989 and currently includes 13 parcels and part of another, and 627 acres. With the withdrawal of TMPs 17-31 and 17-32, the AFD would include 12 parcels and 475.72 acres. The review period for this AFD is recommended to be reduced to five years, so the next review will occur prior to December 18, 2024.

**Buck's Elbow Mountain AFD:** The Buck's Elbow Mountain AFD is located on Buck's Elbow, south of Sugar Hollow and north of Jarman's Gap, and is undergoing its periodic 10-year review. No requests for withdrawal have been received to-date. This AFD was created in 2009 and currently includes 17 parcels and 3,209 acres. The review period for this AFD is recommended to be reduced to five years, so the next review will occur prior to December 18, 2024.

**Chalk Mountain AFD:** The Chalk Mountain AFD is located south and southwest of North Garden, largely on and west of Chalk Mountain, and is undergoing its periodic 10-year review. No requests for withdrawal have been received to-date. This AFD was created in 1989 and currently includes 16 parcels and 1,602 acres. The review period for this AFD is recommended to remain at 10 years, so the next review will occur prior to December 18, 2029.

**Fox Mountain AFD:** The Fox Mountain AFD is located along the Doyle's River, near the intersection of Brown's Gap Turnpike and Blackwell's Hollow Road, and is undergoing its periodic 10-year review. No requests for withdrawal have been received to-date. This AFD was created in 2009 and currently includes 5 parcels and 436 acres. The review period for this AFD is recommended to be reduced to five years, so the next review will occur prior to December 18, 2024.

**Jacobs Run AFD:** The Jacobs Run AFD is located northwest of Earlysville, and is undergoing its periodic 10-year review. No requests for withdrawal have been received to-date. This AFD was created in 1988 and currently includes 19 parcels and 1,012 acres. The review period for this AFD is recommended to be reduced to five years, so the next review will occur prior to December 18, 2024.

**Sugar Hollow AFD:** The Sugar Hollow AFD is located west and north of White Hall, and is undergoing its periodic 10-year review. No requests for withdrawal have been received to-date. This AFD was created in 1989 and currently includes 62 parcels and 5,018 acres. The review period for this AFD is recommended to be reduced to five years, so the next review will occur prior to December 18, 2024.

**Yellow Mountain AFD:** The Yellow Mountain AFD was created in 1989 and currently includes 24 parcels and 748 acres. With the addition of TMP 71-22C2, the AFD would include 25 parcels and 762.56 acres. The review period for this AFD is recommended to remain at 10 years, so the next review will occur prior to December 18, 2029.

There is no budget impact.

After conducting public hearings on the proposed AFD addition and the proposed AFD reviews, which may be held together as one public hearing, staff recommends that the Board adopt the attached ordinance to approve the addition to the Yellow Mountain AFD and to continue the Buck Mountain, Buck's Elbow Mountain, Chalk Mountain, Fox Mountain, Jacobs Run, Sugar Hollow, and Yellow Mountain AFDs.

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Mr. Clark said there were seven Agricultural and Forestal Districts (AFD) reviews for the Board that evening, as well as one addition. He recalled that from previous discussions, one of the key points is whether districts will be renewed for 10 years, as they have been for many years in the past, or if they will be renewed for five years in the case of districts that include properties that are in the Open Space tax

category and that have no development rights, meaning they cannot be subdivided.

Mr. Clark said the Buck Mountain District is located along Davis Shop Road and Markwood Road and is a 627-acre district. He said this is only district for which the County has received withdrawal requests, indicating on the map to two hatched parcels that will be coming out. He said this district has two parcels that are in the Open Space tax category and have no development rights, and therefore there is a five-year review. He said there are two parcels totaling 151 acres that would be coming out at the landowners' request.

Mr. Clark said the recommendation from the Advisory Committee and from the Planning Commission was for approval for the five-year period. He said this was the case for all the districts currently under review.

Mr. Clark said Buck's Elbow Mountain District is located south of Sugar Hollow and north of Jarmans Gap. He said it is a 3,200-acre district, with four parcels in the Open Space tax category that have no development rights. He said this is a five-year district.

Mr. Clark said Chalk Mountain District is located south and southwest of North Garden at 1,600 acres. He said in this district, the only parcels in Open Space have development rights, and so this can be a 10-year renewal.

Mr. Clark said Fox Mountain District is located along the Doyles River near the intersection of Brown's Gap Turnpike and Blackwells Hollow Road, at 436 acres. He said this district contains one parcel that has no development rights in the Open Space category and is thus a five-year district.

Mr. Clark said Jacob's Run District is located northwest of Earlysville at just over 1,000 acres. He said this district contains four parcels that are in the Open Space category and do not have development rights and is therefore a five-year district.

Mr. Clark said the Sugar Hollow District is located west and north of White Hall and is one of the County's larger districts, at 5,000 acres. He said there were no withdrawal requests, and one parcel in the Open Space tax category with no development rights, and therefore the district is a five-year district.

Mr. Clark said the Yellow Mountain District is located west of Crozet, near Greenwood, at 748 acres. He said this is a 10-year district.

Mr. Clark said there is one addition request for the Yellow Mountain District, parcel 71-22C2, at 14.5 acres, which has four development rights and is directly adjacent to the existing district. He said both the Advisory Committee and the Planning Commission have recommended approval of the addition to the district.

Mr. Clark said the ordinance that has been distributed to the Board makes all those changes for those districts, continuing the ones that will be continued with the appropriate review periods, removing the withdrawals from the Buck Mountain District, and adding the Yellow Mountain addition. He said the recommendation is for the Board to adopt the provided ordinance to approve the addition to the Yellow Mountain District and to continue the Buck Mountain, Buck's Elbow Mountain, Chalk Mountain, Fox Mountain, Jacob's Run, Sugar Hollow, and Yellow Mountain Districts.

Mr. Clark noted staff had suggested motions and invited questions.

Ms. Mallek commented there was still work to do to figure out stewardship efforts so that some of the owners who have Open Space can become involved. She acknowledged there was work being done on this, and that the Solar Water Conservation District has programs they can offer and can also inspect so there would not be a staff burden on the County. She said they would work on this, going forward.

Ms. Palmer said she had an update on a couple of properties that were taken out in the Hardware District due to being in Open Space and having no development rights. She said there was a gentleman who came in and explained that he had hired a consultant and had put in native grass and meadows to attract pollinators. She said she had asked him soon after the meeting what he was going to do, noting that he was angry at that moment and he said he was going to mow it down and start his haying operation again. She said she checked back with him later and that he is, in fact, haying. She said this haying operation is not better for the soils, nor the water quality, than what had been there.

Ms. Palmer said she still had a problem with the reviews and that she wished they had grandfathered those things while they worked on a way to deal with the Open Space.

Mr. Gallaway opened the public hearing.

Mr. Neil Williamson, with the Free Enterprise Forum, said the Forum is concerned with the actions being taken regarding Ag-Forestal Districts and the removal of those citizens who have put their land into AFDs in good faith and are now being told that because the development rights have moved, they are no longer valuable. He said it was amazing to him, when they have so much land under conservation easement and never have a public hearing about something going into conservation easement. He said every ten years and now, every five years, there is a discussion about the AFDs, which are not forever, but are protecting those lands.



Mr. Williamson said he also understood what the Board was trying to do in maximizing tax revenue from land that is not generating or putting development rights at bay. He said it is a conflicted place, as the Comprehensive Plan talks about a rural area that is not fragmented, and AFDs help provide this. He said they provide wildlife habitats, but as the reality is that, as the Board talked about dogs running at large, there is a lot of rural area, and there is a level of protection in being in an AFD.

Mr. Williamson said it seems wrong to punish a limited number of rural owners by forcing them out, even though he appreciated the County notifying them ahead of time that they would be clawing back the taxes. He said he appreciated that proactive work, but still thought it was wrong.

Mr. Tom Sikes asked how this would affect the County's ability to provide broadband and cellular coverage for rural areas. He said he has heard a lot of talk about development, but in the rural areas, it is very difficult to get a cellular signal or broadband. He asked if this would prohibit the development in those areas of any kind of coverage.

Mr. Gallaway said he didn't think this would be affected and that this effort to provide coverage would continue.

Mr. Gallaway closed the public hearing.

Ms. Palmer addressed Mr. Sikes and said the answer to his question was no. She urged those who live in the rural areas that have trouble getting coverage to contact their Supervisor or the Broadband Authority. She said she would provide Mr. Sikes with an email address or phone number, as the County is trying to collect a list of people having problems getting connected and that there were many projects going on.

Ms. Mallek said the intent behind the reviews is to not have people using the AFDs as a way to get access to the Land Use Tax Program when they do not qualify. She said it may be a cumbersome and imperfect way to do it, but that this was the best solution that came up after two years of working on it.

Mr. Randolph **moved** to adopt the adopt the attached Ordinance to approve the addition to the Yellow Mountain AFD and to continue the Buck Mountain, Buck's Elbow Mountain, Chalk Mountain, Fox Mountain, Jacobs Run, Sugar Hollow, and Yellow Mountain AFDs. Ms. Mallek **seconded** the motion.

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

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

NAYS: Ms. Palmer

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### **ORDINANCE NO. 19-3(3)**

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 3, AGRICULTURAL AND FORESTAL DISTRICTS, ARTICLE II, DISTRICTS OF STATEWIDE SIGNIFICANCE, DIVISION 2, DISTRICTS, 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 3, Agricultural and Forestal Districts, Article II, Districts of Statewide Significance, Division 2, Districts, of the Code of the County of Albemarle, Virginia, is hereby amended and reordained as follows:

#### **By Amending:**

Sec. 3-209	Buck Mountain Agricultural and Forestal District
Sec. 3-210	Buck's Elbow Mountain Agricultural and Forestal District
Sec. 3-212	Chalk Mountain Agricultural and Forestal District
Sec. 3-214	Fox Mountain Agricultural and Forestal District
Sec. 3-222	Jacobs Run Agricultural and Forestal District
Sec. 3-231	Sugar Hollow Agricultural and Forestal District
Sec. 3-233	Yellow Mountain Agricultural and Forestal District

### **CHAPTER 3. AGRICULTURAL AND FORESTAL DISTRICTS**

#### **ARTICLE II. DISTRICTS OF STATEWIDE SIGNIFICANCE**

##### **DIVISION 2. DISTRICTS**

#### **Sec. 3-209 Buck Mountain Agricultural and Forestal District.**

The district known as the "Buck Mountain Agricultural and Forestal District" was created and continues as follows:

- A. *Date created.* The district was created on January 4, 1989.
- B. *Lands within the district.* The district is composed of the following described lands, identified by parcel identification number:
  1. Tax map 8: parcels 16A, 16C, 17E, 17F, 37, 44, 44A.

2. Tax map 17: parcels 2D6, 26B, 26C1, 26C2, 26C3.

- C. *Review.* The district is reviewed once every five years and will next be reviewed prior to December 18, 2024.

(4-12-95; Code 1988, § 2.1-4(o); § 3-209, Ord. 98-A(1), 8-5-98; Ord. 99-3(1), 1-13-99; Ord. 99-3(5), 10-6-99; Ord. 09-3(2), 9-2-09; Ord. 09-3(4), 12-2-09; Ord. 18-3(1), 11-7-18; Ord. 19-3(3), 12-18-19)

**Sec. 3-210 Buck's Elbow Mountain Agricultural and Forestal District.**

The district known as the "Buck's Elbow Mountain Agricultural and Forestal District" was created and continues as follows:

- A. *Date created.* The district was created on December 2, 2009.
- B. *Lands within the district.* The district is composed of the following described lands, identified by parcel identification number:
  1. Tax map 25: parcel 1.
  2. Tax map 38: parcels 4, 7, 8, 10, 20.
  3. Tax map 39: parcels 1, 1D, 1F, 1F1, 1G, 2B, 8, 10A, 21Q, 21R, 21Z.
- C. *Review.* The district is reviewed once every five years and will next be reviewed prior to December 18, 2024.

(§ 3-209.5, Ord. 09-3(4), 12-2-09; Ord. 10-3(3), 12-1-10; Ord. 11-3(2), 7-6-11; Ord. 11-3(4), 12-7-11; § 3-210, Ord. 18-3(1), 11-7-18; Ord. 19-3(3), 12-18-19)

**Sec. 3-212 Chalk Mountain Agricultural and Forestal District.**

The district known as the "Chalk Mountain Agricultural and Forestal District" was created and continues as follows:

- A. *Date created.* The district was created on September 6, 1989.
- B. *Lands within the district.* The district is composed of the following described lands, identified by parcel identification number:
  1. Tax map 97: parcels 2, 21A1, 21B, 21B1, 21C, 21D, 22, 22A, 22B, 27.
  2. Tax map 98: parcels 1G (part), 11, 12, 13, 14.
  3. Tax map 99: parcel 30.
- C. *Review.* The district is reviewed once every ten years and will next be reviewed prior to December 18, 2029.

(Code 1988, § 2.1-4(r); § 3-211, Ord. 98-A(1), 8-5-98; Ord. 99-3(5), 10-6-99; Ord. 00-3(1), 4-19-00; Ord. 09-3(4), 12-2-09, Ord. 12-3(1), 7-11-12; § 3-212, Ord. 18-3(1), 11-7-18; Ord. 19-3(3), 12-18-19) **Sec. 3-**

**214 Fox Mountain Agricultural and Forestal District.**

The district known as the "Fox Mountain Agricultural and Forestal District" was created and continues as follows:

- A. *Date created.* The district was created on December 2, 2009.
- B. *Lands within the district.* The district is composed of the following described lands, identified by parcel identification number:
  1. Tax map 14: parcels 26A, 26B, 26C.
  2. Tax map 15: parcels 1, 10A.
- C. *Review.* The district is reviewed once every five years and will next be reviewed prior to December 18, 2024.

