

A regular meeting of the Board of Supervisors of Albemarle County, Virginia, was held on April 15, 2020. This meeting was held by electronic communication means using Zoom and a telephonic connection due to the COVID-19 state of emergency. This meeting was adjourned from April 1, 2020.

PRESENT: Mr. Ned Gallaway, Ms. Beatrice (Bea) J. S. LaPisto-Kirtley, Ms. Ann H. Mallek, Ms. Diantha H. McKeel, Ms. Liz A. Palmer, and Ms. Donna P. Price.

ABSENT: None.

OFFICERS PRESENT: County Executive, Jeffrey B. Richardson, Deputy County Executive, Doug Walker, County Attorney, Greg Kamptner, Clerk, Claudette K. Borgersen, and Senior Deputy Clerk, Travis O. Morris.

Agenda Item No. 1. Call to Order. The meeting was called to order at 3:30 p.m., by the Chair, Mr. Gallaway.

Mr. Gallaway informed attendees that this meeting was being held pursuant to, and in compliance with, Emergency Ordinance #20-E2, "Emergency Ordinance to Ensure the Continuity of Government during the COVID-19 Disaster."

Mr. Gallaway said the Supervisors who were electronically present at this meeting were himself (Mr. Ned Gallaway - Rio District), Vice Chair Donna Price (Scottsville District), Ms. Diantha McKeel (Jack Jouett District), Ms. Liz Palmer (Samuel Miller District), Ms. Bea LaPisto-Kirtley (Rivanna District), and Ms. Ann Mallek (White Hall District).

Mr. Gallaway said the persons responsible for receiving public comment are the Board of Supervisors of Albemarle County. He said the opportunities for the public to access and participate in the electronic meeting are posted on the Albemarle County website, on the Board of Supervisors homepage, and on the Albemarle County calendar.

Mr. Gallaway also introduced staff present.

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

Agenda Item No. 4. Adoption of Final Agenda.

Ms. McKeel said she would like to pull Item 6.2, "Resolution of Intent to Amend the Zoning Ordinance to Allow Landscape Contractors in the Rural Area" from the Consent Agenda.

Mr. Gallaway said they would address this item after passing the Consent Agenda.

Ms. Mallek said that under "Matters from the Board," near the end of the meeting, she would like to ask if people had any other questions resulting from information they received from the artisan tenants who have leases with the County.

Ms. McKeel said that at the end of the meeting, she would like to have a brief transit discussion.

Ms. Palmer **moved** that the Board adopt the final agenda as amended. Ms. LaPisto-Kirtley **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Gallaway, Ms. LaPisto-Kirtley, Ms. Mallek, Ms. McKeel, Ms. Palmer, and Ms. Price
NAYS: None.

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

Ms. McKeel reminded everyone to see if they could watch "The Plastic Wars" documentary about plastic recycling. She said this documentary was on NPR and is about how the plastic industry greenwashed recycling.

Ms. McKeel said on that day, the recipients were announced for the 2020 Emily Couric Scholarships. She said this organization usually has a luncheon where the recipients are announced, and that this had to be canceled. She said if visiting the Emily Couric leadership website, one can see a writeup about all the recipients. She said the recipients announced that day were Isabelle (Izzy) Pardue of Albemarle High School (winner of the \$50,000 scholarship), and Taylor Mills of Murray High School (winner of the \$20,000 scholarship). She said there are eight other finalists who will receive \$10,000 each. She congratulated all the winners.

Ms. Palmer said she watched "The Plastic Wars" documentary Ms. McKeel mentioned, and that it was a Frontline documentary on PBS rather than NPR radio.

Ms. McKeel said the information she received that it was an NPR/American University production. She said Ms. Palmer was correct in that it cannot be found on NPR Radio.

Ms. Palmer said it is on the Frontline website.

Ms. McKeel said she pulled it up on VPM World (Comcast channel 266 and 1147).

Ms. Palmer said there is a plethora of things that the Board now has control because of the General Assembly, and that this would mean future discussions about a variety of important things, including the ability of localities to tax plastic bags. She said she hoped that in the coming months, when they were in a better situation, they would be able to have that conversation.

Ms. Mallek said she appreciated all the work the citizenry and staff are doing regarding COVID-19 to keep everyone at home. She said listened into a conversation with a cardiologist that morning and that doctors feel that the present week and next week were terribly risky for transmission. She said high infection numbers are anticipated the following week. She encouraged everyone to wear masks and take other preventative measures.

Ms. Mallek said she appreciated all the work Ms. Emily Kilroy and Mr. Jake Washburn were doing to share information about how people can get their absentee ballots. She said there was some confusion on the application form, as there were too many words and not enough direction on what the State provides. She said Mr. Washburn is trying to clarify this, and if people do have questions, they can call for directions. She said Mr. Washburn would send out a screenshot template that the Board can circulate to citizenry so that they can get their absentee ballots well in time for the June election.

Agenda Item No. 6. Consent Agenda.

Ms. McKeel said she would like to pull Item 6.2, "Resolution of Intent to Amend the Zoning Ordinance to Allow Landscape Contractors in the Rural Area" from the Consent Agenda.

Mr. Gallaway said they would address this item after passing the Consent Agenda.

Ms. Mallek said that under "Matters from the Board," near the end of the meeting, she would like to ask if people had any other questions resulting from information they received from the artisan tenants who have leases with the County.

Ms. McKeel said that at the end of the meeting, she would like to have a brief transit discussion.

Ms. Palmer **moved** that the Board adopt the consent agenda as amended. Ms. LaPisto-Kirtley **seconded** the motion.

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

AYES: Mr. Gallaway, Ms. LaPisto-Kirtley, Ms. Mallek, Ms. McKeel, Ms. Palmer, and Ms. Price
NAYS: None

Item No. 6.1. Emergency Ordinance to Establish Due Dates for Filing Certain Tax Returns and Paying Certain Local Taxes During the COVID-19 Disaster.

The Executive Summary forwarded to the Board states that, as a result of the novel coronavirus ("COVID-19") pandemic, Governor Ralph S. Northam declared a state of emergency on March 12, 2020. Since then, the Governor has issued subsequent executive orders that increased restrictions on public and private gatherings, businesses, and other measures intended to slow the spread of the COVID-19 virus. These restrictions have had an economic impact on individuals and businesses in the County.

On March 18, 2020, the Board adopted an emergency ordinance to extend the April 1 deadline to file an application for the real property tax exemption for certain elderly and disabled persons to May 16. On March 27, 2020, the Board's emergency continuity of government ordinance extended the deadline for filing returns on business tangible personal property from May 1 to June 1, and extended the deadline for paying those taxes from June 5 to June 30. The extensions pertaining to the business tangible personal property tax are incorporated into the proposed ordinance (Attachment A).

The proposed emergency ordinance would extend the following deadlines in 2020 to provide temporary relief to taxpayers and those businesses collecting the transient occupancy and food and beverage taxes:

- Business tangible personal property and machinery and tools taxes: Subsection 3(A) extends the deadline for filing a return on these taxes from May 1 to June 1.
- Real estate, tangible personal property, machinery and tools, and mobile home taxes: Subsection 3(B) extends the deadline to pay the first installment of these taxes from June 5 to June 30.
- Business license taxes: Subsection 3(C) extends the deadline to pay these taxes from June 15 to June 30.

- Transient occupancy and food and beverage taxes: Subsection 3(D) extends the monthly deadlines for businesses to remit these taxes collected for the months of March, April, and May so that they are due and payable on July 20.

Virginia Code § 15.2-1427(F) limits the duration of an emergency ordinance to not more than 60 days. If the Board adopts the Emergency Ordinance, a non-emergency version of the ordinance will be brought to the Board for its consideration in May.

There is no budgetary impact.

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

By the above-recorded vote, the Board adopted the proposed Emergency Ordinance No. 20-E(3):

EMERGENCY ORDINANCE NO. 20-E(3)

AN EMERGENCY ORDINANCE TO ESTABLISH DUE DATES FOR FILING CERTAIN TAX RETURNS AND PAYING CERTAIN LOCAL TAXES DURING THE COVID-19 DISASTER

WHEREAS, on this same date the Board of Supervisors considered an ordinance entitled “An Ordinance to Ensure the Continuity of Government During the COVID-19 Disaster” (the “Continuity of Government Ordinance”); and

WHEREAS, many, if not all, of the reasons supporting the Continuity of Government Ordinance give cause for this Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Board of Supervisors of the County of Albemarle, Virginia, that:

Sec. 1. Purpose

The purpose of this ordinance is to set the due dates and deadlines for filing certain local tax returns and paying certain local taxes.

Sec. 2. Authority

This ordinance is authorized by Virginia Code § 58.1-3916, which enables the Board of Supervisors to establish due dates for the payment of local taxes, including deadlines for filing returns related to the payment of local taxes. This ordinance is adopted as an emergency ordinance pursuant to Virginia Code § 15.2-1427(F).

Sec. 3. Due Dates and Deadlines

This section establishes the deadlines for filing certain local tax returns and due dates for paying certain local taxes.

- Return date for business tangible personal property and machinery and tools taxes. For 2020, the deadline to file the return for all items of tangible personal property and machinery and tools pursuant to County Code § 15-801 is June 1, 2020, rather than May 1, 2020 as set out in Virginia Code § 58.1-3518. For 2021 and all following years, the deadline to file returns is as set out in Virginia Code § 58.1-3518 or its replacement.
- Payment date for first installment of real estate, tangible personal property, machinery and tools, and mobile homes taxes. Notwithstanding County Code § 15-101(A), the first installment of taxes for real estate, tangible personal property, machinery and tools, and mobile homes for 2020 is due and payable on June 30, 2020, rather than June 5, 2020. Otherwise, County Code § 15-101(A) remains in full force and effect. This subsection does not affect the due date for the first installment of taxes for public service corporations.
- Payment date for business license taxes. Notwithstanding County Code § 8-201(B), business license taxes for 2020 are due and payable on June 30, 2020, rather than June 15, 2020. Otherwise, County Code § 8-201(B) remains in full force and effect.
- Payment date for transient occupancy and food and beverage taxes. Notwithstanding County Code §§ 15-902(F) and 15-1002(F), the taxes collected under County Code §§ 15-902(A) and 15-1002(A) during the months of March, April, and May 2020 are due and payable on July 20, 2020. This provision does not alter the time at which these taxes are collected, nor the deadline for reporting these taxes collected to the Director of Finance.

Sec. 4. Severability

It is the intention of the Board of Supervisors that any part of this ordinance is severable. If any part is declared unconstitutional or invalid by the valid judgment or decree of a court of competent jurisdiction, the unconstitutionality or invalidity does not affect any other part of this ordinance.

Item No. 6.3. SDP201900051 Beaver Creek Medical Office Building – Request for Special Exceptions to Disturb a Required Buffer Area and Reduce the Rear Setback.

The Executive Summary forwarded to the Board states that the applicant, on behalf of the developer and owner, is requesting two Special Exceptions: (1) disturb a required 20ft buffer area abutting a residential zoning district, and (2) reduce the rear minimum setback for off-street parking from 20 feet to 5 feet.

Special Exception #1

On commercial properties, County Code §18-21.7(c) requires that no construction activity, including grading or clearing of vegetation, occur closer than 20 feet to any residential or rural areas district, and that screening must be provided as required by County Code §18-32.7.9. The applicant is requesting an exception to this requirement to allow improvements to be made to an existing parking area and the installation of a new fence and landscaping, as part of a redevelopment of the commercial property into a medical office building.

The Board of Supervisors may authorize a disturbance in the buffer by special exception upon consideration of whether: (i) the developer or subdivider demonstrates that grading or clearing is necessary or would result in an improved site design; (ii) minimum screening requirements will be satisfied; and (iii) existing landscaping in excess of minimum requirements is substantially restored.

Special Exception #2

Zoned Highway Commercial, County Code § 18-4.20 requires a rear minimum setback of at least 20 feet for any off-street parking if the abutting lot is zoned residential. The property is currently non-conforming, with an existing parking area and spaces located 5 feet from the rear property boundary. The applicant is requesting an exception to this requirement so the existing parking area may be retained and improved.

A reduction to the rear minimum setback is allowed by special exception pursuant to County Code § 18-4.20.

Please see Attachment B for staff's full analysis.

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

By the above-recorded vote, the Board adopted the Resolution to Approve Special Exceptions for SDP 201900051 Beaver Creek Medical Center:

**RESOLUTION TO APPROVE SPECIAL EXCEPTIONS
FOR SDP 201900051 BEAVER CREEK MEDICAL CENTER**

BE IT RESOLVED that, upon consideration of the Memorandum prepared in conjunction with the application and the attachments thereto, including staff's supporting analysis, and all of the factors relevant to the special exceptions in Albemarle County Code §§ 18-4.20, 18-21.7(c), 18-32.7.9, and 18-33.49, the Albemarle County Board of Supervisors hereby approves the special exceptions (1) to disturb a required 20-foot buffer area abutting a residential zoning district, and (2) to reduce the rear minimum setback for off-street parking from 20 feet to 5 feet, for SDP 201900051 Beaver Creek Medical Center, subject to the conditions attached hereto.

Signed this 15th day of April 2020.

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SDP 201900051 Beaver Creek Medical Center Special Exception Conditions

1. The buffer disturbance within 20 feet, as measured from the rear property line, is allowed only for screening, landscaping, and parking. No dumpster or dumpster pad may be located closer than 20 feet from the rear property line.
2. All screening, parking lot landscaping, and landscaping islands shall meet Architectural Review Board requirements.
3. Surface parking shall be no closer than 5 feet from the rear property line, as shown on the exhibit titled "Beaver Creek – Medical Office Building – Special Exception: Site Layout with Special Exception Request" and dated December 19, 2019.

Item No. 6.4. Albemarle Broadband Authority Quarterly Report, **was received for information.**

Item No. 6.5. Albemarle County Service Authority (ACSA) Quarterly Report, **was received for information.**

Item No. 6.6. Rivanna Water and Sewer Authority (RWSA) Quarterly Report, **was received for information.**

Item No. 6.7. Virginia Department of Transportation (VDOT) Monthly Report (April), **was received for information.**

Item No. 6.2. Resolution of Intent to Amend the Zoning Ordinance to Allow Landscape Contractors in the Rural Areas.

The Executive Summary forwarded to the Board states that The Board of Supervisors endorsed the Community Development 2020 Work Program on March 4, 2020. This included the “nimble” project to development a zoning text amendment to allow landscape contractors as a use by special use permit in the Rural Areas zoning district. The “nimble” projects are so named because their focused scope and streamlined process allow us to move more quickly with limited staff resources. Staff noted that the identified nimble projects could be completed without detracting from more substantive work program projects.

Objective 1 of the Rural Area section of the Comprehensive Plan is to “Support a strong agricultural and forestal economy.” Strategy 1j to achieve Objective 1 is “to consider amending the Zoning Ordinance to allow landscape services and storage of landscape materials in the Rural Areas zoning district.” (Attachment B) For the purposes of moving forward with a “nimble” project, the Board provided guidance to prioritize the provision of landscape services as a use in the Rural Areas district. Implementation of provisions for commercial nurseries or the storage of landscape materials are more involved and will occur through a separate ordinance amendment to be prioritized at a later date.

