

An adjourned meeting of the Board of Supervisors of Albemarle County, Virginia, was held on September 5, 2019, at 12:00 p.m., Room 241, County Office Building, McIntire Road, Charlottesville, Virginia. The meeting was adjourned from September 4, 2019.

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

ABSENT: Mr. Ned Gallaway.

OFFICERS PRESENT: County Executive, Jeff Richardson, Deputy County Executive, Doug Walker, Assistant County Executive, Trevor Henry, County Attorney, Greg Kamptner, and Clerk, Claudette Borgersen.

Agenda Item No. 1. Call to Order. The meeting was called to order at 12:13 p.m., by the Vice-Chair, Mr. Randolph. He stated that Mr. Gallaway was not present, but was present electronically.

Agenda Item No. 2. Welcome and Introductions.

Mr. Randolph introduced the presiding security officer, Office Laura Proffitt, and County staff.

State Legislators Present: Senator Creigh Deeds; Delegate David Toscano from the 57th District; Delegate Rob Bell from the 58th District; and Chris Snider, Senior Advisor to Senator Bryce Reeves.

Also present: Legislative Liaison for the Thomas Jefferson Planning District Commission (TJPDC), Mr. David Blount.

Agenda Item No. 3. 2020 Legislative Priorities.

Item No. 3a. Albemarle County Requested Legislation.

- In-kind Resources to Volunteer Firefighting and Emergency Service Providers.
- Local Control Over Monuments and Memorials for War Veterans.
- Prohibition on Carrying Specified Loaded Weapons in Public Areas.
- Increasing the Minimum Tree Canopy Preserved During Development.
- Equal Taxing Authority for Counties.
- Impact Fees.

Mr. Greg Kamptner, County Attorney, stated that during the 2019 Virginia General Assembly session, HB 2239 was passed, allowing the County courts project to proceed, and this was a success for Albemarle County.

Delegate Bell stated that he owed much of the bill's success to Mr. Kamptner, who did most of the groundwork, and he noted that it passed by a unanimous vote.

Mr. Kamptner stated that one of the Board's priorities was to remedy an issue in state law in order to amend the requirements for notice regarding zoning decisions, determinations, and orders to allow it be mailed by either certified or registered mail. He stated that the Board has had four work sessions to look at legislative priorities for the upcoming General Assembly session. He said the Board first met in April, then May, June and August, 2019. He said the Board of Supervisors determined that there are six legislative priorities that could be presented before the General Assembly, but noted that the "carrying specified loaded weapons" and "monuments and memorials" legislations have lower likelihood of being made into state laws, and the Board is weighing whether or not to pursue them. He stated that the Board is looking for an expansion to the current Virginia Code § 15.2-953(B), which would allow for localities to donate in-kind resources currently reserved for events to volunteer firefighters and emergency service providers. He said that this would better support those organizations and volunteers, and localities' charitable contributions would be more efficiently applied. He said this would help strengthen volunteer organizations by allowing the money contributed by the Board to go further. He added that a 2007 amendment to Virginia Code § 15.2-953 enables localities to donate in-kind resources for "events" sponsored by a donee. He said again, the Board is requesting an expansion of that enabling authority to provide these kinds of services for the volunteers.

Delegate Bell asked if the stakeholders were conferred with in regards to the proposed amendment, noting that there have been some heated discussions with those volunteer departments. Mr. Walker responded that the Board has expressed a strong interest in expanding County funding for large capital maintenance projects. He said that the pilot project was the repair and replacement of the apron at the Crozet Volunteer Fire Department, and there has been support from that department and the Fire EMS (FEMS) Board. He stated that while the County can give them the money, there is no enabling authority to allow the County to actively participate with the department in the construction of the project. He said the amended bill would better allow for the County to engage and support those services.

Delegate Bell asked if that discussion was with the Crozet Volunteer Fire Department. Mr. Walker confirmed that it was.

Mr. Kamptner stated that there are other fire companies that would not be interested in this initiative because they have enough resources without assistance from the County.

Delegate Bell commented that he wants to be sure that there would not be dissent amongst organizations if the expansion was passed.