(§ 3-212.5, Ord. 09-3(4), 12-2-09; Ord. 10-3(2), 7-7-10; Ord. 10-3(3), 12-1-10; § 3-214, Ord. 18-3(1), 11-7-18; Ord. 19-3(3), 12-18-19)

**Sec. 3-222 - Jacobs Run Agricultural and Forestal District.**

The district known as the "Jacobs Run Agricultural and Forestal District" was created and continues as follows:

- A. *Date created.* The district was created on January 6, 1988.
- B. *Lands within the district.* The district is composed of the following described lands, identified by parcel identification number:
  1. Tax map 19: parcels 25, 25A.

2. Tax map 19A: parcels 9, 22, 31.
  3. Tax map 20: parcels 6J, 6S.
  4. Tax map 30: parcel 32B.
  5. Tax map 31: parcels 1, 1B, 4K, 8, 8E, 16, 16B, 44C, 44G2, 45, 45B.
- C. *Review.* The district is reviewed once every five years and will next be reviewed prior to December 18, 2024.

(3-2-94; Code 1988, § 2.1-4(i); § 3-218, Ord. 98-A(1), 8-5-98; Ord. 00-3(1), 4-19-00; Ord. 09-3(4), 12-2-09; Ord. 10-3(2), 7-7-10; Ord. 11-3(2), 7-6-11; Ord. 13-3(1), 12-4-13; Ord. 15-3(1), 12-2-15; § 3-222, Ord. 18-3(1), 11-7-18; Ord. 19-3(2), 9-18-19; Ord. 19-3(3), 12-18-19)

**Sec. 3-231 - Sugar Hollow Agricultural and Forestal District.**

The district known as the "Sugar Hollow Agricultural and Forestal District" was created and continues as follows:

- A. *Date created.* The district was created on September 6, 1989.
- B. *Lands within the district.* The district is composed of the following described lands, identified by parcel identification number:
1. Tax map 25: parcels 11C, 12, 13, 14, 14A, 14B, 14C, 18, 18A, 18B, 21, 21A, 24, 25, 26, 27, 28.
  2. Tax map 26: parcels 5A, 10, 10B, 10D, 10F, 10G, 11C, 11D, 12A, 13, 14F, 19, 40B, 40C, 41A, 52, 52D.
  3. Tax map 27: parcels 8, 8E (part), 24A, 25, 26.
  4. Tax map 39: parcels 2, 2A, 3, 4, 13C3, 14, 15, 25, 25A.
  5. Tax map 40: parcels 1, 9, 9C, 9D (part), 9E, 10, 10A, 10B, 10C, 22, 22A, 27A, 46C1, 49.
- C. *Review.* The district is reviewed once every five years and will next be reviewed prior to December 18, 2024.

(11-17-93; Code 1988, § 2.1-4(q); § 3-226, Ord. 98-A(1), 8-5-98; Ord. 99-3(5), 10-6-99; Ord. 02-3(1), 1-9-02; Ord. 02-3(2), 4-3-02; Ord. 09-3(4), 12-2-09; Ord. 10-3(3), 12-1-10; Ord. 11-3(4), 12-7-11; § 3-231, Ord. 18-3(1), 11-7-18; Ord. 19-3(3), 12-18-19)

**Sec. 3-233 - Yellow Mountain Agricultural and Forestal District.**

The district known as the "Yellow Mountain Agricultural and Forestal District" was created and continues as follows:

- A. *Date created.* The district was created on March 8, 1989.
- B. *Lands within the district.* The district is composed of the following described lands, identified by parcel identification number:
1. Tax map 54: parcels 41, 43, 43A, 43D, 71B.
  2. Tax map 55: parcel 15.
  3. Tax map 70: parcels 15, 15A, 15D, 15E, 15G, 29, 37B, 37B1 (part), 37D (part), 37K, 37L.
  4. Tax map 71: parcel 2B, 22, 22A, 22B, 22C2, 22K, 64, 64A.
- C. *Review.* The district is reviewed once every ten years and will next be reviewed prior to December 18, 2029.

(Code 1988, § 2.1-4(p); § 3-228, Ord. 98-A(1), 8-5-98; Ord. 99-3(1), 1-13-99, Ord. 99-3(4), 5-12-99; Ord. 09-3(3), 9-2-09; Ord. 09-3(4), 12-2-09; § 3-233, Ord. 18-3(1), 11-7-18; Ord. 19-3(3), 12-18-19)

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Agenda Item No. 19. **Public Hearing: ZTA 2019-03 Religious Assembly Uses in the Rural Area.** To receive public comment on its intent to adopt amendments to the following sections of the Albemarle County Code: Section 18-5.1 – to institute performance standards and neighbor notice requirements for religious assembly uses in Rural Areas similar to the performance standards for agricultural operations, and to permit by-right minor expansions of a limited nature to non-conforming religious assembly uses in Rural Areas; Section 18-10.2.1 – to permit religious assembly uses in Rural Areas with assembly of not more than 200 persons by right; Section 18-2.2.2 – to permit religious assembly uses in Rural Areas with assembly of more than 200 persons by special use permit; Section 18-32.2 – to exempt religious assembly use with assembly of not more than 200 persons from site plan requirements. (*Advertised in the Daily Progress on December 2 and December 9, 2019*)

The Executive Summary forwarded to the Board states that this zoning text amendment was initiated by a resolution of intent adopted by the Board of Supervisors on April 5, 2017, along with several other initiatives. This resolution was intended to codify equal treatment of religious assembly uses in the Rural Area (RA) under the Religious Land Use and Institutionalized Person Act (RLUIPA). The Board

held a work session on this proposed amendment on March 20, 2019. At that time, the Board directed staff to draft an ordinance to permit by-right religious assembly of no more than 200 persons in the RA, to propose performance standards for all religious assembly uses in the RA, and to permit nonconforming religious institutions in the RA to make minor expansions to their structures that do not increase assembly capacity.

The Planning Commission held a public hearing regarding the attached zoning text amendment (ZTA) on November 5, 2019. The staff report and minutes from that public hearing are provided as Attachments A and B. The Commission recommended approval of ZTA 2019-03 as provided in Attachment D, and did not request any changes.

In the Board of Supervisors' work session on March 20, 2019, it was suggested that the ZTA be drafted following the adoption of a ZTA on events at agricultural operations. The events at agricultural operations ZTA, which aligned regulations for events at agricultural operations with regulations for events at farm wineries, breweries, and distilleries, was adopted on May 15, 2019.

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

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Ms. Leah Brumfield, Senior Planner in Zoning, presented. She said this was a Zoning Text Amendment (ZTA) to bring the Zoning Ordinance into accord with the Equal Terms clause of the Religious Land Use and Institutionalized Persons Act (known as RLUIPA).

Ms. Brumfield noted that throughout the presentation, she would be using the term "religious assembly uses," but unless otherwise noted, she is referring only to religious assembly uses in the Rural Areas, and will describe that later in the presentation as to why.

Ms. Brumfield said this is being brought to the Board because staff initiated it, along with a large number of other ZTAs, in 2017. She said it was brought back March 20, 2019 for a work session. She said there was some staff work on the amendment, and then the Planning Commission unanimously recommended adoption in November.

Ms. Brumfield said this is being done because of RLUIPA, which is the religious exercise in land use and by institutionalized persons act. She said this is trying to address the requirement in that federal act that no government shall impose or implement a land use regulation in a matter that treats religious assembly or institution on less-than-equal terms with a non-religious assembly or institution. She said in simple terms, the County cannot regulate a religious assembly any harsher or more restrictive than a non-religious assembly.

Ms. Brumfield said currently, the language in the Zoning Ordinance requires a Special Use Permit in the Rural Area for religious assembly uses such as churches, mosques, Quaker meeting houses, synagogues, etc. She noted the County permits non-religious assembly, however, at agricultural operations and farm wineries, breweries, and distilleries without a Special Use Permit, adding that these are by right.

Ms. Brumfield said since this contradicts RLUIPA, the former Zoning Administrator, Amelia McCulley, distributed a Letter of Determination, noting that under RLUIPA, religious assembly of up to 200 persons in the Rural Area was a by right use and did not require a Special Use Permit, and so staff has been following that guidance since October 2017.

Ms. Brumfield said the ZTA is largely initiated to codify the LOD. She said they are also specifying regulations for religious assembly uses to avoid impacts to neighboring parcels, and are trying to fix one of the issues they have with small changes to prior non-conforming or prior-approved religious assembly and institution in the Rural Area.

Ms. Brumfield noted that the ZTA applies only to religious assembly and institutions in the Rural Area because the County treats other assemblies in the development area the same way they treat religious institutions, and so there is no conflict there. She said additionally, it does not apply to religious schools because the County also requires a Special Use Permit for religious schools in the Rural Area, and so those are on equal terms.

Ms. Brumfield said that the least restrictive regulations in the Rural Area are for agritourism at agricultural operations and farm wineries, breweries, and distilleries. She recalled the County recently adopted a ZTA for events, agricultural operations (part one), which aligned the regulations for agritourism events (AgOps) with regulations they have in agritourism at farm wineries, breweries, and distilleries. She said that since that ZTA changed the regulations for non-religious assembly, this amendment for religious assembly was put on hold until they could get that ZTA adopted.

Ms. Brumfield said the agritourism regulations could be imposed wholesale on the religious assembly uses without any additional real changes. She said these could include limiting attendance to no more than 200 persons; requiring 5 acres of land to be used for religious assembly use; establishing setbacks, including parking area setbacks and primary structure setbacks; requiring zoning clearances on lot sizes smaller than 21 acres, or any activity which would have more than 50 visitor vehicle trips per day (25 cars in, and 25 cars out); or requiring a clearance for outdoor amplified music.

Ms. Brumfield said instead of adopting all the potential regulations possible, staff recommends

only applying the ones that address the primary purpose for land use regulation, reducing substantial impacts on health, safety, and welfare. She said this is the least restrictive means of furthering the County's interests, which is also mandated by RLUIPA.

Ms. Brumfield said notwithstanding the current stop gap process of permitting uses up to 200 persons by right, the current ordinance language requires that religious assembly pursue a Special Use Permit and a site plan, as well as obtaining a building permit, which would most likely require them to have a Virginia Stormwater Management Program (VSMP). She said they also have to follow VDOT and Health Department regulations, and that these are all independent of the Zoning Ordinance and does not impact that at all. She said the Special Use Permit process was intended to address any negative impacts, so staff is still trying to address negative impacts, but is taking away the Special Use Permit requirement.

Ms. Brumfield said staff proposes that the Special Use Permit and the accompanying site plan not be required, but that all the independent regulations (VDOT, Health Department, building code) all still apply, regardless. She said staff hopes that this removes the burden of applying for Special Use Permits, which will make life easier for some of the Rural Area religious assembly, as well as follow RLUIPA, as following federal regulations is something the County adheres to.

Ms. Brumfield said regarding primary impacts, noise and traffic will want to be avoided. She said they will want to maintain road safety and avoid unnecessary development or commercialization in the Rural Area. She said the primary tool is limiting the number of people who come to events. She said in the Rural Area, for agritourism, events are capped at 200 persons, and so staff is suggesting this number for religious assembly as well. She said they have proposed neighbor notice to abutting parcels, similarly to agritourism uses, and have minimum yard requirements that are equal to that at the AgOps, which is a normal setback for primary structures, and 125 feet for parking areas, and anywhere tents or portable toilets are placed.

Ms. Brumfield said staff also recommends imposing outdoor amplified music curfew in addition to noise regulations. She said the standard noise regulations are 55 decibels at night, 60 decibels during the day, measured to the property line. She said this doesn't change, and the only thing that would change would be amplified music, such as one might have at an outdoor wedding, that would have a curfew.

Ms. Brumfield said some of the regulations that have been applied to agritourism don't apply to religious assembly, and so those have been removed. She said, for example, a minimum of 5 acres of planted land to count as bona fide agriculture for agritourism uses is one of those regulations. She said staff has determined that although many religions refer to "flock" and "sow and reap" in their liturgy, they are not using this in a literal sense, but is more metaphorical, so they would not be applying the 5-acre minimum.

Ms. Mallek said she thought there was a 5-acre minimum listed in one of the original slides.

Ms. Brumfield replied that those were the options that staff could have applied. She said they were not proposing the 5-acre minimum.

Ms. Mallek asked if they were allowing a building big enough to allow parking for 200 people.

Ms. Brumfield replied yes, if the applicants can meet the setbacks. She said it was very unlikely that one could actually have this with the setbacks on less than 4.4 acres. She said those still apply, and if there was an existing church, it would not be under the regulation, regardless. She said the possibility exists.

Ms. Mallek asked if stormwater and all the other constraints would be outside the buffers as well in the space that is required.

Ms. Brumfield replied yes.

Ms. Mallek asked if they were not allowed to use steep slopes or wetlands. She asked if they were taking away all the constrained lands before considering the requirements they have to have. She asked if it was a net density situation and if they were not allowing the building envelope to be put into constrained areas.

Ms. Brumfield replied that the building site does have to follow all standard building code requirements, and so this is not impacted. She said if someone can build it, they can, and this is not anything that has changed.

Ms. Brumfield said in addition to the performance standards proposed, and the removal of the Special Use Permit requirement, staff has brought to the Board the Board-directed changes that would allow non-conforming religious assembly uses to make minor expansions that they would not increase capacity. She said if one wants to build a gazebo or wants to increase the size of a meeting hall, but not necessarily the actual primary religious service area, this would be permitted without getting a Special Use Permit as well.

Ms. Brumfield said in the past, small religious assembly has had to go through the Special Use Permit process to add bathrooms to their property. She said another example was adding a storage shed to the property. She said this was a situation where it was a 620-foot storage shed, which cost \$9,000 to

build and incurred about \$3,000 in Special Use Permit fees, which increased the cost of the actual building to the church by a third. She said this is a large burden for small religious institutions, and so staff is seeking to reduce that burden.

Ms. Brumfield said staff does not anticipate this happening much because most of the smaller churches that are under 200 people do not need a Special Use Permit, regardless. She said the church, in that particular example, would now be by right and would not have to seek changes to a site plan or a Special Use Permit.

Ms. Palmer asked how staff deals with funerals, homecomings, and other events where more than 200 people come, noting that these have been going on for years.