The Rural Area section of the Comprehensive Plan notes that “Policy and Zoning Ordinance changes are recommended to promote the County’s preferred uses for the Rural Area” with the common goal of helping to keep the Rural Area rural (page 7.4). It goes further to recommend criteria for the review of new uses and the provision of performance standards. The Board endorsed staff recommendation that we initially implement landscape contractors as a use by special use permit. This approach is similar to what was done for the ordinance amendment to allow solar energy systems (utility scale) by special use permit. It allows us to utilize the experience of several applications prior to writing performance standards and determining if it can be allowed as a use by-right.

Staff addresses public engagement as we bring forward resolutions of intent to amend ordinances. As proposed, any Rural Area landscape contractor will be subject to a special use permit and the associated public hearings and legislative review criteria. We recommend that we utilize the County website and Rural Areas A-mail to provide information about the proposed amendment. In addition, we can contact relevant local professional organizations representing arborists and landscape contractor businesses, such as the Virginia Society of Landscape Designers.

There is no identified budget impact. This ordinance amendment will establish an application that will be subject to a fee.

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

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Ms. McKeel noted she was supportive of this item and would not be voting against it. She pointed out that just as they had with the leash law and parking on the secondary roads, the Board cannot look at everything through the lens of the Rural Area and the Development Area. She said when this item comes back to the Board, she would be asking them to view it through specific performance standards and minimum lot sizes. She said there are neighborhoods that are within the Rural Area, but very much Urban Ring neighborhoods.

Ms. McKeel said she did talk to Mr. Kamptner about this and asked if he had anything to add.

Mr. Kamptner said when this ordinance is developed, the areas of Hydraulic and Georgetown Roads are good examples of fairly-urbanized Rural Areas and quite different from Howardsville, Blackwells Hollow, and the northeast part of the County; and that there should be regulations in place that will accommodate the spectrum of circumstances that the Rural Areas entail.

Ms. McKeel said on Hydraulic Road, for example, there is a small neighborhood but because it is in the Rural Area, she is receiving complaints because one of the families that lives on that road is parking 18-wheelers. She said it is perfectly within their rights because it is zoned Rural Area. She said she wants to make sure that when they look through the ordinance, they do not look at it through the strict lens of Rural Area versus Development Area.

Ms. McKeel added that this would be a good time to look at marrying their home occupations in the Development Area to some of the ordinances because what they do not want to do is have their home

occupation ordinances mismatch with other ordinances and be in conflict with each other.

Ms. Mallek said she would only support this as a Special Permit rather than by right. She said she did not think it was being considered by right at all because of all those individual characteristics of the various neighborhoods. She said much of this is already available in the Urban Area, but it is not allowed in the Rural Areas.

Ms. Mallek said where those particular locations happen where it is completely suitable depending on what is happening around it, it might be something useful. She said it will possibly allow some places where some people who cannot park, or should not be parking, their machinery in the urban neighborhood has a place to put it. She said it must have all the Special Permit characteristics to make sure they are answering all those questions first.

Ms. McKeel **moved** to approve the Resolution of Intent to amend the Zoning Ordinance to allow landscape contractors in the Rural Area. Ms. Price **seconded** the motion.

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

AYES: Mr. Gallaway, Ms. LaPisto-Kirtley, Ms. Mallek, Ms. McKeel, Ms. Palmer, and Ms. Price
NAYS: None

RESOLUTION OF INTENT

WHEREAS, on June 10, 2015, the Board of Supervisors adopted the Comprehensive Plan, and

WHEREAS, Objective 1 of the Rural Area section of the Comprehensive Plan is to support a strong agricultural and forestal economy, and

WHEREAS, one strategy identified to achieve Objective 1 is to consider amending the Zoning Ordinance to allow landscape services and storage of landscape materials in the Rural Areas zoning district, and

WHEREAS, the Board of Supervisors has endorsed the Community Development 2020 Work Program, which includes the development of a zoning text amendment to allow landscape contractors as a special use permit use in the Rural Areas zoning district.

NOW, THEREFORE, BE IT RESOLVED that for the purposes of public necessity, convenience, general welfare, and good zoning practices, the Albemarle County Board of Supervisors hereby adopts a resolution of intent to consider amending Albemarle County Code Chapter 18 Sections 3, 10, and any other applicable sections of the Zoning Ordinance deemed to be appropriate to allow landscape services and storage of landscape materials in the Rural Areas zoning district.

BE IT FURTHER RESOLVED that the Planning Commission shall hold a public hearing on this resolution of intent and return its recommendation to the Board of Supervisors at the earliest possible date.

Agenda Item No. 7. **Action Item:** Approval of Calendar Year 2020 Tax Rates.

The Executive Summary forwarded to the Board states that on February 19, 2020, the County Executive presented the Recommended FY 20 Operating and Capital Budget to the Board of Supervisors. On March 5, 2020, the Board authorized the advertising of a \$0.854/\$100 real estate tax rate for the 2020 Calendar Year, which is also sometimes referred to as the "Tax Year." On April 13, 2020, the Board held a Public Hearing on the Calendar Year 2020 tax rates.

The real estate tax rate may not exceed the advertised rate of \$0.854 per \$100 of assessed value. The real estate tax rate also applies to manufactured homes and public service property. The tax rates for personal property, certain personal property used in a trade or business, and machinery and tools, are proposed to remain at \$4.28/\$100 of assessed value.

The real estate tax rate may not exceed the advertised rate of \$0.854 per \$100 of assessed value.

Staff recommends that the Board adopt the attached Resolution to Set Calendar Year 2020 Tax Rates (Attachment A)

Ms. Lori Allshouse (Director of the Office of Management and Budget) presented.

Ms. Allshouse said on March 5, the Board authorized the advertising of a \$0.854 per \$100 real estate tax rate for the 2020 calendar year (or "tax year"). She said on April 13, the Board held a public hearing on the calendar year 2020 tax rates.

Ms. Allshouse said the proposed real estate tax rate is \$0.854 per \$100 of assessed value. She said each penny on the real estate tax rate yields about \$2.1 million in estimated collectable real estate tax revenues. She said the lowered or effective tax rate would be \$0.826 per \$100 of assessed value.

Ms. Allshouse said staff's recommendation is that the Board approves a resolution to set the calendar year 2020 tax rates.

Ms. Price said she would support the tax rate, but that she has received emails asking several types of questions, one of which is why the County does not lower the tax rate. She said this explains the complexity of changing the tax rate -- that for each penny they drop it, it means \$2.1 million in estimated revenues.

Ms. Price said another thing they have to consider, moving forward, is the effect of the economic situation on real estate values, which if they decline will, on their own, similarly result in a reduction of revenues. She said this reduction of revenues then effects the ability of the County to provide the necessary essential services.

Ms. Price said her comment was not so much about the presentation but was a comment for citizens who are listening about what the impact ends up being. She said it is basically a direct correlation between reduced revenues and reduced ability to provide essential services.

Ms. Mallek agreed with Ms. Price. She said it was just two years ago that a penny of the tax rate meant \$1.6 million, and a few years before that, it was about \$1.2 million. She said this is a variable number, and that the County is being thoughtful about taking things a step at a time and seeing what the situation is quarter by quarter.

Ms. Palmer **moved** that the Board of Supervisors of Albemarle County does hereby set the County levy of calendar year 2020 for general County purposes at:

(1) Eighty-Five and Four-Tenths Cents (\$0.854) on every One Hundred Dollars for assessed value of real estate;

(2) Eighty-Five and Four-Tenths Cents (\$0.854) on every One Hundred Dollars for assessed value of manufactured homes;

(3) Eighty-Five and Four-Tenths Cents (\$0.854) on every One Hundred Dollars for assessed value of public service property;

(4) Four Dollars and Twenty-Eight Cents (\$4.28) on every One Hundred Dollars for assessed value of personal property;

(5) Four Dollars and Twenty-Eight Cents (\$4.28) on every One Hundred Dollars for assessed value of business personal property that is not classified as machinery and tools, merchants' capital, or short-term rental property, with an original cost of less than Five Hundred Dollars (\$500.00); and

(6) Four Dollars and Twenty-Eight Cents (\$4.28) on every One Hundred Dollars for assessed value of machinery and tools; and

BE IT FURTHER RESOLVED that the Board of Supervisors orders the Director of Finance of Albemarle County to assess and collect County taxes on all taxable property, including all taxable real estate and all taxable personal property.

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

AYES: Mr. Gallaway, Ms. LaPisto-Kirtley, Ms. Mallek, Ms. McKeel, Ms. Palmer, and Ms. Price

NAYS: None

RESOLUTION TO SET CALENDAR YEAR 2020 TAX RATES

BE IT RESOLVED that the Board of Supervisors of Albemarle County, Virginia, does hereby set the County Levy for Calendar Year 2020 for general County purposes at:

(1) Eighty-Five and Four-Tenths Cents (\$0.854) on every One Hundred Dollars for assessed value of real estate;

(2) Eighty-Five and Four-Tenths Cents (\$0.854) on every One Hundred Dollars for assessed value of manufactured homes;

(3) Eighty-Five and Four-Tenths Cents (\$0.854) on every One Hundred Dollars for assessed value of public service property;

(4) Four Dollars and Twenty-Eight Cents (\$4.28) on every One Hundred Dollars for assessed value of personal property;

- (5) Four Dollars and Twenty-Eight Cents (\$4.28) on every One Hundred Dollars for assessed value of business personal property that is not classified as machinery and tools, merchants' capital, or short-term rental property, with an original cost of less than Five Hundred Dollars (\$500.00); and
- (6) Four Dollars and Twenty-Eight Cents (\$4.28) on every One Hundred Dollars for assessed value of machinery and tools; and

BE IT FURTHER RESOLVED that the Board of Supervisors orders the Director of Finance of Albemarle County to assess and collect County taxes on all taxable property, including all taxable real estate and all taxable personal property.

Signed this 15th day of April 2020.

Agenda Item No. 8. **Action Item:** Authorization to Execute an Economic Development Agreement for a Public-Private Partnership (PPP) with Albemarle Business Campus.

The Executive Summary forwarded to the Board states that in 2018, the developer obtained preliminary subdivision plat approval and initial site plan approval to construct single-family detached and single-family attached units within the project area under existing R-2 and R-10 zoning. Although these approvals remain valid, the developer applied in April 2019 to rezone the property to Planned Unit Development (PUD) in order to achieve a greater density and include some non-residential components under a layout called Royal Fern (ZMA201900003).

The Planning Commission recommended denial of Royal Fern on October 8, 2019, primarily based on objections to the requested PUD zoning. Shortly thereafter, at its meeting on November 20, 2019, the Board of Supervisors approved the developer's request to refer the application back to the Planning Commission to allow for the consideration of revised plans.

The developer met with the Economic Development Office on January 17, 2020 to discuss revised plans. On February 18, 2020, the applicant held a work session with the Planning Commission to discuss a revised layout of ZMA201900003, which had been renamed to Albemarle Business Campus.

The revision of ZMA201900003 from Royal Fern to Albemarle Business Campus changed a primarily residential development into a mixed-used proposal that includes significantly more non-residential development. In doing so, the revised plan offers the opportunity for a public-private partnership that can further both community and economic development goals. By engaging early in the process, several County departments worked together to identify public elements from the Comprehensive Plan and Project ENABLE (the County's economic development strategic plan) that could be provided within the project area at a scope and scale beyond what would otherwise be included in the development.

This project is contingent upon 5th Street Forest, LLC, obtaining Board approval of a mutually exclusive rezoning of the project site. However, if the rezoning is approved, the proposed Development Agreement outlines how each of the identified public elements outlined below would be provided. These elements are shown in the project exhibit at the end of the Development Agreement (Attachment A).

Enhanced Bus Shelter and Bike Racks

At the corner of Old Lynchburg Road and 5th Street Extended, the developer agrees to provide a bus stop with a glass shelter, lighting, adequate seating, and bicycle parking racks. In addition, bicycle racks are to be installed at all buildings within the project.

Connectivity

The site provides multi-use paths, trails, and sidewalks in a way that exceeds what would otherwise be required by County Code. There will be a raised pedestrian crossing to allow pedestrians to safely and easily move across the main internal street.

Conceptual Plans and Space Reserved for Primary Business

The developer agrees to obtain final site plan and building plan approval for a building that reserves 25,000 square feet of Class A office space for a primary business (or businesses). Primary businesses generate more than 50% of their revenues from outside of our region, thereby importing new money into our local economy. For this reason, these businesses are a focus of the Economic Development Office. Many primary businesses desire Class A office space but have been unable to locate in the County due to a significant lack of supply of this type of space. This agreement provides a desirable space and marketing collateral for the Economic Development Office to use over a five-year period to retain or attract a primary business.

Dynamic Transport

In addition to the enhanced bus stop, the developer agrees to provide a space within the development to allow for automobile passengers to safely and conveniently access for-hire, hailed transport services (i.e. taxicab, transportation network partner, or JAUNT vehicle).

Dog Park

The developer agrees to construct a dog park at the rear of the site unless both the County and

the developer agree to do otherwise.

Pursuant to the proposed Development Agreement, it is contemplated that the County, through its Economic Development Authority (EDA), will utilize Synthetic Tax Increment Financing (TIF) to rebate 5th Street Forest, LLC, 100% of the real estate taxes paid to the County. The rebate will continue until a total of \$100,000 is paid back to the developer.

In this scenario, the operational definition of TIF is that when new buildings are constructed in the project area, property taxes will expectantly increase. The developer will pay all County taxes and then the County will contribute the incremental increase in property taxes paid back to the developer.

Staff recommends that the Board adopt the attached Resolution (Attachment C) to approve the Agreement and to authorize the County Executive to execute the Agreement on behalf of the County once approved as to form and content by the County Attorney.

Mr. Doug Walker (Deputy County Executive) said there have been recent questions about the extent to which this public-private partnership is being considered in advance of an upcoming consideration of the rezoning request. He said this proposal is consistent with the recent practice, as they have considered other public-private partnerships in association with rezoning requests. He said most recent examples were the Barnes Lumber and Southwood projects, recognizing that both of those had public-private partnerships considered by the Board in advance of the consideration of the rezoning requests.

Mr. Walker said it has been the position, with Board support, that this is the proper order of things, recognizing that the agreement (if approved by the Board) does not bind the Board and is actually contingent upon the future decision to approve the rezoning.

Mr. Walker said the County Attorney could speak more definitively to some aspects of this. He said there has been a concern about making sure to avoid any appearance of or actual contract zoning. He said the preference and commitment has been to make sure that the public-private partnership arrangements have been completed and approved before the matter of rezoning is then brought forward to the Planning Commission and ultimately to the Board of Supervisors.

Mr. Walker said there is plenty of opportunity to consider the other aspects as they relate to rezoning, but that he wanted to be upfront about his understanding of concerns that have been expressed and the position the County is taking in believing this is the right order so that they can engage now, or later (after the presentation) on any sentiments on the part of the Board, or others.

Ms. Palmer asked if Mr. Walker was suggesting that this is the proper way that the Board should continue to handle these, or if this was the way it happened to work out on Barnes Lumber. She said she had a hard time putting Southwood into that category because of its unique situation.

Mr. Walker replied that this is the way they have done it, and that he would suggest that it is a proper way to clear out the issue of the partnership as it relates to the relationship between the County Board of Supervisors and applicant on the public good being created. He said they want to avoid any conflict with regards to contract zoning. He said this has been the approach in concert with the Board and County Attorney, at that point.

Ms. Palmer said when Mr. Walker said it is their way of establishing public good of a project, the Planning Commission also looks to establish public good. She said her concern with the process, although she knows it is not the intent to influence the Planning Commission, is the perception that there should be no more asked of the applicant by the Planning Commission as they, too, may look for more public good.