Senator Deeds added that he saw the expansion as enabling legislation that would simply enable assistance, not that an organization would ever be forced to accept aid.

Delegate Bell asked how much money the County has subsidized directly through payments. Mr. Kamptner responded that the FY 2020 budget was approximately \$2 million. Mr. Walker added that the County also provides fuel, training, apparatus, turnout gear, insurance, and other in-kind contributions in addition to those cash donations. Mr. Randolph commented that was a good question to ask, because that could be easily misconstrued.

Mr. Kamptner stated that the language in both bills considered last year was fine, with the war memorials and monuments legislation making it clear that contextualization was declaratory of existing law. He stated that the proposed amendment to Virginia Code §18.2-287.4 would add Albemarle County to a list of eight cities and five counties that prohibit carrying certain loaded weapons in public areas.

Regarding impact fees, Mr. Kamptner stated that based on meetings that several localities and a state workgroup have had, it was established that legislation to enforce impact fees on residential development would have to be a multi-year statewide initiative due to the failure of similar legislation in 2019. He stated that the Board of Supervisors has discussed this and would come back again to request County enabling authority to impose impact fees. He said that the planners in Community Development agree that impact fees make a transformational shift to better address infrastructural issues from the offsite cash proffer system. Mr. Kamptner stated that impact fees would be imposed on all residential development, not only those that go through a rezoning process. He stated that he attended a meeting during which Loudoun County presented that they received about \$50,000 per unit per year, yet the cash contributions they received only accounted for 2% of their development-generated need for capital facilities development and expansion. He added that an impact fee system would not completely address development issues, but would help the County more than cash proffers.

Senator Deeds commented that Loudoun County grows faster than any other County in Virginia, and it was unwise to base a system around a County that differs so greatly from Albemarle County's growth. Mr. Kamptner stated that the growth in Loudoun since 2010 was up 34%. Senator Deeds stated that there are over 400,000 people in Loudoun County currently and in the 1980s the population was around 80,000.

Delegate Toscano asked whether there were new models that could possibly better predict the actual costs of development. Mr. Kamptner responded that there are models that range from bare bones enabling authority to elaborate statutory schemes that prescribe exactly how the decisions would play out, but it was difficult to determine what model works best. He said the High Growth Coalition was still evaluating what model might work.

Delegate Toscano asked if there was an effort to drive the decision making process by the stakeholders' involvement to determine the best course of action. Ms. Mallek responded that there were several proposals and dialogue with stakeholders and the housing commission over the summer, and there were multiple reports published about those discussions. She stated that there has been lots of correspondence between the new leadership and their staffs, along with stakeholders. She said that 15 or 20 counties all conferred over the matter.

Mr. Randolph stated that a predictable and consistent model to present to developers would be much more beneficial under an impact fee than under the cash proffer system, in which developers would have a varying cost of development. Delegate Toscano agreed and stated that many people hated proffers because it was difficult to predict what the development costs would entail as time went on, and it would be significant to clarify what the impact fees would cover. Mr. Randolph added that it would level the playing field for all developers as well. Delegate Toscano commented that it makes no sense to separate the two.

Mr. Kamptner stated that these two points are issues that the Board is dealing with. He said in the Rio 29 general area the County has developers who did by right residential development and you get the form of development that was there when the land was last rezoned. He said in Albemarle County a lot of that land was rezoned in 1980 and when that rezoning took place what happened in many areas of the County was that the 1969 zoning designation simply carried over into the new similar designation. He noted that this may be contributing to the issues that have risen with development in the County, emphasizing that they are not meeting their transportation goals. He stated that through the proffer system, developers often find it to be more economically feasible to do by right development, which often means that the development occurs in a conventional probably outdated zoning style with none of the impacts addressed. He added that regardless of the avenue of development, there are very real impacts that happen. Mr. Kamptner said that having the impacts addressed through the proffer scheme means that government bodies often are reluctant to have their zoning designations match their Comprehensive Plans, and Albemarle County takes its Comprehensive Plan process very seriously, extensive public hearings, a lot of community input along with development area master and small area plans. He said the impact fee enabling authority would help unlock these dual scenarios that are taking place right now.