Ms. Brumfield replied that this would fall under any kind of standard complaint process. She said if someone called this in, it would follow the standard violation process. She said if not, the County is not going to go out and seek those events in order to send notices of violation.

Ms. Palmer asked if technically, they would need a Special Use Permit for those events.

Ms. Brumfield replied yes, technically. She said the building itself would be built to a maximum of 200 people, and that is how staff measures it in those situations.

Mr. Dill asked what happens to a building when a church dissolves, if it can be used for other purposes, for instance.

Ms. Brumfield replied that it is a structure, and so the structure itself can be used for additional things. She said the new uses would have to follow the Zoning Ordinance.

Ms. Palmer asked if someone calls and complains about the church having a big funeral, for instance, who would count this. She said she wanted to make sure they are not putting some burden on churches to be worried about how many people show up for an event.

Mr. Bart Svoboda, Zoning Administrator, said the County deals with complaints on a case-by-case basis. He said they would look at what the impacts are, and if what they have is a traditional use, they would analyze it on a case-by-case basis and try to look at how churches operate. He said if there are issues that come up, like other ordinances that have been discussed, they will come back and say that these are regular things they are looking at. He said it was not likely that they would turn something like this into a violation, and that they would look more for part of the regular use.

Mr. Svoboda said some of the churches being discussed are already non-conforming, and so those rules don't apply to them. He said for the newer ones, they would have to make the determination on a case-by-case basis.

Mr. Svoboda said when Ms. Brumfield was talking about the regulation, these are things that must be done as they cannot be regulated in greater fashion than what they do with other agricultural uses. He said when they are looking at site plans, for instance, if an agricultural use doesn't need a site plan, this is fine, but this regulation only exempts from zoning and not from the VSMP and other things. He said this would not apply exemptions to those things.

Mr. Randolph said he could cite a case study he is familiar with that those regulations, had they been applied 4.5 years ago, would have lightened a considerable burden on a small parish church. He said this is a huge step forward for the small, rural, parish churches in Albemarle County, adding that there are quite a few.

Mr. Randolph said he had just finished writing the minister and one of the long-standing senior wardens of a church to let them know that this matter is before the Board, as it would have saved the church about \$250,000 where it is a small church congregation, with about 8 people attending on Sundays every other week. He said they do not have a lot of resources, and it's on family-owned land and definitely non-conforming. He said this is a huge step forward for other such churches and chapels in the County.

Mr. Svoboda said this was some of the analysis done by staff, citing an example of a small Pentecostal church on Barracks Road that, if they wanted to add a shed or other things, they are now under the radar for those, as they are under 200 people. He said if they were adding more impervious area that may impact stormwater, then they may be subject to some VSMP, and so the checks and balances are still there.

Mr. Randolph said they needed to be clear that this was not giving the churches the ability to put in whatever they want.

Ms. Palmer said it was a great idea to make it easier for churches to put in things like sheds. She said she wanted to make sure they understood the impact with larger crowds.

Mr. Randolph said with some of the churches, they physically cannot get a larger crowd on site, and they do not have the septic fields to handle larger crowds.

Ms. Mallek said it is a completely different world when they are talking about the existing parishes

versus the new commercial entities, for which the County has a couple and still have acres of red mud sitting, as they never got there. She asked how this would affect the New Hope installation on Dickerson Road. She said it is a constant struggle for stormwater and other factors when the site has been sitting with footings for seven years now.

Mr. Svoboda said they are still under the same constraints, meaning that if there are erosion and sediment control issues, they can be addressed through the existing regulations, even though there is not a site plan. He said this did not mean that they can finish the projects or put in the parking because those regulations are about stabilization. He said they would not bond the full construction to occupancy and get the use up and running. He said if there is enough disturbance that requires the VSMP, there are certain bonding requirements that would enable the County to stabilize the site. He said at current time, this is for over 10,000 square feet, and at less than that, they would not be doing a VSMP permit.

Ms. Mallek said this was something the Board was considering changing as far as reducing the 10,000-square-foot disturbance, going forward. She said the new construction was the great concern for her. She said even for the additions, one of her parishes is trying to install a bathroom. She asked if they would still have the same setback requirements, as well as the older ones who were non-conforming and couldn't change anything before, but that now they would be able to.

Ms. Brumfield replied that the setback and other requirements would still apply, even though they are non-conforming.

Mr. Gallaway opened the public hearing. Hearing no comments, he closed the public hearing and brought the matter back to the Board for further discussion or a motion.

Mr. Randolph **moved** to adopt the attached proposed Ordinance (Attachment D). Ms. Mallek **seconded** the motion.

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

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

NAYS: None.

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#### **ORDINANCE NO. 19-18(8)**

AN ORDINANCE TO AMEND CHAPTER 18, ZONING, ARTICLE II, BASIC REGULATIONS, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 18, Zoning, Article II, Basic Regulations, is hereby amended and reordained as follows:

**By Amending:**

Sec. 10.2.1 By right.

Sec. 10.2.2 By special use permit.

Sec. 32.2 Applicability

**By Adding:**

Sec. 5.1.64 Religious Assembly Use in Rural Areas.

#### **Chapter 18. Zoning**

#### **Article II. Basic Regulations**

#### **Section 5. Supplementary Regulations**

...

#### **Sec. 5.1.64 Religious Assembly Use in Rural Areas**

Each religious assembly use authorized below shall be subject to the following:

- a. *Notice.* The religious assembly shall provide written notice to the owner of each abutting lot under different ownership than the lot on which the proposed use would be located. The notice shall identify the proposed type, size, and frequency of events and assemblies, and provide the name and telephone number of a contact person who will be on-site at the religious assembly use. The notice shall be mailed at least ten (10) days prior to the issuance of a building permit.
- b. *Sound from outdoor amplified music.* Sound generated by outdoor amplified music shall be subject to the following:
  1. *Maximum sound level.* Sound generated by outdoor amplified music shall not exceed the applicable maximum sound levels in section 4.18.04.
  2. *Times of day when outdoor amplified music prohibited.* Sound generated by outdoor amplified music is prohibited between 10:00 p.m. and 7:00 a.m. the following morning.

- c. *Yards.* Notwithstanding any other provision of this chapter, the following minimum front, side, and rear yard requirements shall apply to any event or activity:
1. *Structures used for religious assembly.* The minimum yards for structures used religious assembly shall be as follows:
    - a. *New permanent structures and temporary structures.* The minimum front, side, and rear yard requirements in section 10.4 shall apply to all permanent and temporary structures used for religious assembly.
    - b. *Existing permanent structures.* If an existing permanent structure does not satisfy any minimum yard requirement under subsection (c)(1)(a), the minimum yard required shall be the distance between the existing permanent structure and the street, road, access easement, or lot line on [date of adoption], and that distance shall not be thereafter reduced. An enlargement or expansion of the structure shall be no closer to a street, road, access easement or lot line than the existing structure.
  2. *Parking areas.* The minimum front, side, and rear yards for parking areas shall be one hundred twenty-five (125) feet from any abutting lot not under the same ownership as the religious assembly use.
  - d. *Expansions to existing nonconforming religious uses.* Notwithstanding the provisions of section 6.2(A), minor expansions to existing nonconforming religious assembly uses shall be permitted by right. These expansions are limited to picnic shelters, storage, office space, recreational equipment, and other similar additions or accessory structures that are determined by the Zoning Administrator to not increase the capacity of the nonconforming religious assembly use. Any new structure shall comply with the provisions of section 5.1.64(c).

(§ 18-5.1.64, Ord. 19-18(8), 12-18-19)

...

## **Section 10. Rural Areas District, RA**

...

### **Sec. 10.2.1 By right.**

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

...

34. Religious assembly use with assembly of not more than 200 persons.

(§ 20-10.2.1, 12-10-80; 12-16-81; 7-6-83; 11-1-89; 11-8-89; 11-11-92; 5-12-93; Ord. 95-20(5), 11-15-95; § 18-10.2.1, Ord. 98-A(1), 8-5-98; Ord. 02-18(6), 10-9-02; Ord. 04-18(2), 10-13-04; Ord. 06-18(2), 12-13-06; Ord. 08-18(7), 11-12-08; Ord. 09-18(11), 12-10-09; Ord. 10-18(3), 5-5-10; Ord. 10-18(4), 5-5-10; Ord. 11-18(1), 1-12-11; Ord. 12-18(3), 6-6-12; Ord. 13-18(5), 9-11-13; Ord. 14-18(4), 11-12-14; Ord. 15-18(10), 12-9-15; Ord. 17-18(1), 1-18-17; Ord. 17-18(4), 8-9-17; Ord. 18-18(1), 1-10-18; Ord. 18-18(2), 9-5-18; Ord. 19-18(3), 6-5-19; Ord. 19-18(6), 8-7-19; Ord. 19-18(8), 12-18-19)

...

### **Sec. 10.2.2 By special use permit.**

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

...

35. Religious assembly use with assembly of more than 200 persons.

(§ 20-10.2.2, 12-10-80; 3-18-81; 2-10-82; 4-28-82; 7-6-83; 3-5-86; 1-1-87; 12-2-87; 11-8-89; 6-10-92; 11-11-92; Ord. 95-20(1), 3-15-95; Ord. 95-20(3), 10-11-95; Ord. 95-20(5), 11-15-95; § 18-10.2.2, Ord. 98-A(1), 8-5-98; Ord. 99-18(4), 6-16-99; Ord. 00-18(6), 10-18-00; Ord. 01-18(2), 3-21-01; Ord. 02-18(6), 10-9-02; Ord. 04-18(1), 5-5-04 effective 7-1-04; Ord. 04-18(2), 10-13-04; Ord. 05-18(7), 6-8-05; Ord. 05-18(8), 7-13-05; Ord. 06-18(2), 12-13-06; Ord. 08-18(7), 11-12-08; Ord. 10-18(3), 5-5-10; Ord. 10-18(4), 5-5-10; Ord. 11-18(1), 1-12-11; Ord. 14-18(4), 11-12-14; Ord. 15-18(10), 12-9-15; Ord. 16-18(7), 12-14-16; Ord. 17-18(1), 1-18-17; Ord. 17-18(2), 6-14-17; Ord. 17-18(4), 8-9-17; Ord. 18-18(1), 1-10-18; Ord. 18-18(2), 9-5-18; Ord. 19-18(3), 6-5-19; Ord. 19-18(8), 12-18-19)

...

## **Section 32. Site Plan**

...

### **Sec. 32.2 Applicability**



Any construction, use, change in use or other development is permitted in any zoning district only with an approved site plan complying with the requirements of section 32, other applicable requirements of this chapter, and all other applicable laws; provided that no site plan shall be required for the following:

...

f. Any religious assembly use with assembly of not more than 200 persons.

(§ 32.2.1, Ord. 12-18(6), 10-3-12, effective 1-1-13 (§ 32.2, 12-10-80; § 32.2.1, 12-10-80); Ord. 19-18(8), 12-18-19)

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Agenda Item No. 20. **Public Hearing – Regulation and Licensure of Certain Mobility Devices.** To receive public comment on its intent to adopt an ordinance to amend Chapter 9 (Motor Vehicles and Traffic) of the Albemarle County Code by adding the following proposed provisions: (1) Article IX (§§ 9-900 to 9-910) would establish regulations for bicycles, electric power-assisted bicycles, motorized skateboards or scooters, and mopeds (collectively, the “vehicles”) by making the riders of the vehicles subject to applicable traffic laws, requiring the vehicles to be equipped with lights and brakes, requiring the vehicles be operated on roadways generally and prohibiting them from being operated on sidewalks, regulating parking the vehicles and other manners of their operation, establishing penalties for violations, requiring that accidents be reported, and disposing of unclaimed vehicles; and (2) Article X (§§ 9-1000 to 9-1007) would establish a licensing program for any business that offers, or applies to offer, a bicycle, electric power-assisted bicycle, or motorized skateboard or scooter (collectively, the “vehicles”), for hire, and to authorize the County Executive or his designee to administer a permitting program, including issuing permits and establishing a cap on the number of vehicles licensed to operate under the program, establishing reasonable fees, charges, and penalties, establishing regulations for suspending or revoking permits for violations of the program, and establishing an administrative appeal process for permit denials, suspensions, revocations, and the number of vehicles allowed under a permit. (*Advertised in the Daily Progress on December 2 and December 9, 2019*)

The Executive Summary forwarded to the Board states that, since November 2018, the City of Charlottesville has been operating a pilot program for Shared Electric Bicycles (e-bikes) and Electric Scooters (e-scooters) (collectively referred to as Dockless Mobility). Since then, multiple companies have been providing Dockless Mobility services in the region. Many of these devices have frequently crossed the City line into the County. Of the more than 200,000 trips taken on Dockless Mobility devices over the past year, according to City data, approximately 8,500 (roughly 4%) started or ended in Albemarle County.

In March 2019, the General Assembly enacted HB 2752, which enables localities to both regulate and/or require the licensure of motorized skateboards or scooters, bicycles, or electric power-assisted bicycles for hire. The new law also provides that on or after January 1, 2020, in the absence of any licensing ordinance, regulation, or other action, a person may offer motorized skateboards or scooters, bicycles, or electric power-assisted bicycles for hire.

With this January 1 date in mind, City staff began working with County and University of Virginia staff to develop an ordinance and policies that would meet regional needs. This proposed City ordinance is now advancing through the approval process and is expected to be adopted prior to January 1, 2020.

At the November 20, 2019 Board of Supervisors meeting, staff presented, and the Board reviewed, the applicable State laws, the City effort, and the effect of both on the County. As a result, the Board directed staff to draft a proposed County ordinance for public hearing prior to January 1, 2020.

Attachment A is a proposed ordinance to address Dockless Mobility devices and renters in the County. The ordinance closely tracks the City of Charlottesville’s proposed ordinance, thereby reducing confusion for users and vendors. Among other provisions, the proposed ordinance would:

- Require certain safety equipment, including lights and brakes;
- Set operational direction for riders, including how and where to ride in the roadway;
- Prohibit riding on the sidewalk, punishable by a fine;
- Regulate how and where devices may be parked;
- Allow for the disposition of unclaimed devices; and
- Prohibit certain unsafe practices, such as riding while attached to another vehicle, riding with earphones, and having more than one rider on a device.