Mr. Walker said the good that has been identified in the public-private partnership arrangement is clearly articulated in the agreement with respect to the reservation of 25,000 square feet for a primary business, and the contribution of the rebate back of those future taxes in exchange for that contribution. He said in his view, there is no assumption that it is then causing any further restraint or problem with respect to what the Planning Commission, the community, and the Board may want to consider as far as land use aspects of the application as it comes forward.

Ms. Palmer said her point was that when they have to do it this way, she understood, but if they could possibly avoid it in the future, she thinks they should try to let the Planning Commission go through their situation before the Board gets into this.

Ms. Mallek said the clarity for her is that there are two different things, in her mind. She said they have to separate the zoning issue entirely from the performance agreement and financial side. She said she was pleased to get that part squared away and out of the way first, and that the land use decision is a different operation with different people involved. She said this was a suggestion that Ron White made for Southwood, which enabled them to move forward much more effectively, and that she hoped it would with this project as well.

Mr. Kamptner said they considered the order with Southwood and Barnes Lumber, and concluded that this order was better. He said it is a close call, and that the key factor for the Board is that it be clear in the process that it is not contracting away its legislative power. He said the way the

agreement is set up with the language and the contingency upon the rezoning being approved separates the two actions, recognizing that some of the qualities of the project may be set in place by the Board acting on the agreement. He said that to some extent, every project comes to the Board with some of its essence already in place for the Board and Planning Commission to review and comment upon.

Mr. Kamptner said his recollection was that with Southwood in particular, the Planning Commission had made a number of comments when it came before them, forcing revisions to the project that were made before it came to the Board.

Ms. McKeel said she reached out to Mr. Julian Bivins (her Planning Commissioner), as she heard that there was some discussion about this concern. She read Mr. Bivins' comments that were in response to her questions: "I would imagine that the agreement is helpful in moving other parts of the plan along. There is clear language that the anticipated agreement is not a green light for the rezoning of the property. In today's environment, there are so many moving pieces that I can understand why it would be helpful to attempt to pin things down. The project still has to be built, and even with very inexpensive money, that could be the final hurdle."

Ms. McKeel said she believed Mr. Bivins felt comfortable with the timing of the order.

Mr. Gallaway reiterated that to Mr. Kamptner's point, Letter H in the agreement makes it clear. He said he could see from an applicant's perspective how having this agreement in place first before having to go through the time and money exercise of the rezoning process could impact whether or not they want to get that path started, or start down that path. He said he could not imagine that any current Planning Commissioner has any lack of confidence to push back against anything, as they can do the land use piece that is under their purview, and especially when the contingency is spelled out clearly and concisely in the agreement.

Ms. McKeel agreed.

Ms. Price said she had raised those questions about the process and order and that she appreciated the time Mr. Walker, Mr. Kamptner, and Mr. Roger Johnson (Office of Economic Development) spent in preparing their responses. She said it is important that they are able to address those questions as they come up and explain to residents why things happen the way they do.

Mr. Roger Johnson presented on the project specifics, along with Mr. J.T. Newberry (Economic Development) and Mr. Kyle Redinger (the potential partner).

Mr. Johnson said Mr. Redinger is a UVA graduate and has his M.B.A. from the Darden School of Business. He said Mr. Redinger is a subject matter expert in innovation and entrepreneurship, and is a co-founder with start-ups, as well as an experienced developer. He said one of Mr. Redinger's most important qualifications is that he is of high moral character.

Mr. Redinger thanked everyone involved in the process, noting it had been about 14 months thus far and that he has worked with everyone from Supervisors to Economic Development to County staff and other consultants. He expressed that it has been successful thus far, despite the challenges of meeting virtually with COVID-19. He said particularly with the County, they have shown great commitment to the community and that he would imagine that when complete, they would become stronger and more efficient with the lessons learned along the way.

Mr. Redinger said he would briefly highlight parts of the performance agreement. He said he would focus on two pillars: the economic development of this project in a designated opportunity zone; and how this project creates a strong return on investment for the County, contributes positively to the tax base, and helps to provide those essential services that the County may struggle to provide in a recession and with a declining tax base.

Mr. Redinger said they have been successful working with the County, and that the process went much more smoothly than anticipated. He said some review times were almost quicker than they were before COVID-19 and that this was perhaps because of less meetings and more project review.

Mr. Redinger said they have hired the full design team, which will be led by Mr. Bruce Wardell (former ARB member). He said Mr. Wardell has an architecture firm in Charlottesville and will be designing the whole concept of the site. He said Mr. Wardell will be designing the most prominent buildings and working with the team through the completion of the construction.

Mr. Redinger said they have already had several businesses asking when they would be able to put their businesses on the site. He said they have been approached by light manufacturing firms and a local food hub, to name a few.

Mr. Redinger shared a view of the project from 5th Street. He said there has been a lot of time spent on design iterations, noting that over the past 12-14 months, the project has changed significantly. He said they have had to balance many different and conflicting requirements, whether those be about the Entrance Corridor, transportation needs, or parking amenities for a Class A office tenant. He said all those things have to come together to make an attractive site.

Mr. Redinger said he wanted to share a concept to show the Board massing and how they have tried to integrate the scale of the buildings into the community. He said over the next two weeks, they

would be working on much more detail, and that Mr. Wardell and his team will be adding the architectural elements to create a better picture of what exactly will be built by the time they enter the next component of the public process.

Mr. Redinger presented a bird's eye view to show what the project would look like from the other side of 5th Street. He said they are making progress on these designs and will continue to make design revisions.

Mr. Redinger said he sees the performance agreement as providing four key benefits to the County, and that some of those are monetary in nature. He said the most important one is that the partnership with Economic Development enables the applicant to market this as an opportunity zone office space that is ready to build. He said they are able to add upgraded amenities that would not otherwise be available in a rezoning process, including a dog park, a substantial amount of open space, green belt, bike racks, and a modern drop-off point for perhaps future autonomous vehicles. He said there will be unique amenities that will be attractive to the types of companies that Mr. Johnson and his team would like to have there.

Mr. Redinger said this project, just in application and permit fees, will be well over \$100,000 for the County. He said when fully built, they will see well over \$300,000 in annual direct real estate taxes. He said what they are all trying to achieve is to replicate a successful project similar to WillowTree and reading that economic impact report, one will find that it generated tens of millions of dollars in economic benefit for the County. He said this performance agreement is the first piece of attempting to recreate what was an extremely successful project at WillowTree.

Mr. Redinger said there are some important indirect benefits with timely benefits. He said although he represents the project, there are many local people he talks to every day (architecture firms, landscaping firms, local contractors, engineering firms, marketing firms, and consultants) who benefit from this project. He said he tries to direct and listen to these people, and that the project puts food on the table and keeps them employed and keep staff. He said with talks of GDP being down 25% in this quarter, and UVA perhaps not coming back until next year, it is scary what happens to local businesses. He said the performance agreement is a step further in continuing to support those businesses, at least in the real estate industry in the near term.

Mr. Redinger said he also thinks the performance agreement will allow the County to stay competitive in the region. He said Mr. Johnson and Mr. Newberry will focus on lack of available office space in the area, and that there is really nothing available. He said if there was another WillowTree type of company that were to consider coming to Albemarle County, he did not think there would be any options for them to go with 25,000 square feet or more. He said the County does need to get ahead of this and provide it, especially if those are the types of businesses they want to attract.

Mr. Redinger said this project is complementary to what is happening on 5th Street. He said it is symbiotic with Southwood's community business orientation in either providing job opportunities for those residents, or complementary services to what they are willing to offer there. He said it makes for an important place at an intersection in the County that is across from the County Office Building, and that the project has proffered traffic improvements that are needed both now and in the future.

Mr. Redinger said the performance agreement would be incorporated as the first proffer, and that there will be many other proffers included in the project, including additional community concerns that haven't been met in the past 12-14 months that he would be happy to consider as a way to mitigate impacts.

Mr. Redinger said there was supposed to have been a community meeting at the end of March, primarily with the 5th and Avon CAC, but that this was deferred due to COVID-19. He said he was willing and able to either have a special meeting with the CAC, or with the broader community, depending on what the Board deems is most appropriate. He said he is willing to engage with community members and do what he can to receive their support.

Mr. Redinger said after that, they would attempt to go to the Planning Commission at the next most appropriate meeting. He said he will work with staff in Economic Development to determine any issues with the zoning, going forward. He said at the same time, as soon as Mr. Wardell provides him with building renderings, he would begin to market the site to potential tenants and get people excited about locating there. He said this process was likely about 12-18 months away.

Mr. Johnson said he planned to talk about both a microlevel look at what is happening in the community, as well as specifics related to the site and the agreement.

Mr. Johnson presented a slide, noting that the subject location is directly across the street from the County Office Building and Police Department. He said there are two highlighted sites, with the one on the left being most residential, and the one of the right being where they are primarily talking about the performance agreement.

Mr. Johnson said public-private partnerships have many societal benefits or public goods, including some that they have already entered into as a County. He said it was important to make sure the County residents understand what they are doing and why. He said a couple of existing examples are Habitat for Humanity, which is a public-private partnership that includes affordable housing; the future Barnes Lumber, which includes a street grid in Crozet and public gathering space, amongst other

amenities; WillowTree, which includes adaptive reuse of Woolen Mills, walking trails, bridge, and retainment of jobs in the community; and Perone Robotics, which created an autonomous vehicle shuttle in Crozet.

Mr. Johnson stated that the two processes (development agreement and rezoning) are mutually exclusive.

Mr. Johnson said for this particular public-private partnership, Economic Development staff would like to grow the County's commercial tax base, producing additional tax revenue for increased services. He said given everything happening in the world, it was particularly relevant here. He said they would like to create space for future business growth.

Mr. Johnson said there is a lack of diversity in the County of product for primary businesses in the community. He said a primary business is a company that produces a good or service locally and sells it outside of their metropolitan area, bringing the money back into the community to help support "mom and pop" and "Main Street" businesses.

Mr. Johnson said for this particular partnership, they were looking at increasing Class A office space. He said currently, the vacancy rating in the County for Class A office space is 1%. He said as a general rule, this is unhealthy, as it means they have no room for expansion for existing businesses, no space for new businesses, or any opportunity for growth in that particular area. He said if there is no room to grow, businesses leave the community, and many of those businesses are very much the type the County would like to have in the community.

Mr. Johnson said the public good they are trying to solve is this particular issue. He said there have been several companies to leave the community because they could not find a home there. He said they have a willing developer who is an experienced partner who passed the requisite background check necessary to demonstrate that both he and his partners are capable.

Mr. J.T. Newberry said he would begin by giving some site history. He said the developer first pursued and obtained preliminary approval for by-right development on this property, and that this approval remains valid. He said nevertheless, early last year, the developer submitted an application for rezoning to a Planned Unit Development zoning, which was mixed use and had some elements of residential and nonresidential. He said this was called "Royal Fern."

Mr. Newberry said the Planning Commission ultimately recommended denial of that layout in October of 2019, and in November, the Board of Supervisors approved the developer's request to revise the application. He said this was the first time that the public and the Board heard of Albemarle Business Campus.

Mr. Newberry said over the holidays, the layout was revised, and the applicant attended a work session in February with Albemarle Business Campus and received feedback from both the Planning Commission and Community Development staff that Neighborhood Model zoning would be more appropriate for the increase in nonresidential development. He said between Royal Fern and Albemarle Business Campus, there was a large increase in the nonresidential development on the site.

Mr. Newberry said that regardless of the action that evening, the applicant will still move forward with a community meeting with that revised layout, and then a public hearing with Planning Commission and then the Board of Supervisors, at a minimum.

Mr. Newberry presented highlights from Attachment A in the Board's packet. He indicated to the obligations of the developer and obligations of the County. He said that under this agreement, the developer would be taking Class A office space plans through the entire approval process so that Economic Development would have the ability to effectively market the opportunity for growing businesses. He said the developer would be retaining or reserving 25,000 square feet on behalf of Economic Development for five years in order to market the site and provide it to a primary business, which are those that get their money from outside the area and are likely to have direct, indirect, and induced benefits that benefit the community.

Mr. Newberry said there are some other elements involved in the developer's obligations related to enhanced connectivity, enhanced bus shelter and bike racks, a place for dynamic transportation, and a dog park.

Mr. Newberry said under the partnership, there are obligations of the County. He said the County would be responsible for using a synthetic TIF (tax increment financing) to rebate \$100,000 to the developer for all the obligations that he just covered. He said as the project moves forward and taxes are paid, the County would calculate from the basis of the existing taxes that are currently due and rebate those incremental additional taxes to the Economic Development Authority, and then the EDA would then provide those funds back to the developer. He said this would be done each year until \$100,000 was returned back to the developer under this part of the County's obligations.

Mr. Newberry said another thing he and Mr. Johnson will be doing is promoting this as one of their premier opportunity zone locations. He said they will be supporting the request for an expedited review by Community Development. He said the property also contains some retail associated with the full campus, and that they would be working with a consultant called Retail Strategies to help find tenants for that retail space as well.

Mr. Newberry said the last page of the development agreement is the project exhibit. He said the arrows indicate the buildings they see as being the most valuable to a primary business. He said the front office building (adjacent to 5th Street) will likely attract many different primary businesses, but the building at the rear of the site may also be attractive, especially if it is a business that is not as interested in visibility, or may even have some light manufacturing associated with it.

Mr. Newberry said some of the other public elements shown there would be the meandering trail that goes from the multiuse trail adjacent to 5th Street through the entire site, up to the dog park. He said the center of the site has the dynamic transportation location, which would be used for transportation network companies like Uber, Lyft, and JAUNT. He said the enhanced bus stop would be located at the corner of 5th Street and Old Lynchburg Road, which is nestled between the two retail buildings.

Mr. Newberry presented a slide highlighting the enhanced connectivity. He said each of the white arrows indicated an area where pedestrians would be able to move about the site, both within the site and to the site from outside areas.

Mr. Newberry presented pictures of what the enhanced public elements may look like. He said a raised pedestrian crossing helps with traffic calming, accessibility crossing the street, and safety. He showed pictures of different bike racks envisioned for the site, associated with the bus stop and each of the buildings within the site. He presented pictures of an example of what an enhanced bus stop would contain, noting it would be enclosed and would have lighting. He said there are other elements listed specifically in the development agreement.

Mr. Newberry said in closing, before taking questions, he wanted to note that he and Mr. Johnson tried to estimate what it would cost if the County was to go on its own and try to develop an equivalent, speculative office space. He said it would cost no less than \$7 million, conservatively, and that this did not include the land costs. He said they feel positive about the value of the partnership they are entering into.

Mr. Newberry said he had started with talking about the site history, which includes those approvals for residential development. He said this would total about \$22 million overall. He said that as he specified in the agreement, this layout yields about a \$40 million investment in the County. He said also they would be rebating a portion of those taxes back, the lifetime benefits to the County are positive.

Mr. Newberry said staff recommends the Board adopt the resolution to approve the development agreement.

Ms. McKeel said in terms of transit, she had a comment about terminology. She asked if they could get away from thinking about "on-demand" as simply Uber and Lyft. She said they would likely be moving into an on-demand transit model along with the fixed route, but she did not want the public to view this as only Uber and Lyft.

Ms. McKeel asked if the dog park was required.

Mr. Newberry replied yes. He said on page 5 of the agreement, it reads, "The developer shall construct a dog park in the location shown on the exhibit, unless the developer and the County agree otherwise."