Mr. Kamptner explained that with an impact fee program, localities would have the ability to determine the range of capital facilities to be supported by impact fees allowing localities to establish and implement the impact fee program that the community desires within the parameters and studies and within the range of capital facilities. He noted that the County had a per-unit cash proffer policy for nine years, that per-unit amount was not set at 100% of the impacts; and there was a balancing process that takes place. He noted in the last bullet point about impact fees being so prescriptive is just a concern, and there are other areas of enabling authority under state planning and zoning law, such as the cluster development enabling authority that was adopted in about 2004 which lays out the rules on how a locality can establish a new cluster development proffer policy. He said staff has looked at that; we were one of the localities that already have a cluster development ordinance in place and we looked at the 2004 enabling authority and it was so prescriptive that we had doubts as to whether it would work, which has been the issue with other localities as well.

Mr. Kamptner said the Board appreciates the 2019 legislation and it is a big help. He said during a recent meeting he attended in Richmond, a representative from Fairfax County already had more than a dozen developers ready to file applications July 1 or soon thereafter, but there have not been any major rezonings in Albemarle that have come in to do that. He added that the 2016 version of the proffer statute was complicated and there are traps for localities because decision makers are interacting with developers regarding residential versus commercial. He said that under the July 1, 2016 statute, a staff person who merely suggests a proffer that is deemed unreasonable may get a locality in trouble, in the event that discussion forms the basis of a rezoning. He added that the 2019 legislation is a great improvement, but is still a complex set of rules to implement.

Ms. Mallek stated that with the two recent very large rezonings that the County had, developers were determined to get their developments approved before the new legislation took effect so they could go with what they knew, and both of the rezonings had been completed within the past year.

Mr. Randolph stated that another complicating issue was that with the growth and development areas, there are citizen advisory committees, which have to operate in a legal environment, with three different standards for what can be said, exposing the County and individuals to potential issues regarding an application. He said that this deters from citizen involvement with the process due to possible prosecution of citizens as well as the County.

Delegate Toscano asked if Southwood was developed in this way. Mr. Randolph responded that project did not involve the proffer system at all. Mr. Kamptner confirmed that it preceded the 2019 legislature.

Delegate Bell commented that Albemarle County seems to be experiencing more growth in the last few years than in the preceding 10 years. Ms. Mallek responded that the High Growth Coalition has defined it as 2% growth every year, but Albemarle has been around 1.7% and this number was still very small comparatively. She added that the County has participated because they want to be at the table.

Delegate Bell asked if this increased in recent years. Ms. Mallek responded that she understands that between 2004 to 2008, there were many massive rezonings approved, including 4,000 rezoned dwelling units in Crozet, and those plans are just now being able to be developed after the 2008 recession, hitting the streets fast.

Ms. McKeel commented that Delegate Bell was looking at both development area and rural area, with the growth area being denser.

Delegate Bell asked if the Board has approved anything in the past year. Ms. Mallek said that Brookhill has been approved, but it preceded the 2016 law change deliberately. Delegate Bell asked what the proffer amount was for the project. Mr. Kamptner responded that the per-unit cash proffer amount was around \$20,000, with a significant dedication of real property of about 60 acres for an elementary school site and some others.

Mr. Randolph added that the County was growing by 1,200 to 1,400 new residents per annum, according to the Weldon Cooper Center.

Senator Deeds asked if 2% growth was the cutoff for high growth. Mr. Blount confirmed that it was right around that level, with some localities growing in and some growing out. Senator Deeds asked how many localities that included. Mr. Blount responded that it was about 16 localities; Fluvanna County has been growing very fast but less so in recent years.

Mr. Richardson stated that as recently as the previous day, the Board heard a report from the Finance Department on the past year of work, and the number of business licenses in Albemarle County went from 2,500 in 2008 to over 8,500 in 2019. He said in 10 years the County has over tripled the number of business licenses. He stated that he would like to meet with the TJPDC to analyze daytime and nighttime population, which would more accurately reflect through economic vibrancy the impact of infrastructure on localities.