The proposed ordinance also would create a permit program for Dockless Mobility devices for hire. Among other provisions, the proposed ordinance would also:

- Require a permit to offer Dockless Mobility devices for hire;
- Allow the County to cap the fleet size in such a program; and
- Create a process and fees for the submission, review, and approval of such permits.

County staff is currently drafting specific requirements and a process for this permit program, which will be outlined for the Board of Supervisors at the December 18th meeting.

Staff estimates that adoption of the ordinance would result in approximately 20 hours of Community Development Department staff time each year to process and manage an expected two applications per year, and approximately 20 hours of Police Department staff time each year to enforce the ordinance regulations. Staff believes that these staff impacts could be absorbed by current staffing

levels, with the Police Department potentially funding the additional staff time with overtime pay of approximately \$750.00 per year.

If the Board wishes to regulate the operation of Dockless Mobility devices and require their licensure when offered for hire, staff recommends that following a public hearing, the Board adopt the attached proposed ordinance (Attachment A).

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Mr. Kevin McDermott, Transportation Planner, presented. He said this was the public hearing for a proposed ordinance on the regulation and licensure of certain mobility devices.

Mr. McDermott said in November 2018, the City of Charlottesville had begun a pilot program for regulating Dockless Mobility devices, which include scooters and e-bikes seen around town. He said many of these did drift into the County, out of the City. He said in March 2019, the General Assembly passed State Code to enable localities to regulate and license the motorized devices for hire, and also provided that, absent local regulation, after January 1, 2020, these businesses could offer the motorized devices for hire within the jurisdictions without any regulation.

Mr. McDermott said the City, County, and UVA all began working together on some regional policies that could address this. He said at the November 20 Board of Supervisors meeting, the public hearing was set for the ordinance amendment.

Mr. McDermott said the purpose of the amendment is to amend Chapter 9, "Motor Vehicles and Traffic" of the Code of the County of Albemarle to add Article 9, "Bicycles, Electric-Powered Assisted Bicycles, Motorized Skateboards or Scooters, and Mopeds." He said it would also add Article 10, which is a permit program for Dockless Mobility devices for hire. He said this will codify regulations related to Dockless Mobility devices, and companies prior to the January deadline will be prevented from operating without any regulatory guidance in the County. He said the purpose was to also address the safety concerns related to the use of those devices and enable opportunities to introduce new multi-modal options in the County.

Mr. McDermott said he would provide a summary of the ordinance changes being considered. He said some sections of the ordinance pertaining to Article 9, regarding bicycles, electric-powered assisted bicycles, motorized skateboards, scooters, or mopeds, will require the devices to be equipped with lighting, reflector, and brakes that meet the State Code. He said they require operators to ride as close to the right curb roadway edge as practicable except when passing, making left turns, or avoiding hazards.

Mr. McDermott said the code restricts all devices from operating on sidewalks and imposes up to a \$50 fine. He pointed out that this does include regular and personal bicycles and is not solely for the companies. He said staff heard a number of comments about this and that they could address it as it comes up. He said it also restricts devices from being parked in the road or sidewalk travel ways, obstructing pedestrian movement, or in other public rights of way where it is not intended. He said up to a \$50 fine is associated with this.

Mr. McDermott said the code prevents riders from attaching to a vehicle, riding on handlebars, or riding with more than one person on a scooter or skateboard. He said it establishes a responsibility for reporting accidents. He said it allows the police to dispose of unclaimed devices. He said it also restricts operating devices with earphones in both ears. He said this is all included in Article 9.

Mr. McDermott said Article 10, regarding the permit program for Dockless Mobility devices, establishes a permit program to regulate the operation of the Dockless Mobility services for hire that ensures health, safety, and wellness. He said it reduces single-occupancy vehicle use and improves safety, mobility, and equity. He said it requires a permit to operate Dockless Mobility for hire.

Mr. McDermott said the code authorizes the County Executive to promulgate regulations setting forth the requirements applicable to the permit program. He said they have outlined some of the potential items that could be covered under the permit program, but that this allows the County Executive to make the final decision on those. He said he would take input on this as they review that piece. He said it also authorizes the County Executive to cap the fleet size of the companies and outlines the process for the review of the applications based on County goals. He said it authorizes the County Executive to revoke permits and provides an avenue for appeals.

Mr. McDermott presented suggestions from staff on what the Dockless Mobility permit program regulation could look like, including items that would be required if one wanted to be permitted under this. He said it does not cover everything and that much of it is rehashing what is already in the ordinance. He said he wanted to present highlights that the Board may want to have input on.

Mr. McDermott said regarding permit requirements and fees, this will require an applicant to have an approved, valid permit through the City of Charlottesville to operate a Dockless Mobility service within the County. He said the purpose of this is that they do not want companies that operate in the County and separate companies that operate in the City, as they hope to have a regional program so that the same company operates in both. He said the City already has two permitted companies that are operating, and the thought was that if those companies could be the ones that would operate in the County, this would reduce confusion and would be a much easier program to administer. He said regardless, the scooters will go back and forth across the County-City line.

Ms. Mallek asked if the County would still have their own permit.

Mr. McDermott replied yes. He said the applicant would come in and have to prove that they already have a permit from the City. He said if this is the case, the County can approve their permit. He said if an applicant came in without a permit from the City, this would be grounds for denial. He noted these were only suggestions and that he was happy to talk about this more. He explained they were trying to set up something that could lend to a regional system.

Mr. Randolph said he hoped there is reciprocity with the City, that similarly, if the County approves a company, they would extend the same privileges to the company in the City.

Mr. McDermott explained that they could do that, but the City has a limit on the number of companies that they would allow to operate, as well as a limit on the number of devices that they allow there.

Mr. McDermott said there is also a suggested \$1,000 application fee which would cover review and approval of the applications, as well as a \$5,000 annual fee for the permit holder. He said the City has an annual fee that is per device, and he thought this would be somewhat easier for the County, noting that they would likely see less use in the County than the City sees. He said he thought it would take less staff time if they don't have to keep track of all the numbers of devices. He said that therefore, he set this at an annual fee limit of \$5,000, which equates to about what they would expect to see if they were to license individual scooters.

Mr. McDermott said this also requires a business license and applicable business license fees and taxes from those companies. He said it also sets out operating requirements such as the remote ability to render the devices inoperable, onboard GPS, and have them properly certified as safe to operate.

Mr. McDermott said it sets fleet size and operation guidelines, noting that he believed a good number to start with for the first year would be a cumulative total of about 100 skateboards or scooters in the County. He said he has been tracking the two companies that operate and how many they are seeing in the County currently, not including what is on the UVA campus, and that this is about 15-20 devices in the County at any one point in time. He said they are focused around the development area. He said he didn't think they would see many devices and that 100 was likely more than what they would expect to see.

Ms. McKeel asked if when Mr. McDermott was referring to skateboards, he was referring to the electric skateboard she has seen people riding on Barracks Road and into the neighborhoods holding grocery bags.

Mr. McDermott replied yes. He said these are permits specifically for the companies for hire.

Ms. McKeel asked if he was specifically talking about battery-powered skateboards.

Mr. McDermott replied yes.

Ms. Palmer said most of the scooters are staying in the City. She asked if the County was going to charge a similar fee to what they would charge in the City.

Mr. McDermott replied no, explaining that the City charges \$85 per device in operation, with a 350-device limit, as opposed to the County's 100-device limit. He said if they met this, the City would be making around \$30,000 a year in those fees, so it is significantly more. He said the application fee in the City is also significantly more than the County's. He said the \$5,000 sounded like a fair amount if the company had about 50 devices operating at the \$85 level.

Ms. Palmer asked what would happen if, because most of the scooters would stay in the City, the owner of the company decided not to apply for a County permit. She asked if the County would be tracking them, find them, and then fine the company.

Mr. McDermott replied that his assumption would be that it would be a complaint-driven issue, which is what is laid out in the ordinance. He said they would be allowed to confiscate any scooters that were in the County if they did not have a permit to operate within the County.

Ms. McKeel said though she agreed with Ms. Palmer, the majority of the scooters were around UVA. She said for those people who live in the Rural Area and aren't driving in the neighborhoods around the urban ring, they are seeing the scooters often.

Ms. Palmer said she sees them all the time, and her question was simply a question about what would happen. She said she could see some operators being very City-centric and making that assumption.

Mr. Randolph agreed, adding that the end-user may not be so City-centric, and they were again back to the line between the development area in the rural area. He said they could get into the rural area very quickly in Albemarle County such as via Georgetown Road, 5th Street, Route 250, and Route 20. He said the devices will become much more extensive, going forward.

Ms. Palmer said her question was about enforcement.

Mr. McDermott pointed out that the companies have the ability to geofence the devices. He said if the County passes an ordinance or does not give someone a permit, but has one in the City, the County will reach out to the company and ask them to geofence the devices at the County line. He said those scooters will then no longer be able to cross over into the County and that they can be rendered inoperable the minute they cross a line.

Ms. McKeel asked if this was optional for the company to do this, or if they have to do it when the County requests it. She asked how much this could be enforced.

Mr. McDermott replied he was not sure how it would work. He said he believes that the City regulation says that those with permits in the City have to abide by their request to set those limits, which may include those at the City line. He said the City could go to those companies and tell them that if they want to continue operating in the City and are not getting a permit for the County, they will need to set up a geofence to prevent their devices from going outside the City. He said he included it in the regulations for the County to require them to set geofences around areas.

Mr. McDermott said he recommended designating the service area within the County development areas, acknowledging that this opens up the same question that the Board had earlier about this, but that in this case, they could request that the companies set the geofence. He said it would not, therefore, be a question of knowing whether or not a person is in the rural area or development area.

Ms. McKeel expressed that this got to her point about the development area and the difficulty distinguishing between areas.

Mr. McDermott said in this case, they could set the geofence on the side of the road in the urban area so that the person can go up and down the road but preventing them from making a turn off the road.

Ms. Palmer said she preferred the City versus County idea. She said she was just thinking about the enforcement, and that this was a good idea, if it could be done, to make sure the company pays their permit.

Mr. McDermott said his thought with this is that he couldn't imagine people taking the scooters out to Earlysville Road and trying to do a winery tour on them. He said there are many roads in the County where it is not appropriate to have the devices.

Mr. Dill said someone could go a ways in the County with an electric bike.

Mr. Randolph said one could go 25-30 miles, and if one is using low battery, they could go 50-60 miles.

Mr. McDermott said they could talk to the companies about different boundaries with e-bikes and scooters as well.

Mr. Randolph added that the batteries are being made better, and so the ability to go greater distances is increasing. He said not to assume that they will be compliant.

Mr. McDermott said he had a minimum included in the regulation to give a permit a minimum number of 25 scooters and 5 e-bikes. He said the City has this as well. He said if they are going to go through the trouble of permitting, they will know they will actually be out there, and people will be able to use them.

Mr. McDermott said the County Executive can require removal of the devices in the development areas during weather emergencies. He said regarding riding and parking, the company would have to apply geofencing specifications to prevent riding or parking in undesignated areas. He said it promotes the use of helmets and other safe, legal riding techniques. He said they must provide equitable access with non-credit and non-smart-phone mechanisms to access services and must be accessible to persons with disabilities.

Mr. McDermott said that relating to customer service, the County would require the companies to provide appropriate contact information both for users and for staff, so if they have issues, they can contact the companies at any time and have them remove devices. He said there is a data sharing agreement in the regulations so that the County can require specific data from the companies. He said the City does this, and it would be easy for the County to work together on collecting and sharing that data. He said the regulations also require that the companies have appropriate insurance and indemnification.

Mr. Randolph said that because the County would not be establishing the expectation that every operator will be wearing a helmet, he thinks it is absolutely essential that when people are going to any of these companies, the companies strongly recommend that the user use a helmet. He said statistics exist of the increased number of emergency room visits for cerebral events are a result of these portable mobility devices, and they will not want to see people having serious brain injuries as a result of operating the vehicles. He said the more the companies could encourage them to wear helmets, the better.

Mr. Randolph said if someone can hit 15 miles per hours and fly forward into an automobile with a helmet, they will likely sustain some major physiological damage, but is far better off having the helmet on than to have hit with nothing whatsoever. He said in that the County would not be requiring it, he felt they should strongly encourage every user of any PMD in the County to use a helmet.

Ms. McKeel said she was speaking to J.J. Davis at UVA about the scooters and that she was adamant about wanting to require helmets. She said she didn't know what their policy was. She asked if the suggested regulations mirror the City and UVA that promote the use of, or if they are requiring, helmets.

Mr. McDermott replied that they are promoting the use of helmets. He said everything the County regulations contain mirrors the City almost exactly.

Mr. Randolph said they are not requiring the helmets.

Mr. McDermott replied yes. He said his understanding was that the County would need State law to require the helmets.

Ms. McKeel said this mirrors the City, expressing this was a good thing. She asked where UVA comes in with this and if they were using the City as a default.

Mr. McDermott replied that this was correct.

Ms. McKeel asked if UVA had specific items that were different.

Mr. McDermott replied that his understanding was that this was exactly what UVA was doing, and that UVA is essentially working off the City's regulatory guidance.

Mr. Kamptner asked if they were referring to the regulatory guidelines or if they were also talking about Article 9.

Mr. McDermott replied that he was talking about the regulatory guidelines. He said he didn't know if the City has an actual ordinance.

Mr. Kamptner asked if it was just about the licensing program.

Mr. McDermott replied yes.

Mr. Randolph said that Article 9 would be different, and one reason for this is because the County does not have the degree of lighting in the roadway that the City has.

Ms. McKeel asked if for this, they were mirroring the City and UVA and would therefore be the same, noting that she felt this is appropriate.

Mr. McDermott replied yes. He said that in general, the ordinance is exactly the same between the City, UVA, and what the County is proposing.

Mr. McDermott said the staff recommendation is that the County adopts the ordinance. He said he also recommends that the Board provide feedback on the Dockless Mobility program regulations.