Ms. McKeel said that while she was not against dogs or dog parks, she did not know why this had to be a requirement, and was curious as to what other Supervisors would say.

Ms. Palmer asked if there was still a storage building planned in this portion of the development.

Mr. Redinger replied yes, noting that they have included a number of design elements to shield this and make it more approachable. He said along the front street level or retail level, they have designed 5,000 square feet of what they call "flex space" from the front of that building. He said this will look like a more traditional retail business, and that the architectural elements will shield the other two stories that are above that grade.

Mr. Redinger said Class A office is relatively expensive to build and is not affordable for all types of businesses, so the flex space in the storage building (because of the construction type) allows for more affordability for start-ups or small businesses that still want to be located in an opportunity zone. He said if there is a small Etsy shop, for instance, with a decent amount of inventory, the business owner can access that storage space as warehousing space. He said it provides flexibility for businesses to not only take advantage of the opportunity zone, but to grow into necessary inventory storage.

Mr. Redinger said two stories of the self-storage building are below grade, so one would never see those unless they drove to the back of the site.

Ms. Palmer said with respect to the dog park, she believes it is a nice compromise to say that it is there unless the County and developer decide otherwise. She said this will let them decide if there is a better use of that property that provides good to the community. She said she personally felt this was something that was needed, but that she also recognized that giving the latitude there to the staff and developer should work out fine.

Mr. Johnson said he knew that people on the call were familiar with the term “opportunity zone,” but that many in the public may not be. He said for those listening in, opportunity zones are federally-designated areas that allow people to use capital gains tax to invest in either a business and or/structure and not have to pay capital gains like they normally would. He said the longer they invest, the less taxes they have to pay on those capital gains. He said there is both an investment and a tax diversion incentive for people to invest in those areas.

Ms. Price said she was supportive of the proposal. She said development that only includes residential or retail is not going to pay the bills the County needs to, and will not provide the needed economic stimulus in the development. She said geographically, the location of the proposal seems to fit in perfectly with what they are looking for in the County. She said reserving 25,000 square feet of Class A office space for five years is critical to achieving that objective.

Ms. LaPisto-Kirtley agreed with Ms. Palmer with regard to the dog park, noting that there was enough flexibility to change things. She said she liked the idea of a dog park.

Ms. LaPisto-Kirtley asked what would happen at the end of the five years of office space reservation if nothing happened in that space (e.g. due to a potential economic situation).

Mr. Johnson said generally, the hold they have as a County to reserve that space for businesses is lost, and that Mr. Redinger would be able to build a Class A office space for a nonprimary business (e.g. law firm, accounting firm) that may not produce a good or service locally and sell it outside the area.

Ms. LaPisto-Kirtley observed it would benefit the County to sell the Class A office space, as it would bring the County more revenue.

Mr. Johnson said that was correct.

Ms. LaPisto-Kirtley said she liked the proposal and was very much in favor of it.

Ms. Mallek said the synthetic TIF is the taxes paid on the increase in value being over and above the value that it is today. She said this is where the taxes are then returned, but that the base taxes stay with the County. She asked if this was correct.

Mr. Johnson replied yes. He said a synthetic Tax Increment Financing means they will establish a baseline. He said if, for example, a property is worth \$1 million today and is assessed in a future year at \$2 million, the incremental value is \$1 million more than the baseline, which would be the determining factor of how much rebate the developer would be eligible for.

Mr. Gallaway said there is a dire need for this type of primary office space in the County. He said it has been painful to have some businesses started in the County that they have lost. He said had this space already been online, they may not have lost those businesses. He said those entities were actively looking for places in the County and couldn't find them, so this is something the County desperately needs because the goods or services being produced here and then being sold outside the area is something the County needs to have in the local economy.

Ms. McKeel said she feels comfortable with the dog park issue. She said she was trying to avoid Mr. Redinger having to come back to the Board to remove a dog park, and that she was comfortable if this was simply going to be handled between Mr. Redinger and County staff.

Mr. Newberry said the specific language of the agreement does say, “Unless the developer and the County agree to it,” and so he would need to defer to Mr. Kamptner to confirm that he and Mr. Johnson are authorized to make that determination.

Mr. Kamptner said they could insert the appropriate language. He said it could read, “The developer and the County Executive,” or, “The developer and the Director of Community Development,” or, “The developer and the Director of Economic Development.”

Ms. McKeel said she would be happy with inserting some language, as she did not want this potential removal to be another step to have to come back to the Board. She said she thought the language was confusing.

Mr. Gallaway agreed, noting that there were different understandings of the word, “County.” He said he presumed this meant staff.

Ms. McKeel said she hoped the same, but that it was not apparent.

Ms. Palmer said she assumed it meant Community Development.

Mr. Kamptner said that inserting a particular officer would add clarity so that there is no doubt and would not have to come back to the Board.

Mr. Gallaway asked who the appropriate officer would be.

Mr. Kamptner said it could be the Director of Community Development, or the County Executive.

Mr. Walker suggested it be the County Executive.

Ms. Mallek agreed, noting that this way, different departments would be drawn in to help inform the decision.

Ms. Price said this was the language with the proposed resolution, to authorize the County Executive.

Mr. Kamptner clarified that this was to sign the agreement itself once complete. He said they would make the change to insert "County Executive" into the language about the dog park.

Ms. LaPisto-Kirtley **moved** to execute an Economic Development agreement for a public-private partnership (PPP) with Albemarle Business Campus (Attachment B) as amended. Ms. McKeel **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Gallaway, Ms. LaPisto-Kirtley, Ms. Mallek, Ms. McKeel, Ms. Palmer, and Ms. Price
NAYS: None

**RESOLUTION APPROVING AN AGREEMENT BETWEEN
THE COUNTY OF ALBEMARLE, THE ALBEMARLE COUNTY
ECONOMIC DEVELOPMENT AUTHORITY, AND
5TH STREET FOREST, LLC**

WHEREAS, the Board finds it is in the best interest of the County to enter into an Agreement with the Albemarle County Economic Development Authority and 5th Street Forest, LLC, subject to the Board's approval of ZMA201900003 Albemarle Business Campus, that outlines 5th Street Forest, LLC's provision of various elements of development in exchange for its receipt of Synthetic Tax Increment Financing Grants from the County Economic Development Authority as provided by the County.

NOW, THEREFORE, BE IT RESOLVED that the Albemarle County Board of Supervisors hereby approves the Agreement referenced above, subject to the Board's approval of ZMA201900003 Albemarle Business Campus, and authorizes the County Executive to execute the Agreement, subject to its approval as to substance and form by the County Attorney.

Signed this 15th day of April 2020.

* * *

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("**Agreement**") is made as of April 15, 2020, by and among the COUNTY OF ALBEMARLE, VIRGINIA, a political subdivision of the Commonwealth of Virginia (the "**County**"), the ECONOMIC DEVELOPMENT AUTHORITY OF THE COUNTY OF ALBEMARLE, VIRGINIA (the "**EDA**") a political subdivision of the Commonwealth of Virginia, and 5th STREET FOREST LLC, a Virginia limited liability company (the "**Developer**"). The EDA, the County and the Developer are collectively the "Parties."

PURPOSE OF THE AGREEMENT

A. The Developer is the owner of certain property located in Albemarle County, Virginia, and described as Albemarle County Tax Map Parcels Nos. 76-54 and that portion of 76-46A sitting northeast of Old Lynchburg Road containing 8.55 acres, more or less, (the "Property") and shown on the attached **Exhibit** (the "Project Exhibit") which the Developer intends to develop for commercial and retail uses as outlined in the Code of Development (the "Project"). The remainder of Tax Map Parcel 76-46A (the "Residential Property") located southwest of Old Lynchburg Road is being developed by the Developer as a multifamily residential development (the "Residential Project")

B. The County seeks to promote the economic development and the increased vitality of the 5th Street Extended area; provide an opportunity for a permanent location for a primary business as contemplated by the County's economic development plan, Project ENABLE; and ensure the Project's development sooner than it likely would have happened without incentives.

C. The Project is consistent with, promotes, and implements several policies, objectives, and strategies of the Albemarle County Comprehensive Plan (the "Comprehensive Plan"):

a. Growth Management Chapter. The Growth Management chapter of the Comprehensive Plan includes Strategy 1b: "To help promote the Development Areas as the most desirable place for growth, continue to fund capital improvements and infrastructure and provide a higher level of service to the Development Areas."

b. Community Facilities Chapter. The Community Facilities chapter of the Comprehensive Plan includes Objective 1: "Continue to provide public facilities and services in a fiscally responsible and equitable manner."

c. Economic Development Chapter. The Economic Development chapter of the Comprehensive Plan includes Objective 1: "Promote economic development activities that help build on the County's assets while recognizing distinctions between expectations for the Development Areas and the Rural Area" and Strategy 4c: "Explore opportunities to assist with redevelopment of underutilized commercial and industrial zoned properties."

d. Economic Development Strategic Plan. The Economic Development Strategic Plan states: “Goal 4 – Seek private investment to further the public good” and its three objectives: “Objective 1 – Partner with others to develop projects that result in a public good or enhance natural resources,” “Objective 2 – Support development projects that capitalize on our assets, inspiration, and potential to create unique and community-based public spaces,” and “Objective 3 – Lead the development of public-private partnerships that increase direct private investment.”

D. **The Investment in the Project.** The amount of funding and private investment by the Developer, the County, and the EDA in the Project is estimated to be approximately \$40,000,000.

E. **The Animating Public Purposes of this Agreement.** The animating public purposes for the County to enter into this Agreement include:

a. Promoting Economic Development. Promoting the economic development and the increased vitality of the County and the 5th Street Extended area and to leverage the area’s Opportunity Zone designation.

b. Enhancing the County’s Tax Base and Jobs Base. Enhancing the County’s tax base and jobs base by facilitating the development of land in the development area into a mixed use development that, when developed will include commercial uses and public spaces and will provide employment and commerce in an area with existing and expanding number of residential units.

F. **The Incentives to Enable the County to Achieve the Animating Public Purposes.** To further incentivize and financially support the Developer in its construction of the Roads and the Plaza, the County Board of Supervisors (the “Board”) agrees, subject to the terms and conditions of this Agreement, to:

a. Provide Financial Support through the EDA for Development Upgrades and to Reserve 25,000 square feet of Space for a Primary Business. Pay to the Developer or Developer’s Bank up to \$100,000 through funds transferred to the EDA originating from the Developer’s incremental increases in its real estate tax payments according the below terms.

G. **Developer’s Acceptance of the Incentives and Related Obligations.** The Developer agrees to such Payments from the County and the EDA described in this Agreement as an incentive for the Developer to (i) provide and construct enhanced connectivity throughout the project site for the public, including sidewalks, pathways, and pedestrian crossings, (ii) provide bicycle parking and racks at all project buildings, (iii) provide and construct an enhanced bus stop that includes an enclosed shelter with glass, lighting, and seating, and (iv) reserve at least 25,000 square feet of Class A office space and associated parking for up to 60 months for a primary business tenant.

H. **This Agreement is Contingent Upon, But Not in Exchange for, Approval of ZMA 2019-00003.** This Agreement is contingent upon the County Board of Supervisors approving (the "Zoning Approval") ZMA 2019-00003 (the "Rezoning") which, as currently proposed, would allow the uses and densities to enable the Project and the Residential Project. However, this Agreement is not, and should not be construed to be, an Agreement by the Board to rezone the Property. In its consideration of ZMA 2019-00003, the Board may and will exercise its full legislative powers and discretion as authorized by law.

I. **Enabling Authority.** The County and the EDA are authorized to enter into this Agreement and to make the cash contributions and transfers as provided in this Agreement to the Developer pursuant to the following:

a. Virginia Code § 15.2-953. Virginia Code § 15.2-953 enables the County to give funds to the EDA for the purposes of promoting economic development.

b. Virginia Code § 15.2-1205. Virginia Code § 15.2-1205 enables the County Board of Supervisors to give, lend, or advance in any manner that it deems proper funds or other County property, not otherwise specifically allocated or obligated, to the EDA.

J. Virginia Code § 15.2-4905(13). Virginia Code § 15.2-4905(13) enables the EDA to make loans or grants to any person, partnership, association, corporation, business, or governmental entity in furtherance of the purposes of the Industrial Development and Revenue Bond Act (Virginia Code § 15.2-4900 et seq.), including for the purposes of promoting economic development, provided that any loans or grants are made only from revenues of the EDA which have not been pledged or assigned for the payment of any of the EDA's bonds.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **INTERPRETATION.**

- a. **Captions.** Captions in this Agreement are for convenience of reference only and shall not be used to interpret this Agreement.
- b. **Gender; Number; Including.** The use of any gender in this Agreement shall refer to all genders, and the use of the singular shall refer to the plural, as the context may require. The term "including" and variants thereof shall mean "including without limitation."
- c. **Not Construed Against Drafter.** The Parties and their respective legal counsel have fully participated in the preparation and negotiation of this Agreement, and accordingly waive any rule of construction that this Agreement be construed against its drafter.

- d. **Severability.** If any provision of this Agreement is held to be invalid or unenforceable, such provision shall be severable and the remainder of this Agreement shall continue in full force and effect.
- e. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall constitute an original and all of which shall constitute one and the same instrument.
- f. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without reference to conflicts of law principles.
- g. **Project Exhibit.** The Project Exhibit is not a site plan for the Project, but is intended to show the general locations of items referenced in this Agreement.

2. DEVELOPER'S OBLIGATIONS

- a. **Rezoning.** The Developer has its modified application for rezoning of the property pending before the Albemarle County Planning Commission. The Developer shall use its best efforts to complete the rezoning from Residential Area (R-10 & R-2) to Neighborhood Model District by July 31, 2020.
- b. **Conceptual Plan.** The Developer will submit a conceptual building plan (including a rendering and/or architectural drawings) to the County's Office of Economic Development (EDO) within four (4) weeks of the Zoning Approval. The EDO will have one week to review the plan for approval and concurrence, which shall not be unreasonably withheld.
- c. **Governmental Approval & Permitting.** The Developer shall apply for and use its best efforts to obtain all governmental approvals and permits necessary to construct a building or buildings with at least 25,000 square feet of space in which to locate a Primary Business and provide Class A Office Space. In addition to the Rezoning, this includes the approval of a final site plan.
- d. **Capacity.** The Developer (including the manager and all members and partners) must demonstrate financial capacity to the County and pass a general background check, both satisfactory to the County. Such proprietary information will be provided subject to a confidentiality agreement from the County in form and substance satisfactory to the Developer. Any information provided subject to such confidentiality agreement shall be exempt from disclosure under the Virginia Freedom of Information Act.
- e. **Reserve Space for Primary Business.** The Developer must reserve at least 25,000 square feet of Class A Office Space within Block 2, Block 3, or a combination of the Blocks (the Blocks are shown on the Project Exhibit) as the Developer and the County may agree. This space reservation will continue for 60 months for a Primary Business to occupy

from when the Developer has obtained the later of: (i) site plan approval or (ii) Architectural Review Board approval for a building on either Block with sufficient space. A "Primary Business" is a commercial or industrial entity that produces goods or services locally and generates more than 50% of its sales revenues from outside the Charlottesville Metropolitan Statistical Area (City of Charlottesville and the Counties of Albemarle, Greene, Fluvanna, Nelson, and Buckingham).