Delegate Bell asked if the business license data was the best metric for measuring how well businesses are doing in the County. Mr. Richardson responded that sales tax was also a good way to measure that. He stated that over the last several budgets, staff has analyzed revenue streams, and the economic vibrancy of retail has moved at a strong pace. He said the County has seen steady and strong

retail growth that would tie to the strong local economic vibrancy in our community. He stated that more detail could be provided on that.

Ms. Mallek stated that in 10 years, there have been 4,000 additional land parcels created in the County, which now has a total of 46,000 parcels.

Mr. Snider asked if they are mostly single-family homes. Ms. Mallek said she assumes so.

Delegate Bell asked if growth from NGIC was available to see in the County data. Ms. Mallek stated that there are about 10,000 employees on and off base. Mr. Dill noted that UVA Research Park employs many independent contractors.

Mr. Walker pointed out that employment data was often received voluntarily from businesses that are willing to report, and some specific tax information is not available from businesses so much of that information about NGIC and growth is inferred in terms of its impact on the market and economy.

Delegate Bell noted that a lot of the NGIC personnel do not come south into town, but instead do their shopping, lunch, etc. on 29 North.

Mr. Randolph commented that it would be interesting to know whether transient occupancy taxes were due to additional occupancy opportunities in hotel trade or whether it was due to homestay opportunities. He stated that this one indicator has been suppressed over time.

Delegate Bell stated that Greene County has seen an increase contributed by Airbnb. He stated that it is a positive opportunity for them because of that; it may be the same in Albemarle.

Ms. Mallek stated that the County is working hard with bringing Airbnb owners into compliance in the County, which would reflect the revenue.

Mr. Kamptner continued his presentation to discuss equal taxing authority for counties, which was meant to give urban counties similar taxing powers as those granted to cities. He continued to say that the daytime residents put stresses on the County, such as business permits and roads, with counties typically being rural, so the focus on real property tax makes sense. He stated that the County's urban ring is more like a city, with the urban type stresses and funding tension that exists. He said this is not a 2020 request, but it is a preview. He said the Board wants to support statewide initiatives to give counties equal taxing authority as cities for things such as cigarettes, admissions tax, removal of the cap and referendum requirement on food and beverage tax, and removal of the cap on transient occupancy tax, which the Board decided to defer an initiative until the newly hired tourism bureau executive director for the Charlottesville Albemarle Visitor's Bureau has an opportunity to weigh in. He said it would be another new regional interest who might be involved on that before the Board pursued. He said he would expect it would be back on the table next year and wanted to give a preview. He said so if you think about Albemarle County in 1969 in a lot of these areas and where we are now with the different issues being dealt with, we just think about transportation of the road network, we are not meeting our goals, and are dealing with old zoning. He said we go through a very lengthy Comprehensive Plan process; the community is involved and this is what we want our community to look like.

Mr. Kamptner said that the last of the legislative changes for discussion was expansion of authority under Virginia Code §15.2-961 or other sections, related to replacing and replanting trees that are removed during development. He stated this is due to the effects tree removal has on air quality, water quality, and with climate change the cooling effects of a tree canopy. He said the Board supports the initiative in terms of expanding the BMPs for stormwater through tree canopy preservation and planting, as well as allowing localities greater flexibility in reforestation and urban forest management. He stated that Albemarle County is joining Arlington County in this initiative.

Mr. Blount added that Arlington County has been conversing with statewide homebuilders. He said the revised Watershed Implementation Plan sent to the EPA a few weeks ago has several provisions dealing with tree canopy and the desire for looking at some of those issues for the reasons that Mr. Kamptner mentioned. He said the Department of Forestry is the lead agency to be charged with doing some of that work.

Mr. Kamptner stated that the current law provides for and states for development of industrial or commercial property, the locality can require that they must maintain, establish or preserve 10% of the tree canopy and increases up to 20% for residential sites that are at 10 units or less per acre.