Mr. Randolph said Mr. McDermott skipped over Section 9 and that he wanted to go through the email that all members of the Board received from Frank Deviney. He said he wanted to go through this section by section and provide some perspective, as a cyclist, where he agrees and where he disagrees with Mr. Deviney. He said Mr. Deviney is a very experienced commuter and takes certain things for granted as a commuter that he himself would not when many of the operators are inexperienced and may not know the rules of the road with the degree of familiarity that Mr. Deviney possesses. He said he would wait until after the public comment period to do this.

Ms. Mallek said Mr. McDermott mentioned about how the County Police would have the ability to dispose of abandoned devices, adding that there have been quite a few dumped on County property. She noted there is a cost to this, as the devices have batteries and are electronic devices which, when taken to Crutchfield, cost \$25 each. She asked if they would be able to reclaim that money from the licensed people to cover the costs of disposable.

Mr. McDermott replied yes, explaining that in the regulations, he recommends a \$100 fee for every device the County confiscates.

Ms. McKeel added that the devices are being pulled out of the Rivanna River as well.

Mr. Dill said the regulations state that the County would put those devices in storage for 30 days, which is also an expense. He said presumably, the companies would pick up the devices and not let them go into the landfill.

Ms. Mallek said the companies say to throw the devices away.

Ms. McKeel agreed that this is what the companies have been saying.

Mr. McDermott said the regulations do allow the County to charge for storage separately as well. He said this would mean they charge \$100 every time they have to retrieve a device, and then they can charge for storage additionally.

Ms. Mallek asked if the companies would have to pay their fines in order to get their devices back.

Mr. McDermott replied yes.

Ms. McKeel said this is why the companies encourage them to be thrown away.

Ms. Mallek agreed.

Ms. McKeel said it is the same as when someone orders furniture and it is dented. She said rather than sending it back, the companies don't want it back and say to discard it, leaving the customer to pay for it to go to the landfill while the company sends a new set.

Ms. Palmer said the part that says, "...restrict devices from being parked in the road or sidewalk, travel ways, obstructing pedestrian movement in other public rights of way where it is not intended...\$50 fine..." all sounded reasonable to her. She said she didn't understand where people are supposed to leave them. She asked where exactly they are allowed to leave them.

Mr. McDermott replied that there is language in the ordinance that gives more definition to this. He said places that are designated for bicycle parking are allowed and that the devices can lean against certain signs.

Ms. McKeel said the County did not have many bicycle areas.

Ms. Palmer asked if the device could be leaned up against a stop sign.

Ms. McKeel noted she has seen the devices abandoned in the bicycle lanes.

Mr. McDermott said the language in the ordinance states that the vehicles are not allowed other than upon the roadway against the curb, or in a corral marked and designated for the purpose. He said they are not allowed on a sidewalk other than in a rack to support the vehicle, or attached to a street sign or light post, or at the curb or back edge of the sidewalks. He said they are not allowed to park where they would obstruct curb ramps, pedestrian access, bus stops, or fire access. He said they are not allowed to park in any other public right of way other than the street or sidewalk, except in the locations specifically designated through signage or provision of racks.

Mr. Dill said his understanding was that there is a truck in town that goes to pick up the devices at night, if they can tell where they are. He said they put them back someplace, so the companies must have legal places where they put them back.

Mr. McDermott said the regulations specify that when the companies redistribute the devices, they must put them in the places that the County defined as to where they are allowed. He said essentially, it was against the back of the sidewalk, unless there is specific bike parking designated.

Mr. Dill asked if the County was considering having places that are designated places that would serve as a common takeoff.

Mr. McDermott replied that there is a need for bike parking throughout the County and that the PMDs would be another reason to help the County move forward with getting this. He said they have been working much more with developers recently to ask them to put in bike parking. He said the public is demanding bike parking in both commercial and residential areas. He said this was something that the County will have to tackle over time.

Mr. McDermott said the City proposes to use some of the fees they are receiving, and that they expect maybe \$80,000 to use some of the fees, if they have enough, to put in new bike parking places, and the County could do this. He said they could also designate parking spaces that are in commercial areas as a designated spot for scooter parking, and so a vehicular spot can be converted to that.

Ms. Mallek said this compounds the parking problem.

Ms. McKeel reminded that there was a deadline to meet and that she didn't want to let the perfect be the enemy of the good. She said the Board could always come back in January or February, or later, to revisit.

Ms. Palmer said her only other question was about Mr. McDermott mentioning that they could address bikes on the sidewalk, if the Board decided they wanted to do so. She said this was a very common complaint, and that they do see this on busy roads such as Barracks Road.

Mr. McDermott said they could modify the language. He said he proposed to Mr. Kamptner that they could regulate by roadway designation, much like Arlington, so to say that it is not allowed on sidewalks adjacent to collectors or below. He said someone could ride on the sidewalks on Routes 29 or

250, but not on local roads where there would perhaps be more pedestrians. He said they could also limit it in a way that other cities have done where they say that no one over the age of 13 can ride on a sidewalk, still allowing for children to ride on sidewalks. He said there are options, if the Board is interested.

Ms. McKeel said the Alexandria City Council had a pilot program where they were allowing sidewalk riding in different areas, and they just banned it completely throughout Alexandria because they were having so much trouble.

Mr. McDermott said this was something that was mimicked straight from the City, noting that the City does not allow riding on any sidewalk. He said he has spoken with the bike-ped coordinator about this, who said she understands that there are likely some selective enforcement of that law and if police see children riding bikes on sidewalks, they are not going to ticket them. He said many of the complainants mentioned that they work in the City and would like to be able to bike there, but they would like to bike on the sidewalk. He said they are already doing this illegally if they are biking on the sidewalk to get to the City.

Ms. Palmer said the City has more designated bike lanes than the County.

Mr. Gallaway opened the public hearing.

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Mr. Jay Hightman, Rio District resident, said he has resided in the area since 1979. He said he lives in the Camelot subdivision. He said in the many years he has been in the area; it has grown significantly in terms of population and motor vehicle use. He said that over this period of time, however, the bike-ped infrastructure has not kept pace with this growth. He said he is deeply concerned over this for his 20-year-old daughter, Robin, who was a very experienced cyclist and graduate of Charlottesville High School, who was killed in New York City on June 24 when a box truck collided with her.

Mr. Hightman said 18 days later, his 19-year-old daughter, Rachel, a triathlete and second-year Echols Scholar at UVA, was struck by the driver of a car while she was riding in a bike lane, not far from the County Office Building on Preston Avenue and 9th Street Northwest. He said fortunately, she escaped with no life-threatening injuries, even though her bicycle was destroyed. He said it was the second time that year she has been hit by a driver in the area. He urged the Board to consider this. He said he nearly lost both of his children to collisions within 2.5 weeks' time as a result of traffic violence, which has affected his family.

Mr. Hightman said he and his wife are founding members of the Richmond Chapter of Families for Safe Streets, which is an organization to help those who have lost loved ones, or who have had loved ones injured, on roadways, as well as proposing road changes to save others from the grief he is personally dealing with.

Mr. Hightman said currently, the Board of Supervisors is considering an ordinance to adopt the mobility devices. He said he considers the use of bicycles, e-scooters, mopeds, and the like as a way to reduce congestion and the carbon footprint while adding to the quality of life for those who call the area home. He said specifically, he would like to address the need for enhanced investment in infrastructure to provide safety to those who ride. He said this will not take place quickly, so he believes it prudent to allow riders of e-scooters and young children to ride on the sidewalks or on paved bicycle paths where there is not a separate bike lane or protected bike lane available.

Mr. Hightman said he supports the use of helmets and lights, but in the proposed provision in Section 9-01B, the design of the e-scooters doesn't permit the use of an active taillight due to the profile. He said he is hesitant to recommend them, but that there are lights available that can be placed on helmets. He said the lighting in the County is poor, and visibility is critical in order to avoid fatalities.

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Mr. Peter Krebs, with the Piedmont Environmental Council, thanked all the Supervisors for their service, especially Mr. Dill and Mr. Randolph, who were finishing their terms. He said they have all been champions of mobility in the community and that he was looking forward to working with the two departing Supervisors in their next phase. He also commended the County on getting ahead of the dockless scooter and mobility issue. He said he loved the way they are working hand in hand with the City and UVA. He said he didn't have anything to add, and that Mr. McDermott had done a great job.

Mr. Krebs said he did want to speak about some small adjustments he wanted to make to Article 9. He said this is where the issue with the sidewalks exist. He pointed out that the infrastructure is simply not there for people to be riding bikes, especially when thinking about places like Hydraulic Road or 5th Street. He said many times, it makes good sense to ride on the sidewalk. He said though he is a City resident, when his child was riding his bike to Buford, he told his child to ride on the sidewalk on 5th Street and that he would pay the fine because it was worth it.

Mr. Krebs said he would be careful about adding a sidewalk prohibition that is beyond what the State requires. He said the State has a good policy about giving notice as well as other things.

Mr. Krebs said Mr. Hightman had already mentioned the issue about the lights. He said it looked as though there was some confusion about the taillight where one line calls for a reflector, noting this made good sense, and then the next subsection calls for a taillight. He said this was confusing and not

necessary. He said he would just follow the Commonwealth's requirements.

Mr. Krebs said in general, when the Commonwealth has good sense requirements, it is better not to have local requirements because then there is a "he said she said" opportunity for discussion between a rider and law enforcement.

Mr. Krebs again commended the Board for its work, expressing his excitement for how the initiative would go forward.

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Mr. Thomas Dickerson, Hollymead resident, said he agrees with the concern about riding on sidewalks but that realistically, given the state of the County's infrastructure, they should allow to continue riding those devices, as well as bicycles, on sidewalks as there are simply not adequate bike lanes and infrastructure in all parts of the County.

Mr. Dickerson said he agreed with the logic behind the road-by-road decision in the case where there is an existing bike lane to require the use of that lane, and when there is not, to allow riding on the sidewalks. He said he feels, however, that this would be complicated, given that some routes would cross between the different types of road.

Mr. Dickerson said the simplest solution is to continue to allow bicycles and other wheeled, electric, low-power devices to ride on the sidewalks. He said earlier that day, he witnessed a non-sporting bicyclist trying to get from point A to B and was traveling nowhere near the rate of speed of the vehicles on the roadway. He said even though there was a bike lane, he had decided that he felt safer on the sidewalk. He said there were no pedestrians on the sidewalk, and so it seemed to be ridiculous that the County would require the man to ride his bicycle in the bike lane when a safer alternative existed, given his slow rate of speed.

Mr. Dickerson urged the removal from the proposed ordinance of Section 9-903 about riding on sidewalks. He said he didn't think this regulation needed to exist, and as was mentioned previously, the State regulation requires the operators of the devices to yield to pedestrians on the sidewalk and to exercise safe passing behaviors, such as announcing oneself prior to passing a pedestrian. He said he believes this is adequate and didn't think the County needs to add new regulations, as it would have a chilling effect on the use of alternative transportation.

Mr. Galloway closed the public hearing and invited questions.

Ms. Palmer agreed that the County did not yet have the infrastructure to keep riders off sidewalks. She said they prefer that they not do the sidewalks, or at least let people on the major roads use the sidewalks, but that she realized they were in a hurry to meet the deadline. She said it would be her preference to leave the sidewalks out of it.

Mr. Randolph said he would like to go through Mr. Deviney's detailed letter with recommendations. He said they were on page 1, Section 9-901, in A, which cites the PMDs must be equipped with a lamp on the front, which must emit a white light visible in clear weather from a distance of at least 500 feet to the front. He suggested instead of having a red reflector, most cyclists now in Albemarle County are riding in the morning with a blinking red light in the back because of distracted motorists. He said a reflector will not be as visible, especially in daylight. He said it works excellently at nighttime because it will reflect the light from a car, but at that point, the car could be too close; whereas, a red light on the rear provides visibility.

Mr. Randolph said that in Europe, the requirement is that there is light on the front of the device and that there is a light on the back as well. He said many U.S. cities, and now states, are also moving in that direction.

Mr. Randolph said he would go to Section 9-902A, stating that the recommendation has been made by Mr. Deviney that any person operating a PMD must ride as close as practicable. He said Mr. Deviney suggested substituting "must" with "shall" and that he didn't have difficulty with doing this. He said the goal was for the riders to be riding as close as practicable to the right-edge or edge of the roadway.

Mr. Randolph said Mr. Deviney provided language suggesting that when there is a right-hand turn, it is recognized that it is actually safer for cyclists to keep their direction going when they come up to a right turn. He said if one turns with the right-hand turn and then try to go straight, the motorist thinks you're going to the right and will run directly into them.

Mr. Randolph said there is value in having the cyclist or PMD operator asserting his or her right to the roadway by pointing that they are going to be proceeding forward and putting their hand down. He said they also need to turn around to make sure there is no one coming along. He said this was why he was very nervous that these vehicles are being introduced without anyone truly becoming well-versed in proper etiquette and safety procedures in terms of being on the roadway, noting that it was very different than being in a car.

Mr. Randolph said the County has received the most correspondence from citizens about riding on sidewalks. He said he thinks all the sections on parking seem to be eminently reasonable to him.



Mr. Randolph said Mr. Deviney suggested that any person operating any PMD at less than the normal speed of traffic, interrupting himself to ask how they would define the normal speed of traffic, as this varies during the day. He said, for example, an elderly woman could be driving at a normal speed of traffic at 25 mph, but if there is a harried mother trying to pick up a child at daycare and going faster, this may be normal to her as it is commuting time. He said with all due respect to Mr. Deviney, they would have difficulty asking the police to determine the normal rate of speed. He said he didn't say the "posted" rate of speed, but the "normal" rate of speed.

Mr. Randolph said there are many times when the operator of a PMD can keep up with traffic, but that they should still ride to the right. He said the worst thing that can happen is to have someone out in a PMD going down the middle of the road because there are drivers that are distracted who may not see them. He said that for personal safety reasons, every operator of a PMD should stay as close to the right-hand side of the roadway as possible. He said this is the expectation in many European countries, that although the riders have the right to the road, and traffic has to be 2 meters left to the rider, but it doesn't mean they go down the center of the road.