- f. **Lease to a Primary Business.** Subject to Subsection (e) above, the Developer agrees to lease or sell at least 25,000 of Class A Office Space to a credit worthy Primary Business at a fair market rate or fair market value as the case may be. The Developer and the County agree to bargain in good faith to satisfy this condition.
- g. **Enhanced Connectivity.** The Developer will provide enhanced connectivity throughout the site to provide community access from the Project's southern boundary to its northern boundary. Enhanced connectivity will include pathways, paved sidewalks, and raised pedestrian road crossings. The final design must substantially comport with the Project Exhibit.
- h. **Dynamic Transport Pick-Up.** The Developer will provide space within the Project for automobile passengers to access for-hire, hailed transport services (i.e. taxicab, transportation network partner, JAUNT vehicle, or otherwise) as shown on the Project Exhibit.
- i. **Enhanced Bus Stop.** The Developer must provide an enhanced bus stop along the Project's southern boundary to accommodate public transportation. The stop must include a glass shelter, lighting, adequate seating, and bicycle parking racks. The design and provisions are subject to the County's approval, which cannot be withheld unreasonably.
- j. **Bicycle Racks.** The Developer must install bicycle parking racks at all buildings within the Project.
- k. **Dog Park.** The Developer shall construct a Dog Park in the location shown on the Project Exhibit unless the Developer and the County agree otherwise.

3. COUNTY'S OBLIGATIONS.

- a. The County, by and through its Economic Development Office, will create collateral material to provide to its consultant, Retail Strategies, to market retail space in Block 4 of the Project for two years from final approval of the site plan.
- b. The County, by and through its Economic Development Office, will co-market the reserved 25,000 square foot space to prospective eligible Primary Business tenants or purchasers and will provide Developer with leads until the space is occupied by a Primary Business or five years from the final site plan approval, whichever occurs sooner.

- c. The County, by and through its Economic Development Office, will post and update promotional information about the Project to the Virginia Economic Development Partnership website, the Opportunity Virginia website, and other County websites and platforms where entrepreneurs and primary businesses intersect and frequent.
- d. The County, by and through its Economic Development Office, will support the Developer's requests for
 - i. expedited development and governmental agency review if the Project is deemed eligible under County development and review guidelines;
 - ii. the Developer's efforts to obtain Virginia Department of Transportation approval of road designs; and
 - iii. the Developer's request for alternative parking solutions for the Project.
- e. The County will provide the EDA funding for an Enhanced Development and Primary Business Reservation Incremental Tax Grant (the "Grant"), subject to the County's Board of Supervisors annual appropriation.
 - i. The Grant funding will total \$100,000.00;
 - ii. The County will fund the Grant annually;
 - iii. The Grant funding obligation will start after the County issues the first real estate tax bill in which the real estate assessment for the Property exceeds the Base Assessment;
 - iv. The Grant funding obligation will be based on 100% of real estate taxes the Developer pays on the Tax Increment;
 - v. The Tax Increment will be calculated by subtracting \$1,323,786.58 (the total 2020 real estate assessment for the Property) (the "Base Assessment") from the assessed value of the Property as determined by the County's Real Estate Assessor, Department of Finance for the year in which taxes are due;
 - vi. The County will provide the EDA the required funding for the Grant annually within thirty (30) days after the annual second-half real estate tax payment deadline; and
 - vii. The Grant funding will continue until the County has funded \$100,000.00 to the EDA.

4. **EDA's Obligations.**

- a. So long as the Developer is in compliance with this Agreement and the County has disbursed the Grant funding proceeds to the EDA, the EDA will disburse annually the Grant funds to the Developer within thirty (30) days of receipt; and

- b. The EDA shall not be obligated to pay the Developer if the County does not first provide the EDA with the funds. The EDA's only obligation to the Developer is to provide the Developer with the Grant funds that the County provides to the EDA.
-
5. **Reporting.** At the request of the County Executive, no more frequently than annually, the Developer shall report, document, and verify to the County, at the Developer's expense, a written report that verifies the Project's progress. The report must be in a form and having a content reasonably satisfactory to the County Executive or his designee. Upon the County's reasonable request for additional information, the Developer will provide such additional information related to this Project and reasonably satisfactory to the County before disbursement of Grant funds. No Grant payment shall be made until the County receives adequate documentation and verification.
6. **Default.** The following constitute default and allow the non-defaulting party to seek a remedy:
- a. A party fails to make a payment when the payment becomes due and payable and such failure continues uncured for at least 30 days after receipt of written notice of failure from the non-defaulting party; or
 - b. A party fails to perform any other obligation this Agreement requires as and when such performance is required and such failure continues uncured for at least 60 days after receipt of written notice of failure from the non-defaulting party. If the failure is not reasonably susceptible of being cured within the 60 day period, then the 60 day period to cure will be extended so long as the defaulting party starts making efforts to cure within the 60 day period and thereafter diligently pursues completion of the cure.
7. **Remedies.** Upon a default that is not cured pursuant to Section 6, the non-defaulting party shall have the option to:
- a. Terminate this Agreement by written notice to the defaulting party; or
 - b. Pursue such other rights and remedies as may be available under law.
 - c. If the Developer is in default, then any Grant funds remaining in escrow with the EDA and not paid to the Developer shall be returned to the County.
8. **Term.** The term of this Agreement shall commence on the date this Agreement is executed by all the Parties and shall continue until the later of (i) the Developer's obligation to reserve the space provided for in Section 2(e) has ended or has been satisfied or (ii) the Developer has received all Grant funds due from the County as provided for in Section 3(e) or unless terminated sooner by any Party under the terms of this Agreement.

9. **Effect of Termination.** The termination of this Agreement for any reason shall not affect any right, obligation or liability which has accrued under this Agreement on or before the effective date of such termination.
10. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. Notwithstanding the foregoing, the following limitations on assignment shall apply:
- The Developer shall not assign its rights or obligations under this Agreement without the prior written approval of the EDA and the County.
 - Neither the EDA nor the County shall assign its rights or obligations under this Agreement to any Entity other than the EDA or the County without the prior written approval of the Developer.
11. **Notice.** All notices and other communications given or made pursuant to this Agreement ("**Notice**") shall be in writing and shall be deemed effectively given upon the earlier of actual receipt or: (a) personal delivery to the party to be notified, (b) when sent, if sent by electronic mail or facsimile, during normal business hours of the recipient, and if not sent during normal business hours, then on the recipient's next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) business day after deposit with a nationally recognized overnight courier, freight prepaid, specifying next business day delivery, with written verification of receipt. Any notices sent by email shall only be valid with a read receipt and if a copy of the Notice is also sent by regular mail. All notices shall be sent to the addresses set forth below. A party may designate other or additional addresses in writing according to this section.

County: Albemarle County Executive's Office
401 McIntire Road
Charlottesville, Virginia 22902
ATTN: Jeffrey B. Richardson, County Executive
jrichardson3@albemarle.org

With a copy (which does not constitute notice) to:

Albemarle County Attorney
401 McIntire Road
Charlottesville, Virginia 22902
ATTN: Greg Kamptner, County Attorney
gkamptner@albemarle.org

EDA: Albemarle Economic Development Authority
401 McIntire Road
Charlottesville, Virginia 22902
ATTN: Rod Gentry, Chair
rgentry@albemarle.org

With a copy (which does not constitute notice) to:

Economic Development Office
Roger Johnson, Director Albemarle EDO
401 McIntire Road
Charlottesville, Virginia 22902
rjohnson2@albemarle.org

Developer: 5th Street Forest LLC
c/o Kyle Redinger
250 W. Main Street, Suite 201
Charlottesville, Virginia 22902

With a copy (which does not constitute notice) to:

Flora Pettit PC
530 East Main Street
Charlottesville, Virginia 22902
ATTN: Donald D. Long, Esq.
ddl@fplegal.com

12. **Amendments.** Modification or amendment of this Agreement and waiver of any of its provisions must be done only in a writing executed by the party against whom such modification, amendment or waiver is sought to be enforced.
13. **Non-appropriation.** The obligation of the County to contribute the Grant as provided in this Agreement is subject to and dependent upon appropriations being made from time to time by the Board. Therefore:
 - a. Obligations in the Event of Non-appropriation. If the Board of Supervisors does not appropriate funds for the Grant, then this Agreement terminates and the Developer shall have no further obligation under this Agreement.
 - b. This Agreement does not Establish an Irrevocable Obligation. Under no circumstances shall this Agreement be construed to establish an irrevocable obligation on the County to fund the Grant as provided in this Agreement.
14. **No Goods or Services Received by the County or EDA.** The Grant funds transferred by the EDA to the Developer pursuant to this Agreement are solely to enable the Developer to construct the enhanced Project elements and facilitate the location of a Primary Business within the Project. The descriptions of the services that the Developer will provide support the Grant's public and economic development purposes and are not a description of goods or services being procured by the EDA or the County.

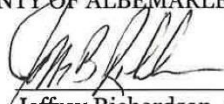
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15. **Non-severability.** If any provision of this Agreement is determined by a court having competent jurisdiction to be unenforceable to any extent, the entire Agreement is unenforceable.
16. **Governing Law and Venue.** This Agreement is to be governed by and construed in accordance with the laws of the Commonwealth of Virginia. Venue for any litigation arising out of our involving this Agreement shall lie in the Circuit Court of the County of Albemarle or in the United States District Court for the Western District of Virginia. An action shall not be brought in any other court.
17. **Interpretation of this Agreement.** This Agreement shall be interpreted in accord with how any terms are defined in this Agreement and otherwise by applying the plain and natural meaning of the words used, and not for or against any party by reason of authorship.
18. **Dispute Resolution.** If there is a dispute of any kind between any parties arising under this Agreement, upon the written request of a party:
- a. **Designation of a Senior Representative; Negotiation.** Each of the parties to whom the dispute pertains will designate one or more senior representative to negotiate with the other parties' senior representative in good faith and as necessary to attempt to resolve the dispute without any formal proceedings.
 - b. **Corrective Action.** If the negotiated resolution of the dispute requires any party to take, cause to be taken, or cease taking some action or practice, that party shall do so within a reasonable period of time, not to exceed 90 days.
 - c. **Dispute Resolution Process a Prerequisite to Starting Court Proceedings.** No party may initiate court proceedings by filing an action in a court of competent jurisdiction to resolve a dispute until the earlier of: (i) a good faith mutual conclusion by the senior representatives that amicable resolution through continued negotiation of the dispute does not appear likely; or (ii) 90 days after the initial request to negotiate the dispute. After either condition has occurred, a party may file an action in the jurisdiction and venue provided in this Agreement and may pursue any other remedy available at law or in equity. Each party shall pay its own attorney's fees.
 - d. **When the Dispute Resolution Process is Not Required.** Nothing in this Section 7.13 will, however, prevent or delay a Party from instituting court proceedings to: (i) avoid the expiration of any applicable limitations period; or (ii) seek declaratory and injunctive relief.
19. **Relationship of Parties.** This Agreement is intended solely to establish the relative rights and obligations of the parties and does not create any type of partnership, joint venture, purchaser-vendor, or employer-employee relationship.

20. **No Third-Party Beneficiaries.** This Agreement does not confer any rights on any person or entity who is not a party, whether as a third-party beneficiary or otherwise.
21. **No Waiver of Sovereign Immunity or Other Immunities.** This Agreement and any action taken by the County, the EDA, or their respective Boards pursuant to this Agreement is not, and shall not construed to be, a waiver of either sovereign immunity or any other governmental immunity that applies to the County, the County's Board of Supervisors, the EDA, or the EDA's Board of Directors.
22. **Non-liability of County and EDA Officers and Employees.** No County Supervisor or other County officer or employee, and no EDA Director or other EDA officer or employee, shall be personally liable to the Developer if there is any default or breach by the County, the Board, the EDA, or the EDA's Board of Directors pursuant to this Agreement.
23. **Indemnification and Hold Harmless.** The Developer agrees to indemnify, hold harmless, and defend the County, the EDA, and their supervisors, officers, directors, agents, and employees from any and all liability, loss, damage, claims, causes of action, and expenses (including without limitation reasonable attorneys' fees), caused or asserted to have been caused, directly or indirectly, by the Developer in connection with the performance of this Agreement. This includes any act or omission of an officer, director, agent, employee, or representative of the Developer, its successors and assigns, to the extent that such liability or damage is caused in whole or in part by such party's default or breach, negligence, or intentional misconduct. The provisions of this section shall survive termination of this Agreement as to acts or omissions occurring prior to the effective date of termination.
24. **Force Majeure.** If any Party's timely performance of any obligation in this Agreement is interrupted or delayed by any occurrence that is not caused by the conduct of the officers or employees of either the County, the EDA, or the Developer, whether the occurrence is an "Act of God" such as lightning, earthquakes, floods, or other similar causes; a common enemy; the result of war, riot, strike, lockout, civil commotion, sovereign conduct, explosion, fire, or the act or conduct of any person or persons not a party to or under the direction or control of the County, the EDA, or the Developer, then performance is excused for a period of time that is reasonably necessary after the occurrence to remedy the effects thereof.
25. **Entirety of Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any and all oral discussions, agreement, or understanding.

[SIGNATURES PAGE FOLLOWS]

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

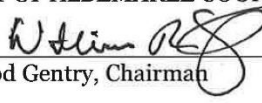
COUNTY OF ALBEMARLE, VIRGINIA

By: 
Jeffrey Richardson, County Executive

Approved as to form only:


Greg Kamptner, County Attorney

ECONOMIC DEVELOPMENT
AUTHORITY OF ALBEMARLE COUNTY

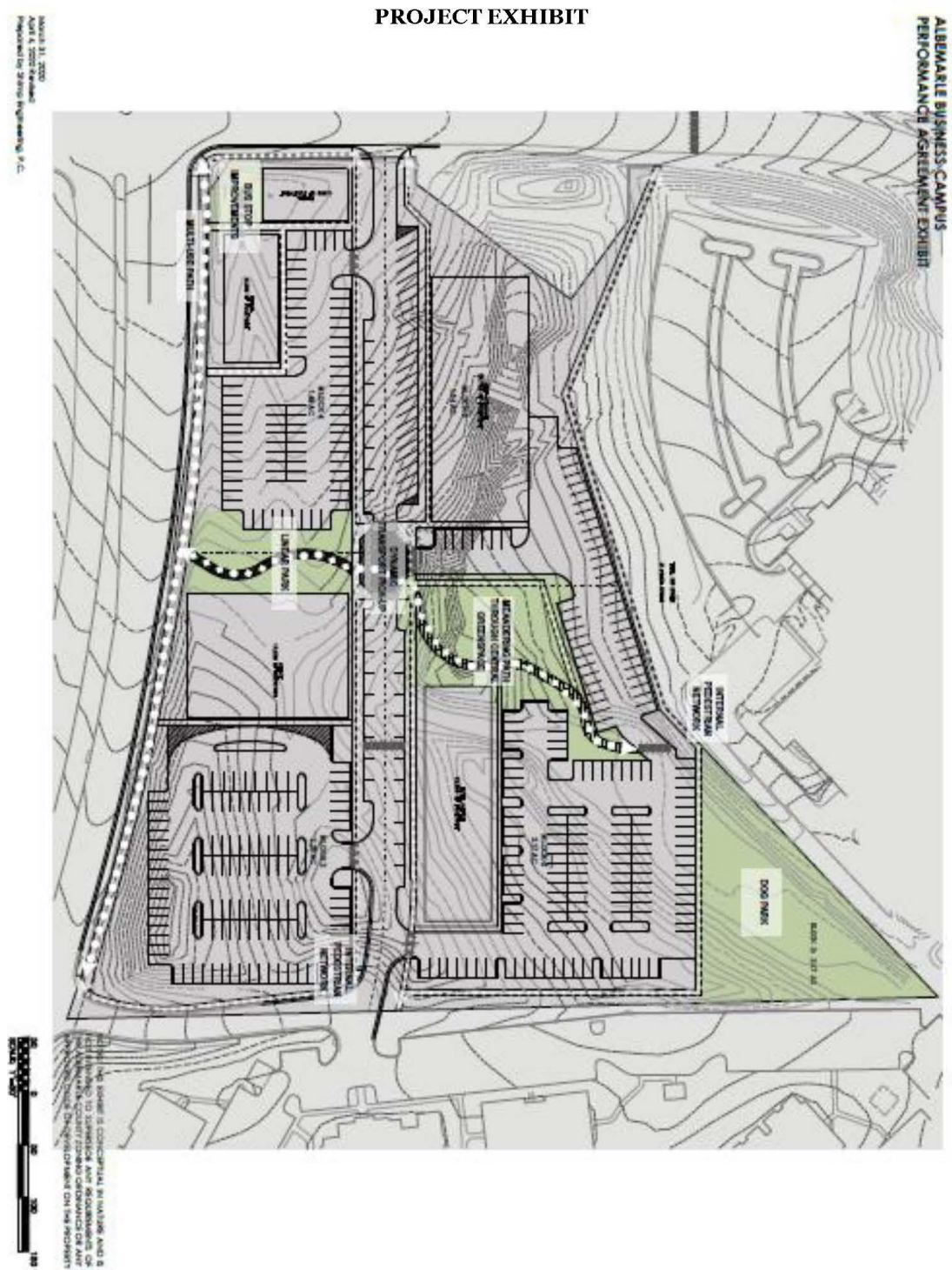
By: 
W. Rod Gentry, Chairman

ATTEST:


Secretary/Treasurer

5th STREET FOREST LLC

By: 
Kyle Redinger, Manager



Recess. The Board recessed the meeting at 4:08 p.m. and reconvened at 5:05 p.m.