Senator Deeds asked if that was part of the current zoning and building permit process. Mr. Kamptner confirmed that it is, and it is implemented into the site plan development process for a ministerial review. He said the enabling authority also allows credits, deviations, waivers, and to establish tree banks, etc., so there is already some flexibility.

Mr. Kamptner continued with his presentation with a discussion of Biscuit Run Park, which was acquired by the state in 2009. He said a master plan was constructed for Biscuit Run Park to be a state park, with funding requirements of \$42 million. He said in the beginning of 2018 after lengthy negotiations with the DCR, the County then entered a 99-year lease to continue developing the park to function as a regional park; and the master plan of which was adopted by the Board in 2018. He said the estimated cost to develop the park is between \$31 and \$34 million and is planned to be constructed in multiple

phases. He said the first phase ranges from about \$5 to \$7 million, and there are ranges within in the 3 phases. He noted the Board adopted a resolution accepting the State's offer. He said that there was a \$15 million mitigation fund for the environmental impacts from the Atlantic Coast Pipeline, with the County's share at \$5 million, but due to the uncertain future of the project may not be implemented. He said at the end of July, the Fourth Circuit Court of Appeals invalidated some permits. He noted that was the most recent information in the court reports. He said the request is \$15 million in funding from the State with County funding also obviously to meet the needs for full buildout.

Ms. Mallek asked if the three phases of development in the next three years would be focused to construct access points so that people could access the existing trails more easily. Mr. Kamptner confirmed that it was, and that the County would be pursuing funding from the State through VDOT and the Transportation Board for some of that.

Delegate Bell asked Mr. Kamptner to clarify where in the County the park is located in proximity to Route 20 South and Old Lynchburg Road. Mr. Kamptner indicated multiple landmarks on the map, including I-64, the County Office Building, and Southwood.

Delegate Toscano asked if DCR knows about the request. Mr. Randolph confirmed that they do, and he has talked to Clyde Cristman, the Director of DCR, about it. Delegate Toscano asked if he has put a request in their budget. Mr. Randolph responded he was unsure whether the request for the budget has been submitted. Delegate Toscano suggested they should have it submitted so the legislators can discuss it.

Mr. Kamptner pointed out the Phase 1 entrance on the property.

Mr. Trevor Henry, Assistant County Executive, said that a map with the master plan along with the information can be shared with the legislators.

Delegate Toscano stated that the only way for the park to be developed would be to have it submitted as soon as possible.

Senator Deeds commented that he is disappointed that it was not a more regional park, with more local governments at the table, but they have to ensure it happens as quickly as possible. Ms. Mallek commented that the other local governments have been invited.

Mr. Kamptner concluded his presentation and asked if there were any questions. There were none.

Ms. Mallek commented that hopefully meeting in this earlier time frame works better for the legislators. Comments were affirmative.

Agenda Item No. 4. Brief Update on Board 2019 Legislative Positions and Policy Statements.

Mr. Kamptner said he has already spoken on the issue of proffers. He thanked the General Assembly for continuing to fund VATI. He said the County's Broadband Authority has been making great progress over the last two years, particularly this year, in deploying broadband in the rural areas.

Senator Deeds commented that the General Assembly needs to do a better job; \$19 million is not enough for the state, much less one county. Mr. Randolph commented that any amount is appreciated; it incentivized this Board to increase its commitment to broadband and he does not believe the Board would have been as responsive, if the \$19 million was not available.

Mr. Blount added that based on discussions of the broadband coalition at the state level, he believes the Governor will ask for \$50 million in each of the next two budget years to fund broadband.

Agenda Item No. 5. Legislators' Priorities/Questions & Answers.

There were none.

Agenda Item No. 6. Adjourn to September 9, 2019, 4:00 p.m., City Space, 100 5th St NE, Charlottesville, VA 22902.

At 1:12 p.m., with no further business to come before the Board, Mr. Randolph adjourned the meeting to September 9, 2019, 4:00 p.m., City Space, 100 5th St NE, Charlottesville, VA 22902.

Chairman

Approved by Board
Date 03/04/2020
Initials TOM