Mr. Randolph said regarding number 5, Mr. Deviney said that when riding upon a one-way road or highway, a person may also ride as near the left-hand curb or edge, as such roadway is safely practicable. He said the worst thing they could do is allow people to be riding to either the right or the left, as this will be confusing. He said there must be the same standard, and for the police to enforce as well. He said the advantage in riding to the right is that someone may have to stop, look to the left, then make the left-hand turn. He said they are putting safety first by doing so, rather than moving over where the rider may not look behind them, and they are then hit by a distracted driver. He said consistency is very important.

Mr. Randolph said slower traffic should always stay to the right. He pointed out that car drivers hang out in the left-hand lane on a four-lane road because under State law, that is meant to be a passing lane, and yet they should be staying right, where slower traffic should be.

Mr. Randolph said the danger of asking for different standards on different roads is that many of the County's roads are extremely narrow, and there is a danger there for allowing the operators to be in the left-hand lane and then switch to a right-hand lane going around a curve. He said motorists may not notice them, and the County will be encouraging accidents. He said it is very important for the County to be consistent and clear in the rules it establishes for the operators of the PMDs.

Mr. Randolph said the real issue lies with the sidewalks. He said he totally agrees that in the best of all worlds, they should never have a PMD operating on a sidewalk and that they shouldn't be there. He said there are certain locations in the County, however, where he would never fathom riding a bicycle at certain hours and days of the week in the roadway, where someone is much safer being on a sidewalk.

Mr. Randolph said that what they were missing in their stipulations, prefacing by saying it didn't have to go in that evening, but later on, he thought there was room to require courtesy for the operator of the PMD, that if there is a pedestrian ahead of them on the sidewalk, they say, "On your left." He said this would let the person know they are passing. He said the expectation with cyclists is that if they will be passing someone on the road, they say, "On the left" so that the person knows.

Mr. Randolph said all the riders have to do is notify the person by saying, "Bike behind you," for instance, to let the pedestrian know someone is coming up, and that the rider should then dismount to go around the pedestrian. He said this would ensure they do not pass the pedestrian on a narrow sidewalk; run into them; or have the pedestrian move, go into the roadway and get hit by a car.

Mr. Randolph said the County could establish some reasonable, courteous rules for co-use where there is a real safety concern about having PMDs in the roadway, at certain times of the day especially. He said otherwise, everything in the regulations was very sound, once they correct for lighting to the front and rear of the devices to ensure there is visibility. He said some helmets do have lights in the rear, noting that he owns one that he wears at dusk.

Ms. Mallek said she was fine with the starting place for what Mr. McDermott put forth. She said she disagreed that they are choosing the safety of people who choose to ride a device on a dangerous road over the people who are in wheelchairs or are walking on the sidewalk. She said this was a huge mistake.

Ms. Palmer said they see more bikes on some of the sidewalks than anything else, and that there are many paved trails with bikes and pedestrians and where people do exactly what Mr. Randolph said in terms of notifying pedestrians. She said she would prefer to start with that and go back and change it later, if needed. She said the County is trying to encourage people to ride bikes and are trying to get bike trails in. She said the starting place should be not having the sidewalks in it, and then next year, they can figure out which roads it is okay on and which it is not.

Ms. Mallek suggested doing it the other way because the City and UVA are not allowing any sidewalk use, and that she would question why the County would have a more lenient policy at the beginning and then try to get more control over it later. She said it personally did not make any sense to her and that they should start with the full expectation. She said if they then learn that there are some places where a change is needed, she would look at that in the future, but to give it away at the beginning is not appropriate.

Ms. Palmer said the City does not have roads such as Route 29 North.

Ms. Mallek said she thought they were working very hard to find an excuse to do something that is counterintuitive to everyone's expectation. She said that as she stated to Mr. Randolph in an email, for the 65 years she has been aware of the law, riding on sidewalks has never been allowed anywhere she has ever lived, including Boston. She said she did bicycle to work in Boston for years.

Ms. McKeel said that on Georgetown, Hydraulic, and Barracks Roads, she has a lot of pedestrians on sidewalks.

Ms. Mallek added those pedestrians are carrying groceries and babies and don't have anywhere else to walk.

Ms. McKeel said she would prefer to start with mirroring the City and UVA, then come back to the issue at a later date.

Mr. Randolph said this was fine, but that he is asking the Board to consider his points for the longer term.

Ms. McKeel said there would need to be a report back on how the program is going. She said she would hope that Mr. McDermott, the City, and UVA are meeting or talking about the issues, perhaps six months from then. She said she would prefer to start with the entire community being on the same page, and then come back to revisit the issue.

Mr. Gallaway said he thought the Board was pushing this through because of the "e" element to it, referring to the electric-powered vehicles. He said he has appreciated the people who have been corresponding about bicycle use on the sidewalk because until that came up, he had only been thinking about "e" devices. He said he was only interested in moving the program forward so quickly because of that element on it.

Mr. Gallaway said they need to slow down on the bicycle piece because on East Rio Road, for example, there is a mixture of bicycle lanes, sidewalk, and multi-use path and that they are all supposed to work as one network. He said they would be going against their own design if they started to say that people could not ride their bikes on sidewalks. He said he believed they put some sidewalks in using the rationale for bicyclists.

Ms. Mallek said those are 10 feet wide.

Mr. Gallaway noted that they are calling them "sidewalks."

Ms. Mallek said it would be a multi-use path at that point.

Mr. Gallaway asked if what they put in from Carrsbrook down to the river was a multi-use path or sidewalk.

Mr. McDermott said that from Carrsbrook down to the river, they were recommending a shared use path. He said this would be a separate classification that allows riding, similar to John Warner Parkway.

Mr. Gallaway said there are places, however, where there are sidewalks connecting the shared use paths without having bike lanes. He said on Rio Road, the bike lane stops at some point, and asked where the people are supposed to go.

Ms. Mallek replied they are supposed to ride in the road.

Mr. McDermott said this was correct.

Mr. Gallaway said that with all due respect, he didn't want anyone riding in the road on East Rio Road. He said it is a four-lane expressway right now, and the bike lane makes him nervous. He said that certainly for kids and people trying to access some of the urban trails there, it is a different element than what he sees happening at Barracks Road and Greenbrier Drive. He said Greenbrier Drive and Rio Road are two completely different roads.

Mr. Gallaway said if they are going to be discussing bicycles on the sidewalks, this was a conversation the Board needs to slow down and take some time on. He said he was not interested in trying to hassle or argue those rules tonight, as this was about getting in an "e" power piece, specifically brought up around the e-scooters, so that the County would not be the "wild west" with the e-devices. He said he would be very interested in having a much longer conversation about the bicycles on the sidewalks, as he believes it is very different in each district, in different elements.

Mr. Randolph said that for the user, there is nothing that notes that something is a multi-use path versus a sidewalk. He said for them, it is a path, and they do not distinguish between them.

Ms. McKeel said she did not disagree with what the other Supervisors said. She asked what they would be doing that evening, as it seemed to her that to get something going to mirror the City and UVA was the goal.

Mr. Gallaway said if the County puts something in place that says that bicycles are restricted on sidewalks, he would like to say publicly that he would like the police to use maximum discretion in their judgment on what they are doing in terms of enforcement.

Mr. Kamptner said it was Article 10 regarding the e-mobility device that is under the deadline to get adopted by December 31.

Mr. Gallaway said that if the County could do something that is specific to the State regulation, and if the bicycle piece could be left for further conversation, he would prefer this.

Ms. McKeel asked if they would take “bicycle” out of the regulation.

Mr. Kamptner said another option would be that 9-903, no cycling on the sidewalks, could be excluded from the ordinance that is adopted that evening. He said this could be a reserved section to be further analyzed.

Mr. Gallaway said he would be fine. He said that with all due respect to Ms. Mallek, when they say they can come back and refine it later, he sees the work plan and knows what the priorities are, and that it would not be something that would be back in front of the Board in February.

Ms. Mallek asked if they were then going to start off with a different set of rules than the other two jurisdictions.

Mr. Gallaway said this would not be relative to the e-devices, which was the whole reason for getting the ordinance pushed through.

Ms. Mallek said if they are to remove the section, the City’s and UVA’s restriction is gone as well.

Ms. Palmer said the County has pointed out many times that they are not the same as the City. She said they do have different issues.

Ms. McKeel mentioned the urban ring.

Ms. Palmer said she understood this. She said she would prefer to do what Mr. Kamptner just suggested.

Ms. Mallek asked if they would be taking the word “bicycle” out of Section A, or if they would be taking Section A out altogether.

Mr. Kamptner replied that he was referring to Section 9-903, the riding on sidewalks regulation. He said the Board would adopt the ordinance as written, except for that section. He said it would be a reserved section, and when staff has a chance to further process the emails that came in and evaluate the Arlington and New York City approaches, they can come back on that particular issue.

Mr. Gallaway said he would be happy to have the vote go forward that way.

Mr. Randolph **moved** the Board approve Regulation and Licensure of Certain Mobility Devices, cited in the Executive Summary, with the omission of Section 9-903, “Riding on Sidewalks.” Ms. Palmer **seconded** the motion.

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

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

NAYS: None.

Mr. Kamptner said the expectation was that staff will return with proposed text for that section.

Ms. McKeel said that there are multi-shared paths, sidewalks, and bicycle lanes. She said perhaps it would behoove the Board to have a discussion about how all this works together.

Mr. McDermott said staff could put together a work session on this where they can discuss the differences and options for regulating.

Ms. Mallek said that when this discussion comes back, she would like to know when there is a collision on a sidewalk between a pedestrian and someone on a bicycle, who is responsible in this circumstance when the common knowledge is that the pedestrian is the person who is supposed to be walking on the sidewalk.

Mr. Randolph replied that it would be the person who is negligent.

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#### **ORDINANCE NO. 19-9(2)**

AN ORDINANCE TO AMEND CHAPTER 9, MOTOR VEHICLES AND TRAFFIC, 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 9, Motor Vehicles and Traffic, is hereby amended as follows:

**By Adding:**

- Article IX. Bicycles, Electric Power-assisted Bicycles, Motorized Skateboards or Scooters, and Mopeds
- Sec. 9-900 Riders subject to traffic laws, etc.
- Sec. 9-901 Required equipment for bicycles, electric power-assisted bicycles, and motorized skateboards or scooters.
- Sec. 9-902 Riding on roadways generally.
- Sec. 9-903 Reserved.
- Sec. 9-904 Parking for bicycles, electric-power assisted bicycles, and motorized skateboards or scooters.
- Sec. 9-905 Rider not to attach vehicle or himself to another vehicle.
- Sec. 9-906 Riding on handlebars.
- Sec. 9-907 Riding with more than one person on a motorized skateboard or scooter.
- Sec. 9-908 Report of certain vehicle accidents.
- Sec. 9-909 Disposition of unclaimed bicycles, mopeds, etc.
- Sec. 9-910 Unlawful to ride motorized skateboard or scooter while using earphones.
- Article X. Permit Program for Dockless Mobility Devices for Hire
- Sec. 9-1000 Purpose and persons covered.
- Sec. 9-1001 Definitions.
- Sec. 9-1002 Permit requirement.
- Sec. 9-1003 County Executive authorized to promulgate regulations.
- Sec. 9-1004 Maximum fleet size.
- Sec. 9-1005 Review of permit applications.
- Sec. 9-1006 Suspension or revocation of permits.
- Sec. 9-1007 Appeals.

**Chapter 9. Motor Vehicles and Traffic**

\* \* \* \* \*

**Article IX. Bicycles, Electric Power-assisted Bicycles,  
Motorized Skateboards or Scooters, and Mopeds**

**Sec. 9-900 Riders subject to traffic laws, etc.**

Every person riding a bicycle, electric power-assisted bicycle, motorized skateboard or scooter, or moped upon a street, roadway or other public vehicular area will be subject to the provisions of this Code and the provisions of Code of Virginia, Chapter 8 (Section 46.2-800 et seq.) of Title 46.2, applicable to drivers of motor vehicles, unless the context of any such provision clearly indicates otherwise.

**State Law reference** – Similar provisions, Va. Code § 46.2-800

**Sec. 9-901 Required equipment for bicycles, electric power-assisted bicycles, and motorized skateboards or scooters.**

- A. Every bicycle, electric power-assisted bicycle, and motorized skateboard or scooter, when in use between sunset and sunrise, must be equipped with a lamp on the front which must emit a white light visible in clear weather from a distance of at least 500 feet to the front and with a red reflector on the rear of a type approved for use on the highways of this state by the superintendent of state police, which must be visible in clear weather from all distances from 600 feet to the rear, when directly in front of lawful lower beams of headlights on a motor vehicle.
- B. Every bicycle, electric power-assisted bicycle, and motorized skateboard or scooter, when in use between sunset and sunrise, must be equipped with a taillight on the rear emitting a red light plainly visible in clear weather from a distance of at least 500 feet to the rear. Any such taillight must be of a type approved by the superintendent of state police.
- C. Every bicycle, electric power-assisted bicycle, and motorized skateboard or scooter, when operated upon a street or highway, must be equipped with a brake that will enable the operator to make the braked wheels skid on dry, level, clean pavement.

**State Law reference** – Similar provisions, Va. Code § 46.2-1015

**Sec. 9-902 Riding on roadways generally.**

- A. Any person operating a bicycle, electric power-assisted bicycle, motorized skateboard or scooter, or moped on a roadway must ride as close as practicable to the right curb or edge of the roadway, except under any of the following circumstances:
  - 1. When overtaking and passing another vehicle proceeding in the same direction;
  - 2. When preparing for a left turn at an intersection or into a private road or driveway; and

3. When reasonably necessary to avoid conditions including, but not limited to, fixed or moving objects, parked or moving vehicles, pedestrians, animals, surface hazards, or substandard width lanes that make it unsafe to continue along the right curb or edge.
- B. For the purposes of this section, a "substandard width lane" is a lane too narrow for a bicycle, electric power-assisted bicycle, motorized skateboard or scooter, or moped and another vehicle to pass safely side by side within the lane.
- C. Bicycles, electric power-assisted bicycles, and motorized skateboards or scooters may use bicycle lanes when operating in the intended direction of travel.