Agenda Item No. 9. **Action Item:** Business Recovery Fund to Assist Businesses Impacted by COVID-19.

The Executive Summary forwarded to the Board states that the strategic plan for economic development, Project ENABLE, was approved by the Board of Supervisors on December 5, 2018. During its development, staff engaged with a wide variety of stakeholders in the community to assess existing economic development programs and identify partnerships that would be critical to advancing its mission. This approach ensured the County's economic development goals would be complementary and not duplicative of the community's ongoing efforts.

As a result, Project ENABLE strategically focuses on businesses that earn more than half of their revenues from outside the region (called "primary businesses"), while relying on its partners at the local, regional, and statewide level, to serve consumptive businesses. The Economic Development Office (EDO) works with several different local partners to support the County's consumptive businesses including the Central Virginia Small Business Development Center and the Community Investment Collaborative (CIC).

Nevertheless, the economic impacts of the COVID-19 pandemic are being felt across the world and it requires broad consideration of all businesses within our community. The uncertainty created by

the evolving nature of the public health response and the unknown duration of the public health crisis has led many businesses to significantly reduce or indefinitely suspend operations, as well as furlough or lay-off employees. The response from the County and its economic development partners will play a critical role in how businesses choose to restart operations once the COVID-19 pandemic subsides.

The COVID-19 pandemic will have dramatic impact on local businesses and likely longer-term implications to the overall local economy. Although federal and state-level agencies are providing unprecedented levels of resources and services for emergency relief (such as the Coronavirus Aid, Relief, and Economic Security Act or CARES Act), staff identified gaps for the business community that will exclude impacted businesses locally.

- Some lenders require all 20% minority owners to be listed on applications
- Applications and qualifying standards are changing regularly
- Some banks are only servicing existing clients
- Lenders set the qualifying threshold standards
- 66-day loan processing timeframe
- Lenders don't weigh community needs

As a result of these gaps and community needs, staff is proposing a microloan program. This microloan will help impacted businesses restart operations once the COVID-19 pandemic subsides and after state and local emergency orders are lifted.

Many of the small business relief programs at the federal level are focused on the short-term survival of businesses, where the most valuable benefits expire by June 30th. In contrast, the main goal of the Business Recovery Fund is to restore business activity, employment and critical community services in rural areas to as close to pre-pandemic levels as practical.

Additionally, staff is recommending this microloan include consideration to both equity and community needs. Although loan guidelines are intended to be flexible, County staff will direct the CIC to give additional weighting to rural service providers (examples would be daycare, convenience stores, etc.), as well as small businesses that may not otherwise qualify for a small business loan.

In doing so, this microloan program will further a public good and help increase business and business-related tax revenues such as sales tax, meals tax, BPOL, as well as machinery, tools and equipment taxes. Business and business-related taxes reduce the County's reliance on real property taxes, which are otherwise needed to fund County services. The microloan terms, eligibility requirements, and application process are summarized in Attachment A. The CIC has agreed to administer the application process and manage the loans. The CIC will also provide a report on the overall payment history for the program over the life of the loan fund.

On March 26th, the Economic Development Authority for the City of Charlottesville agreed to contribute \$100,000 to this effort. It is expected that this microloan program will allow other partners including nonprofits and private donors to also contribute to the fund.

Staff anticipates little-to-no impact on staff resources as a result of CIC agreeing to administer the program.

\$200,000.00 is recommended to be provided from the Economic Development Fund to the Economic Development Authority for the Microloan Program. This funding amount, if approved, will reduce the amount intended to support the Project ENABLE goal related to site readiness and staff thinks this is an appropriate re-prioritization of strategic focus at this time given the circumstances. Appropriation of this funding is noted in Attachments B and C. A budget amendment public hearing is not required for this appropriation pursuant to Virginia Code §15.2-2507 because the amount of the cumulative appropriations does not exceed one percent of the currently adopted budget.

Staff recommends that the Board adopt the attached Resolution (Attachment C) to approve the appropriation described in Attachment B.

Mr. Roger Johnson, Economic Development, said he would be joined by Mr. Stephen Davis, President, Community Investment Collaborative, a business partner with Albemarle County that provides Economic Development Services.

Mr. Johnson said many on the Board were familiar with Project ENABLE and its history, but that he would provide a background for context about what they are proposing and why. He said they would talk about business continuity strategy, which is brand new. He said they would talk about a microloan as a subset of a larger strategy. He said in order for the Board to make an informed decision, staff thought it was important to see the larger picture. He said he would then talk about next steps.

Mr. Johnson said Albemarle County created an Economic Development strategic plan called Project ENABLE to enable a better life economically. He said in doing so, they first assessed Albemarle County and completed a SWOT analysis to understand strengths and weaknesses. He said they assessed existing business support and looked at what other partners were providing in terms of services, whether this be the Small Business Association, Small Business Development Center, or Community Investment Collaborative (CIC).

Mr. Johnson said they looked at reviews of existing archives, which include the Comprehensive Plan, previous Economic Development studies, and other existing information. He said they engaged the community through a large outreach and asked what the community would like to see Economic Development focus on, which brought back interesting insights.

Mr. Johnson said they built the plan to focus on primary businesses. He said this is a focus on existing businesses in the area that produce a good or service locally and sell it outside of the metropolitan statistical area to bring funds back in to help with all the things that are done by a local government as well as small business.

Mr. Johnson said there are existing partners who help small businesses, and that the County continues to fund those particular organizations so they can provide services.

Mr. Johnson said there is now a pivot happening that is being proposed. He said Economic Development Office staff was focused on services not provided by partners, and so its strategic initiatives were focused on primary businesses which included business recruitment and expansion. He said they are still providing customized solutions for those businesses. He said they focus on public-private partnerships, innovation, and entrepreneurship. He said this is all part of Project ENABLE, which was approved by the majority of the Board and has been worked on for the past 18 months.

Mr. Johnson said the pandemic has triggered the need for a strategic shift. He said they would like to focus on the continuity of all businesses, meaning that they will continually focus on the things he mentioned before, but they would add to this a business continuity strategy.

Mr. Johnson said they would look at this in three ways. He said they would consider ways that the County can suspend, defer, or remove costs for existing businesses. He said this is a Finance-led initiative that will be led by Mr. Bill Letteri and Ms. Christy Shifflett, and that they will look at different ways to defer costs. He said they are hiring a financial consultant to advise on federal stimulus package information and determine ways the County may be able to leverage those.

Mr. Johnson said Economic Development and others would like to increase access to capital for existing businesses. He said they would do this by connecting businesses to grants, loans, stimulus package, and CARES package. He said they have created a Business Resource Guide where they have consolidated information about what they are doing as a County, to share with the business community.

Mr. Johnson said the microloan fits into this bigger strategy. He said they are requesting permission from the Board to create a microloan program in conjunction with the City. He said it would be asking for \$200,000 of funding in an Economic Development fund, into a collaborative fund. He said the microloan program is for small business, for both recapitalization as well as overcoming community issues.

Mr. Johnson said the EDO is virtually meeting with the City, UVA, Chamber of Commerce, CACVB, Central Virginia Partnership for Economic Development, and others. He said they are monitoring and creating joint initiatives and over the next week, the Board would hear advance notice about a regional initiative. He said he thinks the Board would be excited about how the community is working together to help respond to the crisis.

Mr. Johnson said in working with the City, EDO launched a series of three educational webinars to help small businesses work on strategy and other educational components to help them survive this unprecedented pandemic.

Mr. Johnson said conversely, they are partnering with CAPE, who has been a strategic partner in helping EDO educate the business community on all the significant information going on. He said there is an abundance of resources, but they are spread out and disparate. He said CAPE has helped to consolidate and promote this. He said EDO has agreed to be a single point of contact.

Mr. Johnson said overall, EDO continues to support its partners' initiatives and are promoting things like the CACVB website and other things happening throughout the community.

Mr. Johnson said it was important for the Board to understand how the microloan program fits into a much larger strategy, which will help it move forward in its decision making.

Mr. Johnson said the federal and State response has been significant, and that the CARES Act in particular was large, at \$350 billion set aside for small business loans. He said some portion of this was forgivable. He said this was intended to retain employees.

Mr. Johnson said there have been revised guidelines from the Treasury. He said there had been gaps in the program where some businesses are not served or completely served. He said this was administered by private-sector banks and/or community lending institutions, which had to be certified and they determine what the lending requirement minimum thresholds were. He said many banks determined that they would serve their existing customers first, so if a business had a loan with a large publicly-owned bank, they would serve that business first, and then move secondly to serving those that had an account with them. He said if there were any funds left over to help, they would take on new clients. He said this has left gaps in eligibility.

Mr. Johnson said the overwhelming demand for loans and unemployment insurance is evident in

the news media. He said the leader of the Virginia Economic Development Partnership said at a recent conference that the \$350 billion set aside for lending made up about one-third of the need. He said this program was focused on short-term employee retention. He said while they do expect additional action at the federal level, there is a large lack of detail, and the federal government is looking at this from the microlevel.

Mr. Johnson said he believed the County needs to take action locally to help existing businesses, which is why the Board had a business recovery microloan before it for consideration.

Mr. Johnson said they are specifically proposing to allocate \$200,000 from the existing Economic Development Opportunity Fund and move it to the Economic Development Authority. He said they would then ask the EDA to move that over to the Community Investment Collaborative to administer a microloan program.

Mr. Johnson said in terms of the money the Board set aside a few years earlier, there is a remaining balance of \$1.85 million in these funds. He said this microloan program would reduce that funding to \$1.65 million.

Mr. Johnson said although much of those funds are unencumbered, they are planned. He said that, in fact, there is more Economic Development work than they have funding. He said as the Board makes this decision, they should remember that this will reduce funding for future site readiness programs. He said EDO was advising the Board that they believe it is in their best interest that they shift their focus to help small businesses maintain business continuity at the expense, in some respect, of future funding for site readiness included in Project ENABLE.

Mr. Johnson said the EDA would provide funding to the CIC for microloans for all small businesses. He said this would fill gaps in access to capital that the small businesses are facing, help restore business activity, including recapitalization, and help pay employees.

Mr. Johnson said this program would also focus on essential service for at-risk communities. He said as part of the microloan program, they reached out to the Office of Equity and Inclusion and asked for input to make sure that those in the community who do not often have a voice were heard. He said it was their recommendation that they include a certain percentage or portion of the particular funding to help those at-risk communities.

Mr. Johnson said generally, this microloan program would be administered by the CIC, and that there would be a joint collaboration with the City. He said the EDA allocated \$100,000 of funding to go forward with an initiative of this nature, and that they are waiting to see how the County reacts to that opportunity.

Mr. Johnson stressed that they are providing a system by which other philanthropic endeavors in the community can contribute to. He said there are many people who want to give back to the community who may also take advantage of this particular system and grow this particular fund.

Mr. Johnson said payments and proceeds from this particular loan will remain in a revolving loan fund and will be continuously administered by the CIC, who will continue to help fund small businesses as part of their overarching strategy.

Mr. Johnson said staff's recommendation is for the Board to adopt the resolution to approve the appropriation to the Business Recovery Fund.

Ms. McKeel said Mr. Johnson had indicated that this is a collaborative with the City and County. She asked about UVA.

Mr. Johnson replied that he did not mention UVA.

Ms. McKeel asked if the City was putting in \$100,000 and if the County was putting in \$200,000.

Mr. Johnson replied yes. He said the City has an existing relationship with the CIC, so they had existing funds they are reallocating to different programs. He said while it seems like there is a disproportionate contribution, the City is changing their allocation of approximately \$350,000, and that \$100,000 of it is going towards this program while \$250,000 is going to other similar programs.

Mr. Johnson said he should have mentioned that the money that the County would be moving into this revolving loan fund would be only for Albemarle County businesses, and the monies that the City is contributing would be only for City businesses.

Ms. McKeel said this was good to know, and it was good to know how the monies are going into the fund. She asked how the businesses are identified, such as first come, first serve.

Mr. Johnson replied that they have been moving quickly with this particular item and that normally, before coming to the Board, they have all the details worked out. He said they are trying to move at a rapid speed and have been working on that process.

Mr. Johnson said as it currently stands, they expect to have an application period of 7-10 days, and that this would be an online application. He said if this were approved, the CIC would go about

building that online application process. He said the applicants will come in during that timeframe, and staff will evaluate whether or not they meet the minimum standards. He said if so, there would be some sort of scoring matrix, and round one of loans would be distributed. He said he hoped there would be a second and third round, and that those scoring higher would be given precedence.

Ms. McKeel said she supported the endeavor and understood the necessity of doing this as quickly as possible.

Ms. Palmer said she supported the program. She asked how much of the scoring criteria had been worked out. She said for instance, one thing that has been learned is that businesses with one employee, or only volunteers, have not been helped by federal programs. She asked if those businesses would have a lesser score for that reason. She asked about nonprofits as well.

Mr. Johnson replied that he expects nonprofits to apply, and that they would be encouraged to do so. He said they have not set specifics on the scoring matrix for neither nonprofits nor businesses. He said they have provided some general guidance for the CIC to say that they would like to see about 20% of the funds go to nonprofits, and another 20% going to those at-risk community services, and the final 60% going to any and all businesses. He said there was not a scoring matrix designed at that point.

Ms. Palmer said she was thinking about the Crozet Arts Depot, which serves the public good and helps the bottom line by increasing tourism to that area. She asked how Mr. Johnson envisions a business like this to work into this program, given that they operate with many volunteers.