**State Law reference** – Similar provisions, Va. Code § 46.2-905

**Sec. 9-903 Reserved.**

**Sec. 9-904 Parking for bicycles, electric-power assisted bicycles, and motorized skateboards or scooters.**

- A. No person may stand or park a bicycle, electric power-assisted bicycle, or motorized skateboard or scooter:
  1. upon the street, other than upon the roadway against the curb, or in a corral marked and designated for the purpose;
  2. upon the sidewalk, other than in a rack to support the vehicle, or attached to a street sign or light post, or at the curb or the back edge of the sidewalk;
  3. where they would obstruct curb ramps, pedestrian access within bus stops, or fire access;
  4. in, or upon, any public right-of-way, other than a street or sidewalk, except in a location specifically designated through signage or provision of racks.
- B. Bicycles, electric power-assisted bicycles, and motorized skateboards or scooters must be parked upright, in such a manner as to afford the least obstruction to pedestrian and vehicular traffic.
- C. Violations of this section will be subject to a civil penalty of not more than \$50.00.

**State Law reference** – Similar provisions, Va. Code §§ 15.2-2028, 46.2-1300

**Sec. 9-905 Rider not to attach vehicle or himself to another vehicle.**

No person riding upon any bicycle, electric power-assisted bicycle, motorized skateboard or scooter, or moped may attach the same or himself to any other vehicle on the roadway.

**State Law reference** – Similar provisions, Va. Code § 46.2-932

**Sec. 9-906 Riding on handlebars.**

No person riding a bicycle, electric power-assisted bicycle, motorized skateboard or scooter, or moped on a street, highway, or other public vehicular area may permit any person to ride on the handlebars.

**State Law reference** – Similar provisions, Va. Code §§ 15.2-2028, 46.2-1300

**Sec. 9-907 Riding with more than one person on a motorized skateboard or scooter.**

Motorized skateboards or scooters may not be used on a street, highway, or other public vehicular area by more than one person at a time.

**State Law reference** – Similar provisions, Va. Code §§ 15.2-2028, 46.2-1300

**Sec. 9-908 Report of certain vehicle accidents.**

It will be the responsibility of the rider to report any bicycle, electric power-assisted bicycle, and motorized skateboard or scooter accident involving bodily injury or damage of \$50.00 or more to the chief of police within 48 hours of such accident. The chief of police must keep complete and retrievable records of all such accidents involving these vehicles. Such records must include the location and nature of the accident.

**State Law reference** – Similar provisions, Va. Code §§ 15.2-2028, 46.2-1300

**Sec. 9-909 Disposition of unclaimed bicycles, mopeds, etc.**

Where any bicycle, electric personal assistive mobility device, electric power-assisted bicycle, motorized skateboard or scooter, or moped has been found or delivered to the police department, and has thereafter remained in the possession of the police department, unclaimed, for more than 30 days, and the property is not owned by a Dockless Mobility Business operating under a permit issued pursuant to Article X of this Chapter, such property may be disposed of as provided in County Code § 2-502 of the County Code or as provided in Virginia Code § 15.2-1720.

**State Law reference** – Similar provisions, Va. Code § 15.2-1720

**Sec. 9-910 Unlawful to ride motorized skateboard or scooter while using earphones.**

No person may ride a motorized skateboard or scooter while using earphones on or in both ears. For the purposes of this section, “earphones” will have the meaning set forth in Virginia Code § 46.2-1078.

**State Law reference** – Similar provisions, Va. Code § 46.2-1078

**Article X. Permit Program for Dockless Mobility Devices for Hire**

**Sec. 9-1000 Purpose and persons covered.**

- A. Purpose. The purpose of this section is to establish a permit program to regulate the operation of Dockless Mobility Services for-hire within the County of Albemarle, as defined below. The aims of the permit program shall be:
1. to ensure that Dockless Mobility Services for-hire are carried on in a manner that is consistent with the health, safety, and welfare of the public, as well as consistent with the accessibility of public right-of-way for bicyclists, pedestrians, and people with disabilities;
  2. to reduce single occupancy vehicle use; and,
  3. to improve the overall mobility, safety, and equity of the County’s transportation network.
- B. Persons Covered. Any person who provides, or applies to provide, Dockless Mobility Service for-hire, as defined below, within the County of Albemarle will be governed by the provisions of this Article.

**State Law reference** – Va. Code § 46.2-1315

**Sec. 9-1001 Definitions.**

The following words and terms, when used in this section, will have the following meaning, unless context clearly indicates otherwise:

“Dockless Mobility Device” means a bicycle, electric power-assisted bicycle, or motorized skateboard or scooter, as those terms are defined in the Code of Virginia.

“Dockless Mobility Business” means any person that offers, or applies to offer, Dockless Mobility Devices for-hire by relying on the public right-of-way to store the Dockless Mobility Devices for customer access and use. Dockless Mobility Business does not include any transportation service operated by the County or any other political subdivision or agency of the Commonwealth of Virginia.

“Dockless Mobility Service” means the service provided by a Dockless Mobility Business.

**State Law reference** – Va. Code § 46.2-1315

**Sec. 9-1002 Permit requirement.**

No person may provide Dockless Mobility Services for public hire within the County of Albemarle without obtaining a permit from the County Executive pursuant to this Article.

**State Law reference** – Va. Code § 46.2-1315

**Sec. 9-1003 County Executive authorized to promulgate regulations.**

The County Executive, or the County Executive’s designee, will administer the permit program and will have the authority to promulgate regulations setting forth the requirements applicable to all persons applying for, or operating under, a permit issued pursuant to this Article. The County Executive, or the County Executive’s designee, may establish reasonable fees, charges, and penalties in connection with the permit program, including, but not limited to, requirements for insurance coverage, bond payment, and indemnification.

**State Law reference** – Va. Code § 46.2-1315

**Sec. 9-1004 Maximum fleet size.**

The County Executive, or the County Executive's designee, will have the authority to establish, modify, or eliminate a cap on the total number of Dockless Mobility Devices allowed to operate under this permit program.

**State Law reference** – Va. Code § 46.2-1315

**Sec. 9-1005 Review of permit applications.**

- A. The County Executive, or the County Executive's designee, will evaluate each application for a permit under this program and notify the applicant in writing regarding the decision to approve or deny the application. In making such an approval or denial, the County Executive, or the County Executive's designee, may consider any established cap on the total number of Dockless Mobility Devices, aggregate demand for services, and any goal articulated in the County's Comprehensive Plan or Strategic Plan.
- B. An applicant for a permit must request an initial allocation of Dockless Mobility Devices. The County Executive, or the County Executive's designee, may determine the initial number of Dockless Mobility Devices approved under the permit. The County Executive, or the County Executive's designee, may subsequently increase or decrease the number of approved devices under a permit for any of the reasons mentioned in this section or in connection with the enforcement of any regulations promulgated pursuant to this Article.

**State Law reference** – Va. Code § 46.2-1315

**Sec. 9-1006 Suspension or revocation of permits.**

The County Executive, or the County Executive's designee, may revoke or suspend a permit for any violation of this Article or regulations promulgated pursuant to this Article.

**State Law reference** – Va. Code § 46.2-1315

**Sec. 9-1007 Appeals.**

The County Executive, or the County Executive's designee, will establish an administrative process for any Dockless Mobility Business to appeal the denial of a permit application, the suspension or revocation of a permit, or any change in the number of approved devices under a permit.

**State Law reference** – Va. Code § 46.2-1315

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Agenda Item No. 21. **Public Hearing: Ordinance to Amend County Code Chapter 9, Motor Vehicles (Residential Parking)**. To receive comments on its intent to adopt an ordinance to amend Albemarle County Code Chapter 9, Motor Vehicles, Section 9-102, General prohibitions, and Section 9-118, Removal or immobilization of vehicles with outstanding parking violations-enforcement of parking regulations; notice of violations; waiver of trial; contesting charges; penalties. The proposed ordinance would prohibit commercial vehicles from being parked on, and storage containers and dumpsters from being placed on, secondary streets in areas zones for residential use in the County, impose a fine for the violation of these regulations, provide definitions for "commercial vehicles" and "areas zoned for residential use," and clarify the fine payment process. (*Advertised in the Daily Progress on December 2 and December 9, 2019*)

The Executive Summary forwarded to the Board states that, in 2018, the General Assembly added Albemarle County to the list of localities in Virginia Code § 46.2-1222 enabled to regulate on-street parking on public streets in the State's secondary system of highways ("secondary streets"). Section 46.2-1222 enables the Board of Supervisors to adopt an ordinance that: (1) restricts or prohibits parking on any secondary streets in the County; (2) creates vehicle classifications that would or would not be subject to these restrictions and prohibitions; and (3) provides that the violation of the ordinance would be a traffic infraction and prescribe penalties. The proposed ordinance is intended to allow the County to address on-street parking of commercial vehicles in the County's residential neighborhoods, an issue that has generated complaints from residents.

A team that included representatives from the Police Department, the Department of Community Development, and the County Attorney's Office met during the summer to develop a draft ordinance that would implement Virginia Code § 46.2-1222.

The attached proposed ordinance (Attachment A) would amend County Code § 9-102 to add regulations prohibiting commercial vehicles from being parked on secondary streets in areas zoned for residential use in the County. The proposed ordinance also would prohibit storage containers and dumpsters from being placed on those same secondary streets. A violation of these regulations would be subject to a fine pursuant to County Code § 9-118. The terms "commercial vehicle" and "areas zoned for residential use" are defined in the ordinance.

The Police Department proposes to enforce the ordinance by first educating the residents about the parking restrictions and giving the violator a warning. Subsequent violations by the same vehicle

owner could be enforced by issuing a notice of violation.

The budget impact on the Police Department will depend on whether the ordinance is enforced on a complaint basis or proactively. If it is enforced on a complaint basis, staff has not identified a need for additional staffing at this point. Proactive enforcement may necessitate creating a parking enforcement unit within the Police Department, which would likely be three to five years out. An increase in the number of parking tickets would also have an impact on the Department of Finance, which processes fine payments.

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

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Mr. Gallaway reminded the Board and the public that this item had been pulled from the agenda. He asked if anyone from the public was there who wished to speak on the item. Hearing none, he said the item would be coming back to the Board at a later time.

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Agenda Item No. 22. **Public Hearing: Conveyance of Real Property to the Albemarle County School Board.** To consider conveying Tax Parcel 09100-00-00-01100, owned by the County, located at 133 Galaxie Farm Lane, and consisting of approximately 15.80 acres, to the Albemarle County School Board, for the purpose of the Albemarle County School Board's construction of a high school center. *(Advertised in the Daily Progress on December 9, 2019)*

The Executive Summary forwarded to the Board states that, by resolution adopted November 14, 2019, the Albemarle County School Board requested the Board of Supervisors to convey Tax Parcel 09100-00-00-01100 located at 133 Galaxie Farm Lane and composed of approximately 15.80 acres (the "Parcel"). Albemarle County Public Schools (ACPS) plans to construct a high school center on the Parcel. On November 20, 2019, the Board authorized this matter to be scheduled for public hearing.

The Parcel is located in the Scottsville Magisterial District and is zoned R1 Residential. The 2015 Comprehensive Plan designates the Primary Land Use for the Parcel as Institutional.

Virginia Code § 15.2-1800(B) requires a public hearing for this proposed disposal of County property.

The Parcel is located between Founders Place (off Mill Creek Drive) and Galaxie Farm Lane (a private road off Scottsville Road), adjacent to the Monticello Fire/Rescue Station. The Parcel was purchased by the County in the year 2000, as a landbank property to serve an undetermined future use. Since its acquisition, it has been considered for use as a public middle school, public library, courts facility, sports complex, recreation facility, and public safety facility.

ACPS wishes to construct a high school center on the Property to accommodate 400 students and provide educational resources that will enhance the academic programs of the existing ACPS high schools. Staff of ACPS and of the Department of Facilities & Environmental Services have determined that the location is physically suitable for this purpose.

The proposed deed (Attachment A) includes a clause providing that the School Board must reconvey the Parcel to the County if it is not used for an ACPS facility.

The County will receive no money in consideration for this conveyance. There are no other budget impacts associated with this request.

After conducting a public hearing on the proposed conveyance, staff recommends that the Board adopt the attached Resolution (Attachment B) approving the request and authorizing the County Executive to sign the deed of conveyance after it is approved as to substance and form by the County Attorney.

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Mr. Kamptner said this is a public hearing on the proposed conveyance of real property to the Albemarle County School Board. He indicated on a map to the parcel, explaining that in order to provide orientation, the curving road was Mill Creek Drive and immediately to the north was the Monticello Fire Rescue Station. He indicated to Cale Elementary, soon to be named Mountainview, to the east of the parcel, as well as Scottsville Road sweeping underneath the parcel.

Mr. Kamptner said the parcel was acquired by the County in 2000 and has been retained or landbanked for a number of years with the idea that it would be put to a public use at some point. He said on November 14, the School Board requested the County convey the parcel to it so that it could be used for a high school center. He said the draft deed, which was included in the Board's materials, conveys ownership of the parcel to the School Board and includes a "reverter" clause, requiring that the parcel be used for public educational purposes and if it ceases to be put to that use, the School Board agrees that it would be conveyed back to the County.

Mr. Gallaway opened the public hearing. Hearing no comments from the public, he closed the public hearing and brought the matter back to the Board for discussion and action.

Mr. Randolph **moved** the Board approve the conveyance of real property to the Albemarle



County School Board, located at 133 Galaxie Farm Lane, per the Resolution (Attachment B). Ms. Palmer **seconded** the motion.

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

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

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**RESOLUTION TO APPROVE CONVEYANCE OF REAL PROPERTY  
TO THE ALBEMARLE COUNTY SCHOOL BOARD**

**WHEREAS**, the Board finds it is in the best interest of the County to convey Tax Parcel 09100-00-00-01100 located at 133 Galaxie Farm Lane and composed of approximately 15.80 acres (the "Property") to the Albemarle County School Board (the "School Board") for the purpose of Albemarle County Public Schools constructing a high school center on the Property.