Mr. Johnson replied that in isolation, almost all the applications look good, and it is difficult to determine how they will score or compare when there are hundreds of applications for the program. He said in isolation, Crozet Arts Depot would be a viable candidate, but without knowing the total number of applications and what the needs are in the community, it is difficult to provide a specific answer.

Ms. Price said as she understood, the County puts in \$200,000 and the City puts in \$100,000 that they are redirecting into the fund, but that other entities or individuals are able to contribute to the fund. She asked if this was correct.

Mr. Johnson replied yes. He said in fact, EDO is hopeful that Mr. Davis, CIC President, will help reach out to philanthropic contacts in the community. He said many of those organizations want to work with the CIC, so there is hope of additional contributions as this moves along.

Ms. Price said it was important that people see that the County and City are putting their money into this. She said with all of this coming through a central funnel, she believes it will provide a more equitable distribution of these assets and not necessarily be on a "first come, first serve" basis. She said she saw this as a great start, and the only thing she would ask is to continue to keep the Board informed so they can look to see what additional steps they can take to help the local businesses.

Mr. Johnson replied that he planned to do so.

Ms. LaPisto-Kirtley asked what the average amount is that is given to a business, and what has been the recovery rate or payback.

Mr. Johnson replied he could not speak as to what the average will be. He said preliminary guidance is that the cap amount of loan will be at \$10,000 with a 1% annual fee.

Mr. Johnson said Mr. Davis' organization serves an under resourced community who is, at times, economically deprived. He said he would imagine the recovery rate could be different than from a traditional bank and asked Mr. Davis to speak to that.

Mr. Davis said that before the pandemic, CIC had worked hard to build relationships with its clients and had a solid repayment rate of over 98%. He said that will not continue with the existing loans, and for these loans, they are risky while providing opportunities to help people potentially survive where they may not have otherwise. He said they will be riskier than the typical business growth loan, but that is part of the reason they are necessary. He said he had no way of knowing exactly how risky they are, and the hope is that CIC is able to recover a large percentage of them over time. He said CIC can provide flexibility to those owners over time to do that, but that it was hard to know exactly how well they would do.

Mr. Davis said CIC's goal is that it is not just about making the loan, but about building relationships. He said through CIC and the partner program with the Small Business Development Center, helping those businesses get the other services they need to be successful is a goal as well.

Ms. Mallek asked if criteria for how the money is to be used exists. She asked if it is important for those who have been in business for some time versus someone who has been in business for much less time as far as their access to these kinds of loans.

Mr. Johnson replied that while there were not criteria for what the money could be used for, there is criteria for what it cannot be used for. He said particularly, they did not want people to use the money to purchase land or to enter into a lease, as the thought is for the use to be focused on the business itself.

Ms. Mallek asked if it cannot be used for rent.

Mr. Davis replied that the idea was that it would not be used for long-term purchases such as land, property, or equipment. He said working capital and expenses of rent would be included. He said they did not want the money to be used to enter into a new long-term lease.

Mr. Johnson thanked Mr. Davis for the clarification. He said that theoretically, it could be used to pay for existing rent.

Ms. Mallek said that regarding the triaging amongst the different candidates, she assumed there would be tremendous competition for the money. She asked how they would determine how to award it, whether it be about years of experience or ability to succeed.

Mr. Johnson asked if Mr. Davis could speak to the way CIC looks at credit history.

Mr. Davis replied that the two core criteria CIC would include looking at whether or not the business had a business license in 2019 and has a current license in 2020. He said this would ensure that the business was in operation for at least 4-6 months or longer.

Mr. Davis said another set of criteria was that before March 1, the business demonstrating through tax returns and other documents that they had the capacity to make the loan payment. He said if they did not have enough money left over with their normal operations before March 1 to afford the loan payment, then they would not be approved. He said they need to be doing well enough to have what will effectively be a \$300 loan payment to do that before March 1. He said obviously after March 1, many businesses started to feel the effects of COVID-19, so CIC would not be considering that timeframe.

Mr. Davis said another factor is personal credit, and CIC is sensitive to that. He said they are about providing opportunities to those who may not have always had them, and sometimes this means they do not have well-established personal credit or have had some tough points in their credit histories. He said CIC is looking for people who, at least in the last 12 months, have somewhat stabilized their personal credit situation. He said if they had a bad 2015, 2016, or 2017 and got into a hole, and have been working during the past year to stabilize that, CIC would still consider them. He said in the last 12 months, if they are continually behind on payments to other creditors, they would likely be scored lower and would be less likely to receive the loan.

Mr. Gallaway said time is critical and while he could understand the need for a scoring process and the interest in it, he would encourage it to not be overly complex with several rounds that would prevent the applicants from receiving the microloans. He said the need is critical for them to receive it, and the first round about the eligibility and loan terms are standard, which he is satisfied with and would likely eliminate some people. He said the fact that they cannot use it to pay existing debt was important, as the microloans would not be going to those people but would be going to viable places that have employees and will help to keep them afloat during this time period.

Mr. Gallaway said that while he could appreciate the desire for a scoring process, he would caution not to make this overly complex where it draws the time out, where the timing for the applicant becomes problematic for them. He said if they receive the money two weeks too late, it will not matter if they get the money.

Mr. Gallaway said he appreciated the comment Mr. Davis made about it being riskier, but that the money is being focused on the things that are the correct stabilizers, which goes to the point he just made about it not being used to overextend by purchasing extra property, purchasing additional equipment that is not pertinent at this time, or paying off past debt. He said the money would go to paying current operating expenses and employee wages. He said this is the stabilizer that could lessen the risk.

Ms. Palmer clarified that she did not want to hold up the process. She said her questions about the criteria were specifically geared towards people who do not qualify under the federal stimulus. She said she wanted to make sure that they did not have the kind of criteria that would throw out those people like the federal programs did. She said this was her main reason for asking the questions she did.

Ms. Palmer said she is concerned about the Crozet Music and Arts School, as well as the Crozet Art Depot, and their not being able to qualify for those other loans. She said she was trying to make sure that they were eligible to apply for this.

Ms. McKeel said she understood that they could not say at this point which businesses would succeed. She asked if the two businesses Ms. Palmer mentioned would qualify to go into the pool to be evaluated with the other applicants.

Mr. Johnson replied yes. He said they could certainly apply.

Ms. McKeel asked if there was nothing that would exclude those businesses from applying.

Mr. Johnson replied that was correct.

Ms. McKeel said she wanted to be sure that they were talking about local small businesses. She said she did not know exactly what the criteria of that is, but that there are many large businesses and chains in the area. She said she wanted to make sure they were talking about who they consider to be local small businesses.

Mr. Johnson said he was not only talking about local small businesses, but about local, existing small businesses. He said they want to focus on those who already have a presence.

Ms. Price **moved** to adopt the resolution to approve the appropriations described in Attachment B. Ms. McKeel **seconded** the motion.

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

AYES: Mr. Gallaway, Ms. LaPisto-Kirtley, Ms. Mallek, Ms. McKeel, Ms. Palmer, and Ms. Price

NAYS: None

**RESOLUTION TO APPROVE
ADDITIONAL FY 2020 APPROPRIATION**

BE IT RESOLVED by the Albemarle County Board of Supervisors:

- 1) That Appropriation #2020056 is approved; and
- 2) That the appropriation referenced in Paragraph #1, above, is subject to the provisions set forth in the Annual Resolution of Appropriations of the County of Albemarle for the Fiscal Year ending June 30, 2020.

Signed this 15th day of April 2020.

Agenda Item No. 10. **Action Item:** HS201900020 Homestay Special Exception (McGough).

The Executive Summary forwarded to the Board states that the applicant requests one special exception pursuant to County Code § 18-5.1.48(i) for an existing Homestay at 1874 Thomas Jefferson Parkway to modify County Code 18-5.1.48(j)(1)(v) to reduce the required 125 foot setback from one side property line for a Homestay use.

Please see Attachment A for full details of staff's analysis and recommendations.

Staff recommends that the Board adopt the attached Resolution (Attachment F) to approve the special exception with the conditions contained therein.

Ms. Rebecca Ragsdale, Principal Planner, presented. She said she would provide two updates on homestays before reviewing the Special Exception items.

Ms. Ragsdale reminded the Board that the work session where they had planned to review the Homestays Compliance Program and the regulations that were adopted in August 2019 is now rescheduled for June 3.

Ms. Ragsdale said staff continues to work on how they might display or provide people with application information in GIS. She said there was a request about how to either show that in GIS as a map layer, or perhaps in another place under Property Information. She said staff thinks this will be valuable information to have not only for homestays and Special Exceptions, but possibly for other types of applications as well. She said staff will keep the Board updated on this as they develop options.

Ms. Ragsdale said the Homestay Special Exception application HS201900020 has been named by the applicant as "The Gateway to Monticello," as it is close to Monticello. She said she would remind the Board of the homestay regulations that apply to the parcel. She said because the parcel is greater than 5 acres, the applicant may rent up to five guestrooms. She said in this case, the proposal is for three guestrooms within an existing structure.

Ms. Ragsdale said all the other requirements apply that apply to other homestays, including that the owner resides on the parcel, has approval of the Homestay Zoning Clearance where staff has verified the safety inspection and parking, is providing neighbors with emergency contact information, and annual safety inspections.

Ms. Ragsdale said there are four regulations in the ordinance which applicants can request to waive or modify. She said in this case, the application is requesting the reduced setback from one property line to the east.

Ms. Ragsdale said she would review the characteristics of the property, but that she would remind the Board of the criteria in the ordinance and what staff bases its analysis on in terms of the specific request and looking at any detriment to abutting lots or harm to public health, safety, or welfare for the Special Exceptions.

Ms. Ragsdale said the property is on Route 53 just a couple miles east of Monticello and other attractions in the County. She presented a map that showed the abutting property owners that would

receive a notice from the County. She said included in the application packet that the applicant submitted was a letter of support from a property owner to the east. She said staff did not hear any other questions or comments from the mailing that was sent to the abutting property owners.

Ms. Ragsdale indicated on the map to the property, noting it is a 13-acre parcel that is mostly wooded along the eastern property line, where the Special Exception is needed. She said it is about 40 feet that the house is located from the property line, and that a portion of it is a wooded buffer that is on the applicant's property. She presented an exhibit that was referenced in the report.

Ms. Ragsdale said staff recommended approval of the request, with a limit to three guestrooms, and limited to the existing structure and parking areas that have been reviewed for this particular request.

Ms. Price said what the Board was seeing was that the most common request for the Special Exception has to do with the distance to a property line. She said she had no concerns with this application.

Ms. LaPisto-Kirtley asked if there had been any concerns or complaints regarding this property.

Ms. Ragsdale replied no.

Ms. Mallek asked if there were any closer photographs to show what kind of buffer exists on the short side, as it looked as if it was not buffered at all visually and that there was a large opening there.

Ms. Ragsdale replied that this was measured by staff, and that there is a mix of evergreen and deciduous trees on the applicant's property, with 15-20 feet between the house and the eastern property line where the Special Exception is needed from.

Ms. Mallek asked what requirements they have that people leave the vegetation alone.

Ms. Ragsdale replied that the County has not made that a condition to date, but that staff does look at whether the areas are substantial enough. She said although it was not evident from the photo, it was substantial enough in this case, and provides the buffering to the east. She said this did not count what was already on the abutting property, as staff does not make its recommendation based on abutting properties.

Ms. Palmer asked what the problem was with putting a condition on these exceptions that they maintain a buffer. She said the Board has approved some requests that do not have a particularly good buffer. She asked if there was any suggestion from staff that, given a number of feet, there should be a buffer and how close it is.

Ms. Ragsdale replied yes. She said at this point, they are looking at the distance that mitigates it, in addition to the vegetation. She said if there is a site that is extremely close, they would go down the path of recommending a fence or screening and establishing that as a condition of approval. She said the Board may see that on some of the requests in the future, if staff believes it should be there, but that in this case, staff did not recommend it.

Ms. Palmer asked if the applicant could determine they need more parking and decide to extend the parking lot and put it closer to where the driveway is on that side.

Ms. Ragsdale replied that they are limited by the conditions of approval to what is there now. She said if they wanted to increase parking or put on an addition to the house for the homestay, then they would need to amend the Special Exception.

Ms. Price said for the next Special Exception, they would see that question coming up. She said these are all valid points and are the sort of things the Board needs to address in its general discussion about homestays, which would be coming up in June. She recognized that the application has to stand on the merits of that particular piece of property, so she thinks that these are things the Board should look at as they move forward.

Ms. Price said based upon the 25-foot setback minimum on the side, and with there being only a 40-foot distance from the edge of the house to the property line, there is not much space, even if the property owner was interested in making some revisions. She said as Ms. Ragsdale just pointed out, this exception is limited to the conditions as they exist today. She said in general, the Board's questions are good ones, but that for this particular application, it meets the standard that the Board has applied in previous applications. She said she would support this request.

Ms. Mallek said she was not arguing this point, but that the Board has mentioned the same things now for four different applications and yet, she has not seen where they have made progress on determining what criteria is needed. She said the Board should not encourage staff having to make it up as they go along. She said there needs to be more clarity for applicants, as well as to prevent the Board from going to court, as there needs to be consistency. She said when something is needed and they have not held anyone else accountable to a standard, it is harder to put it in where it is needed.

Ms. Mallek said she would continue to raise her concerns. She said she thinks people who are pushing commercial uses into the Rural Area where it does affect their neighbors, especially when they are not meeting the 125-foot setback, it is a concern that future owners can do this, too. She said they

are giving up a lot when they allow things that do not meet the criteria.

Ms. Price said she completely agreed with Ms. Mallek and that her point was not specifically to her comments on this application, but more that these are considerations that she believes they need to rightfully bring up as they review the totality of the regulations, as they will be applied. She said this would be done at the scheduled June meeting, and agreed that they likely need to include some additional requirements. She said these applicants that day, however, should not be held to a different outcome based upon the standards as they currently exist and have been applied.

Ms. LaPisto-Kirtley said it seemed as if the Board was approving a lot of these requests, as the homes are not in the center of the development. She asked if it would be more feasible if it has to be a certain number of feet within residences. She said if they let it be shorter than 125 feet and there is a neighboring abutting property next to their border, it may not be as effective, but perhaps an area of 125-150 feet between residences could be something to consider.

Mr. Gallaway said as the Board wrestled to arrive at the 125-foot setback, there had been different criteria to consider, and that this was the one that came to be. He said the Special Exception allowed the Board to wrestle with the nuances of each property. He said obviously, there were still points of discussion that will happen in the upcoming conversation on these items.

Ms. Mallek said it took the Board a couple of years to make a correction where they had allowed the first person on a site to have a reduced side setback called the "zero lot line." She said this created a tremendous unfairness to the second person, or the other homeowner, who then would not be allowed to expand or do what they wanted because their neighbor had basically used up a gap. She asked the Board to continue to be mindful of that as they think about other ways to change the approaches to the buffers.

Ms. Mallek asked Ms. Ragsdale if she had any explanation about these criteria that she uses to determine who needs extra buffer and who does not, she would love to hear about that.

Ms. Ragsdale said they are looking at each of the Special Exceptions, and that they are all unique. She said just because they have not been requiring a buffer or fence to date does not mean that they could not for parcels where staff would recommend one. She said staff has been visiting the properties and looking at them on site, and if there was no buffering and there was a close distance between houses, it would be a case where staff would recommend the buffer.