**NOW, THEREFORE, BE IT RESOLVED**, that the Board of Supervisors of the County of Albemarle, Virginia, hereby approves the conveyance of the Property to the School Board for the above purpose, and authorizes the County Executive to execute a Deed of Conveyance on behalf of the County after it is approved as to substance and form by the County Attorney.

\* \* \*

This document was prepared by:  
Albemarle County Attorney  
County of Albemarle  
401 McIntire Road  
Charlottesville, Virginia 22902

Parcel ID Number 09100-00-00-01100

This deed is exempt from taxation under *Virginia Code* § 58.1-811(A)(3) and 58.1-811(C)(4) and from Clerk's fees under *Virginia Code* § 17.1-266.

**THIS DEED**, dated as of the 19<sup>th</sup> day of December, 2019, by and between the **COUNTY OF ALBEMARLE, VIRGINIA**, Grantor, and the **SCHOOL BOARD OF ALBEMARLE COUNTY**, the Grantee, whose address is: 401 McIntire Road, Charlottesville, Virginia 22902.

**WITNESSETH**

By resolution of the Board of Supervisors of Albemarle County, Virginia, adopted on December 18, 2019, a certified copy of which is attached hereto, the Grantor does hereby CONVEY to the Grantee the following real property:

All that certain parcel of real estate situated on State Route 620 in the County of Albemarle, Virginia, containing 16.186 acres, more or less, being Parcel 11 on the Albemarle County Tax Map 91, and shown as "TMP 91-11" on a plat of Thomas B. Lincoln Land Surveyor, Inc. dated December 19, 2000, recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia, in Deed Book 1979, page 46 (the "Plat"); being a portion of the property conveyed to the Grantor herein by deed of Kimco, L.C., dated November 10, 2000, and recorded in said Clerk's Office in Deed Book 1979, page 44.

This conveyance is subject to an easement for ingress and egress over the existing old road, identified on the Plat as the "old road bed." Neither party hereto shall be responsible for maintenance of the old road except that each party shall be responsible for the repair of any damage caused by its own use.

This conveyance is further made expressly subject to easements, restrictions, conditions, and reservations contained in duly recorded deeds, plats, and other instruments constituting constructive notice in the chain of title to the property hereby conveyed, which have not expired by limitation of time contained therein or have not otherwise become effective.

The Grantor grants all of the described property to the Grantee so long as the described property is used for public educational purposes by Grantee, including a mixed-use facility that provides educational and internship opportunities for Grantee's school children. In addition to its operation as a public school, the described property is deemed to be "used for public educational purposes" during

periods when Grantee is actively planning, designing, constructing, reconstructing, modifying, or renovating a public school or other educational facility, on the described property, even though students may not be in attendance on the described property during any such period, including any period not to exceed 365 consecutive days during which none of the activities described above are pending. If this condition is breached, the property shall automatically revert to the Grantor or its successors, without the necessity of the Grantor or its successors taking any affirmative action to effectuate this reverter.

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Agenda Item No. 23. From the Board: Committee Reports and Matters Not Listed on the Agenda.

Ms. Palmer said the day before, she found out that 9 of the 11 letters to private property owners on the line of the future Southfork to Ragged Mountain Reservoir have been sent out. She said they have received only one back so far, which was an acceptance. She said the private property owners will be getting, or have already gotten, letters within the past few days.

Ms. Mallek asked if the other two were in negotiations.

Ms. Palmer said the letters have gone out. She said these were offers, and that Rivanna sends the offer to the private property owner. She said 9 of the 11 letters have gone out in the mail. She said one has been accepted.

Ms. McKeel commented that there is a rural area and a development area, and that she has always supported that distinction, as she believes it has benefited the County greatly. She said they were now at a point where the urban area is urbanized, and they are seeing issues. She said she didn't know how they would handle it, but that some of the urban area quality of life concerns must be addressed. She said she did not want them to be addressed at the expense of rural residents, but if rural residents want to continue to have a development area and an urban area, they will have to help them solve the issues.

Ms. McKeel said the issues could not be put off and make the excuse of being a large, 726-square-mile County. She said the quality of life issues must be solved in the urbanized area, part of which is in the rural area. She said they need some help.

Ms. Mallek said she had sent out photographs she collected on a drive-around in Old Trail, where the developers have been carefully following the landscaping requirements in the site plan ordinance. She said she shared the photos with Ms. Filardo and her staff as well. She said what has happened is that the kinds of trees that are required are not appropriate for the places in which they are being put.

Ms. Mallek said there are many new developments underway in the County, yet all the new neighborhoods will be facing the same problem, which is 3-4 years after a tree is put in, it is taller than the roof, running into the buildings, and hanging over parking spaces. She said that although shade is great, what is being found is every year, people are having to spend a fortune for the tree-trimming companies to come and cut them back because they are impeding on the buildings. She said when there is an oak tree planted 4 feet from the foundation, that is a big mistake, as the roots will ruin the foundation and basement, as well as causing damage to the outside.

Ms. Mallek said the neighbors' request was that the County staff and Board think about how there could be different tree lists that are available. She said they tried to change things with their builders, and even people who are from forestry backgrounds who are familiar with this issue got into arguments with their builders, who said they would not go against the County rules. She said the neighbors have then gone back later and cut the trees down.

Ms. Mallek said there are plenty of trees that don't grow as tall over their lifespan and would be much more suitable in creating beautiful tree-lined streets without the constant maintenance and impedance.

Ms. Mallek said she would be discussing this more with staff, as she acknowledges that it could be a complicated matter. She said they will need to determine if it is possible to have some alternatives, such as willows or redbuds. She said this would save many other neighborhoods from experiencing the same issue.

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Item No. 23. b. Resolution of Support of Objectors Champion Brewery Earlysville Road.

Ms. Palmer said the Board discussed the matter earlier in the day and decided to postpone the vote until the time that it was listed on the agenda.

Ms. Mallek said this was in case the people at 6:00 p.m. Matters from the Public wanted to address the Board on this issue.

Mr. Randolph said he appreciated Ms. Mallek having the presence of mind to write the letter to the ABC. He said this was critical. He thanked her, on behalf of the Board, for putting them in the position to be able to make the case against the application.

Ms. Mallek **moved** the Board adopt the resolution in support of the objectors for the Champion Brewery license. Ms. Palmer **seconded** the motion.

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

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

NAYS: None.

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**RESOLUTION IN SUPPORT OF THE OBJECTORS TO THE PENDING APPLICATION FOR A  
LIMITED BREWERY LICENSE (#751919) FOR 2001 EARLYSVILLE ROAD  
IN ALBEMARLE COUNTY**

**WHEREAS**, the Albemarle County Board of Supervisors (the “County Board”) is the policy-making body of the County; and

**WHEREAS**, a primary role of the County Board, composed of elected local representatives, is to take appropriate steps to protect the health, safety, and welfare of County residents; and

**WHEREAS**, a November 4, 2019 press release associated with the proposal for a limited brewery stated that “Camp Champion will be an outdoor venue, restaurant and bar with a summer camp vibe;” and

**WHEREAS**, the proposed Camp Champion, which is the subject of the application for a limited brewery license (#751919), would be located at 2001 Earlysville Road in Albemarle County (the “Property”); and

**WHEREAS**, the Property abuts the South Fork Rivanna Reservoir, a public water supply impoundment, and is surrounded to the north, south, and east (including across the Reservoir) by residential areas and to the west (across the Reservoir) by the Ivy Creek Natural Area; and

**WHEREAS**, a Virginia Department of Transportation (“VDOT”) study from December 2015 reported that the stretch of Earlysville Road, in close proximity to the Property, has travel lanes of 10 to 11 feet wide, which are less than the standard 12-foot lanes, and has shoulders varying from 0 to 1 foot less in width than the 6-foot shoulder length VDOT recommended; and

**WHEREAS**, this stretch of Earlysville Road has steep embankments and drop-offs, and vehicles frequently run off the road and crash, some of which have been fatal; and

**WHEREAS**, the County has long encouraged and required good land management practices and water quality protections on the properties surrounding the South Fork Rivanna Reservoir, including a requirement that properties maintain a 200-foot buffer along the Reservoir to protect water quality and provide habitat for wildlife, and the values of properties in the area reflect the peaceful, quiet nature of the area that these policies and protections have helped to preserve; and

**WHEREAS**, County residents have invested more than fifty years of effort and untold financial resources into protecting the South Fork Rivanna Reservoir from silt, effluent, and contaminants, including a significant downzoning approved by the County Board in 1980 for the purpose of protecting the drinking water watershed, an action that was challenged in court and ultimately upheld as a legitimate exercise of the County Board’s power to protect the health, safety, and welfare of the citizens of the City of Charlottesville and the County; and

**WHEREAS**, the Property is located approximately 700 feet east of and across the South Fork Rivanna Reservoir from the Ivy Creek Natural Area, a 219-acre natural area jointly owned by the County and the City of Charlottesville and managed by the not-for-profit Ivy Creek Foundation for purposes of environmental education, land conservation, and the improvement of water quality; and

**WHEREAS**, the Ivy Creek Foundation actively uses the Ivy Creek Natural Area’s Educational Building, historic River View Farm (possibly the only intact African-American farmstead in the region), and the “Barn” building to provide environmental education opportunities for children and adults and provides guided educational walks, including night walks for stargazing and to observe nocturnal wildlife; and

**WHEREAS**, the County Board has followed the requirements imposed on it by Virginia Code § 15.2-2288.3:1 regarding the proposed Camp Champion, by which the Board is required to classify a licensed limited brewery as an agricultural use under the County’s zoning regulations, but the Board also recognizes that the proposed use at the Property does not appear to be capable of being conducted as a farm.

**NOW, THEREFORE, BE IT HEREBY RESOLVED** by the Albemarle County Board of Supervisors that, based on the information the County Board has received about the “Camp Champion” proposal, the activities that may be allowed under a license, including the on-premises sale, tasting, and consumption of beer, and the information and concerns received from residents of the surrounding neighborhoods (the “Objectors”), the County Board has serious concerns about the effects the operation of a limited brewery on the Property will have on the surrounding residential areas and the Ivy Creek Natural Area and the Natural Area’s related activities; and

**BE IT FURTHER RESOLVED** that the County Board strongly supports the Objectors in their opposition to the issuance of a limited brewery license for the Property because of the concerns they have identified, which include but are not limited to the following:

A. The operation of a limited brewery with on-premises sale, tasting, and consumption in this suburban location of residences and residential neighborhoods would adversely affect real property values and substantially interfere with the usual quietude and tranquility of the surrounding residents by subjecting them to increased noise, traffic, odors, and light pollution, and generally making the area a less desirable place to live (see Virginia Code §4.1-222(A)(2)(d)); and

B. The operation of a limited brewery with on-premises sale, tasting, and consumption in this suburban location of residences and residential neighborhoods would adversely affect real property values and substantially interfere with the usual quietude and tranquility of the surrounding residents by adding traffic to a dangerous and curvy stretch of road (see Virginia Code §4.1-222(A)(2)(d)); and

C. The operation of a limited brewery with on-premises sale, tasting, and consumption in this location would adversely affect and interfere with the normal, orderly conduct of the affairs of the Ivy Creek Natural Area and Ivy Creek Foundation by substantially increasing traffic, noise, and commercial activity in close proximity to the Natural Area, altering the educational and tranquil recreational experience of visitors and causing considerable disruption to birds and waterfowl population (see Virginia Code §4.1-222(A)(2)(c)).

**BE IT FURTHER RESOLVED** that the County Board requests the Hearing Officer and the Virginia Alcoholic Beverage Control Board to fully consider those concerns when considering whether to grant a limited license brewery for the Property.

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Agenda Item No. 24. From the County Executive: Report on Matters Not Listed on the Agenda.

Mr. Richardson said he did not have a presentation, but that he was distributing a County Executive Monthly Report to the Supervisors. He thanked the Community and Public Engagement division for helping him to work through the first issue of the report. He said the report would be distributed once a month, likely at the first meeting of the month. He said he and Ms. Emily Kilroy would be working through presentations, as well as pushing out the report through A-mail and other media outlets. He expressed appreciation to the Board for allowing staff to continue refining the document and create a blend of both performance metrics and data.

Mr. Richardson said focusing on departmental efforts that month, they aligned with the Economic Development department and their annual report.

Mr. Richardson said they would be looking to provide timely, interesting information to the Board with the hope that it is helpful for the Board to continue to learn about the services, volume, and complexity of what the County does.

Mr. Richardson said that on behalf of the County Executive Office and staff, it has been an honor and pleasure to work with both Mr. Dill and Mr. Randolph. He said both gentlemen have worked hard and set a nice example for staff. He said staff will miss them both greatly, and wished them the best. He asked Mr. Dill and Mr. Randolph to stay in contact with them, offering his assistance to them if needed.

Ms. McKeel asked if copies of the report would be available to have at CAC meetings.

Mr. Richardson replied that there will be copies that Supervisors can take with them to CAC and community meetings in Ms. Kilroy's office.

Ms. McKeel said she would love to share them with her CAC.

Ms. Mallek asked if the report would go out digitally.

Ms. Kilroy replied that this was the pilot month of the report, so they did not have a rollout plan yet. She said in January, they would roll it into an A-mail and social media push. She said she would be glad to provide physical copies each month, and that she could have copies of the current report put in the Supervisors' mailboxes the next morning. She said staff wanted to see how the Board received the information before pushing it out.

Ms. McKeel said there are people in her CAC that would like a hard copy.

Ms. Kilroy offered to give each Supervisor ten copies.

Ms. Palmer asked if she could get the copies that evening, as she had a CAC meeting the next day.

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Agenda Item No. 25. Adjourn to January 8, 2020, 1:00 p.m., Lane Auditorium.

At 9:15 p.m., the Board adjourned their meeting to January 8, 2020, at 1:00 p.m., Lane Auditorium, Second Floor, County Office Building, McIntire Road, Charlottesville, Virginia.

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Chair

Approved by Board
Date 08/18/2021 Initials CKB