Ms. Ragsdale said going forward, conditions could be established for the sites that staff thinks would be appropriate to maintain a buffer. She said the Board had brought up good discussion points for the meeting in June, as one of the items at the top of the list is revisiting the 125-foot requirement, and what some other approaches could be or what the Board thinks should be codified now that they have had Special Exception experience.

Ms. Mallek asked if Ms. Ragsdale does not now have the authority to make a requirement on the buffer.

Ms. Ragsdale replied that staff has the ability to add it as a condition now but have not recommended it to date.

Mr. Kamptner clarified that the Board has the authority to impose the condition. He said staff has simply not recommended it at this point.

Ms. Price said she appreciated Ms. Mallek's point about ensuring that the Board does not take action that unduly burdens one property owner because of actions taken by an adjacent property owner. She said what the Board did to rectify that was significant.

Ms. Price reminded that not all the lots are flat, and very often, the individuals built their homes based upon what was the best building site available on the lot. She said this is why they will often see homes that are far from centered on a piece of property and that very often, they are adjacent to neighboring properties.

Ms. Price said the Board cannot always expect that there will be a minimum of 125 feet in each direction. She said this particular application, for example, has 150 feet to one side, and 37 feet to the other side. She said adding those together and it is under 250 feet, so they could not get the 125 feet, even if they had centered the house on that section of the property.

Ms. LaPisto-Kirtley clarified that she was talking about 125 feet total between two properties and not on each side.

Ms. Price **moved** that the Board approve the resolution in Attachment F to approve the Special Exception, with conditions contained therein. Ms. LaPisto-Kirtley **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Gallaway, Ms. LaPisto-Kirtley, Ms. Mallek, Ms. McKeel, Ms. Palmer, and Ms. Price
NAYS: None

**RESOLUTION TO APPROVE SPECIAL EXCEPTION
FOR HS2019-00020 McGOUGH HOMESTAY**

BE IT RESOLVED that, upon consideration of the Memorandum prepared in conjunction with the application and the attachments thereto, including staff's supporting analysis, any written comments received, and all of the factors relevant to the special exception in Albemarle County Code §§ 18-5.1.48 and 18-33.49, the Albemarle County Board of Supervisors hereby approves the special exception to modify the minimum 125 foot east side yard required for a homestay in the Rural Areas zoning district for HS2019-00020 McGough Homestay, subject to the conditions attached hereto.

Signed this 15th day of April 2020.

* * *

HS 2019-00020 McGough Homestay Special Exception Conditions

1. The Homestay use is limited to three (3) guest rooms within the existing residence as depicted on the Parking and House Location Exhibit dated March 4, 2020.
2. Parking for homestay guests is limited to the existing parking areas as depicted on the Parking and House Location Exhibit dated March 4, 2020.

Agenda Item No. 11. **Action Item:** HS202000013 Homestay Special Exception (Kessler).

The Executive Summary forwarded to the Board states that the applicant requests one special exception pursuant to County Code § 18-5.1.48(i) for an existing Homestay at 1315 Tilman Road to modify County Code 18-5.1.48(j)(1)(v) to reduce the required 125 foot setback from one side property line. The Homestay has been approved and in operation for up to five guest rooms since 2018. The applicants would now like to offer whole-house rental of the Homestay and must apply for a new Zoning Clearance and comply with current Homestay regulations.

Please see Attachment A for full details of staff's analysis and recommendations.

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

Ms. Ragsdale said this Special Exception was somewhat different than other requests the Board had seen. She said it is a parcel of over 5 acres, at about 7 acres, and was approved as a bed and breakfast in 2018. She said the applicant may continue the rental of up to five guestrooms, subject to those regulations.

Ms. Ragsdale said the applicant would like to include whole-house rental as one of their offerings to guests. She said whole-house rental is when the owner or manager is not present during the rental. She said this is limited to 7 days per month, or 45 days per year. She said the homestays are expected to keep a log of that.

Ms. Ragsdale said all the other homestay requirements apply in terms of parking, getting the Zoning Clearance, safety inspections, and providing the neighbor notice of responsible agent/emergency contact information. She said if an issue arises, the ordinance requires that the issue be resolved or addressed within 1 hour of notification.

Ms. Ragsdale said in this case, there is a setback reduction request to one property line. She said these requests are analyzed on a case-by-case basis and that staff can condition based on the unique characteristics of the parcels in terms of any impacts they believe need to be addressed.

Ms. Ragsdale presented the general location map, noting that the property is on Tillman Road that is located close to the intersection of Owensville Road. She said the map shows the surrounding properties that were provided a notice of the request.

Ms. Ragsdale said that submitted with the Special Exception request application were two letters of support from the property owners to the west, where the 125-foot property line reduction is requested. She said in this case, staff also received an email with concerns, but that this was from an anonymous commenter.

Ms. Ragsdale presented an image of the subject property, noting its relationship to the properties to the west, where the 125-foot setback reduction is requested. She said the exhibit staff provided shows that similar to the last request, it is about 40 feet for the homestay structure itself, with a parking area that extends over that is about that close as well. She said the neighbors' properties were shown in the image, who had provided the letters of support.

Ms. Ragsdale said staff recommended approval with those conditions, referencing the exhibit that

limits it to the current parking and the house location. She said in this case, there is not a condition to limit the number of guestrooms because the ordinance allows up to five guestrooms, and the applicant is proposing fewer guestrooms in terms of the rental associated with whole-house rental.

Ms. Palmer said she had a number of comments about the request. She said this property is unusual, and that she was familiar with it. She said the area has a suburban feel to it, and that it was built in 2016 at over 5,000 square feet with six bedrooms, six baths, and a pool. She said the pad in the front that is next to the other person's property is a basketball area. She said shortly after being built, this house was put on the platform for whole-house rental Airbnb. She said it existed for some period of time this way, and staff got involved. She said the applicant ended up applying for the bed and breakfast to make sure they could continue to rent the house.

Ms. Palmer said the letter she read was disturbing, and that this was something Ms. Mallek brought up in the past about pitting neighbors against neighbors, and neighbors' unwillingness to come out publicly and complain about something that is clearly meant to be a party house. She said she looks at this piece of property, and that there is little in the way of buffering. She said as far as lighting, traffic, and the 20 cars that were talked about in the letter, she was quite concerned about allowing this to go back to what it was before there were regulations.

Ms. Palmer recognized that it will be more limited than it was prior to it being a bed and breakfast, but that she was concerned. She said staff has been bringing these requests to the Board to see where they are and what they will or will not approve. She said this particular property would probably be best left as-is, as a bed and breakfast, and requiring the homeowners to be present while it is rented.

Ms. Price thanked Ms. Palmer for her comments. She said this does raise a difference between a residence that is being employed as a part-time income-producing activity as opposed to a structure that appears to possibly have been designed and specifically built as a short-term hotel.

Ms. Price said she has concerns as well, and that her concerns apply not only to this particular application, but to the County's policies and regulations in general. She said there is an even more significant issue with regard to the buffer in the sense that there is virtually no growth or vegetation between the structure and the property line, whereas at least in the last request the Board just approved, there was some minimal buffering.

Ms. LaPisto-Kirtley said she shared some of the same concerns, and that she could see the owner has about nine events going on in the future with groups. She agreed with Ms. Palmer and Ms. Price, noting she had concerns. She asked Ms. Ragsdale if there had been any complaints or violations regarding this property.

Ms. Ragsdale replied that there was an initial concern that was reported to the County that the owner was renting without a permit, which was in 2018. She said in 2018, the owner got that permit. She said in July of 2019, the County had the concern reported to them that they were renting without the owner present. She said staff contacted them, and that the owners stay in the basement of the house. She said they discussed this, and the owners updated their website to be clear in their listings that the owners are present during rental.

Ms. Ragsdale said the owners included a lot of information in their packet regarding the rental, their response to neighbors' concerns, and their lease agreement. She said the applicant wanted her to mention that in terms of the presentation.

Ms. Ragsdale said she mentioned that the Board can either approve, deny, or defer this application, so if they believe it needs some further thought or conditions added to it, the applicants will request a deferral, if necessary.

Ms. Palmer asked Ms. Ragsdale what the lease is.

Ms. Ragsdale replied that she referred to it as a "lease," but it was the rental agreement that was provided by the applicant in the application packet and what it covers in terms of their limitations on guests. She said it was included in Attachment B, in the applicant's proposed homestay and neighbor support letters, and included "Rental Terms and Conditions."

Ms. McKeel said she appreciated Ms. Palmer's perspective because not being familiar with the house herself, Ms. Palmer being aware of the situation was helpful. She agreed that it sounded like this was a situation that caused the Board to talk carefully about an ordinance to begin with.

Ms. Mallek said this crosses the line for her, because without plantings or fence there, there is not sufficient buffer to give neighbors protection from the kind of activity that happens on this property. She said she heard anecdotally of many other houses being built in the White Hall District for this very purpose, and as long as they continue to allow these things to happen without conditions, she believes it is a big mistake.

Ms. Mallek asked if Ms. Ragsdale inspected the basement accommodation.

Ms. Ragsdale replied that the code compliance staff handled that complaint and did the field work at the time the complaint was made last July. She said she herself just visited the outside of the property, but did not go into the basement, although other staff had.

Ms. LaPisto-Kirtley asked if someone actually visited the basement. She said she wondered if they are not including this as one of their bedrooms.

Ms. Ragsdale replied that the basement is not proposed for guest rental, and the code compliance staff did verify that when they investigated the complaint in 2019. She said there is a requirement that the owner reside there and be present during all the other rentals throughout the year. She said that can be verified again. She said the owner provided a number of pieces of documentation, and that the County could certainly do another inspection before issuing a Zoning Clearance for a homestay, if there were remaining questions about that.

Ms. LaPisto-Kirtley said she was hesitant about whole-house rental in this particular case because of the other violations, and because they are able to rent it out otherwise. She said for them not being there, it is problematic for the neighbors, and that the lack of buffer is a concern.

Ms. Mallek said her concern was that a planted buffer and fence is essential for any approval of continuation of the operation. She said she was not in favor of allowing whole-house rental.

Mr. Gallaway said the Board could take action to deny or approve, and that the idea of deferral had been floated. He asked if the Board wanted to approve or deny that evening, or if there was interest in deferring.

Ms. Palmer said she wondered if they were going to defer the item, what they would be deferring it for. She recognized that the issues of the buffers could be fixed, but said she was not sure how the Board handles the largess of the house as a whole-house rental with a pool in a suburban atmosphere. She said it still lends itself to large groups making noise at night with the owners not there, and she would hate to set something up for the neighbors to have to deal with on a regular basis when there is clearly a neighbor who feels very uncomfortable with being public about their concerns.

Ms. Palmer said they do not even know if that is one of the people who gave a letter of support, as she recognized that some people are uncomfortable with getting into a fight with their neighbors.

Ms. Palmer said her tendency was to keep it as a bed and breakfast, as it has been operating, as it does have full use of the property, but they can be assured that someone is always there.

Ms. Palmer said if the applicant wanted to apply for an addition where they have a home manager in the house that does not have to necessarily be the owner, that this was one option for homestays. She asked if this was correct.

Ms. Ragsdale replied that with the update in August, they clarified the expectation that the owner or manager be present during rental, except for the whole-house provision. She said under the bed and breakfast regulations, the expectation is that it is someone's residence. She said under the old regulations, it does not have to be owner-occupied but, in this case, they are indicating that it is their residence and family home and that they are present during rental when guests are there. She said as far as a resident manager, if they have someone else there while the place is being rented, that has not been discussed with the owner, nor is it what they have proposed so far.

Ms. Ragsdale said if they added an addition that wasn't associated with the homestay, or if they added bedrooms to the house, they could do that, but they are still limited to the five bedrooms that they have approval from under the bed and breakfast regulations.

Ms. Palmer said she would prefer to deny and keep it as a bed and breakfast.

Ms. Price said Ms. Palmer brought up an important point. She said her understanding was if they rent a number of bedrooms, then the requirement is that the owner or a resident manager must be present. She said when the whole house is rented, there is no requirement that the owner or resident manager be present, which is exactly the concern that has been demonstrated by this particular situation. She said she would support Ms. Palmer's comment in terms of denying the proposal and keeping the condition as it currently exists.

Ms. Mallek said she would also like to deny the request rather than deferring. She asked what the status was of the "three strikes and you're out" criteria that has already been adopted.

Ms. Ragsdale replied that this is part of the short-term rental registry that was established after August 7. She said none of the prior violations would count towards those strikes.

Ms. McKeel asked if this meant they start over again.

Ms. Ragsdale said there was no "three strikes, you're out" before August 7, and that there have been no complaints or violations after August 7 when that provision was adopted in the County Code.

Ms. Mallek asked if the applicant was still held accountable for business prior to August 7, but that it was not that they have not had any violations since then.

Ms. Ragsdale replied that this property has had two violations or complaints that were investigated and logged, and that this was prior to the adoption of the short-term rental registry. She said

they have not started counting the strikes for them because they do not have any after August 7.

Mr. Kamptner said the short term rental registry “three strikes and you are out” rules do not apply retroactively.

Ms. Mallek asked if this did not apply to any business who was in business before August 7.

Ms. Ragsdale replied that it applies, but it is not retroactive in terms of counting strikes prior to August 7.

Mr. Gallaway said it sounded as if there was not any interest to defer at that point.

Ms. Palmer **moved** to deny the resolution to approve the Homestay Special Exception in Attachment G. Ms. Price **seconded** the motion.

Mr. Kamptner said that before the Board takes a vote, he would summarize the reasons for denial. He said the motion was to deny the Special Exception because approving it would result in a detriment to the abutting lot; harm to the public welfare based on the information in the letter from the anonymous neighbor; the property’s history of use as explained in that letter by staff, and by Ms. Palmer; and because of the minimal existing 37-foot setback and lack of buffering between this property and the neighboring property.

Mr. Gallaway said regarding the letter from the neighbor and some of the concerns brought forward about Airbnb activity, there are other ordinances, such as noise, that whether or not there is an Airbnb there that can be enforced. He said he wants to make sure that there are other means to get noise or other types of violations handled. He said someone could have a huge party and not be an Airbnb, and that this is not allowed just as much as if it were people there staying in an Airbnb.

Ms. Palmer agreed. She said what they are seeing in some areas is a reluctance to report, or a situation like this one where they are in more of a suburban area and are setting up a commercial activity. She said unlike where there is event space, where staff goes out and talks about noise levels at property lines, they do not have that here and when they set up commercial situations in residential areas, that pits neighbors against neighbors. She said she understood and appreciated Mr. Gallaway’s comment.

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

AYES: Mr. Gallaway, Ms. LaPisto-Kirtley, Ms. Mallek, Ms. McKeel, Ms. Palmer, and Ms. Price

NAYS: None

Agenda Item No. 12. Public Hearing: ZMA201900014 Commercial Development TMP #61-134A.

ZMA201900014 Commercial Development TMP #61-134A

MAGISTERIAL DISTRICT: Rio

TAX MAP/PARCEL(S): 061000000134A0

LOCATION: East side of 1400 block of Seminole Trail (US 29), immediately south of Fashion Square Mall.

PROPOSAL: Request for approval of an Application Plan for an undeveloped property within an existing Planned Development Shopping District (PDSC), to allow new commercial development to occur in two phases.

PETITION: The undeveloped 0.9-acre parcel is currently zoned PDSC, which allows for shopping centers, retail sales, and service uses, as well as residential uses by special use permit (15 units/acre). The proposed zoning would remain PDSC. Approval of an Application Plan is requested pursuant to Sections 8.5 and 33.15.A.2 to allow new commercial development to occur in two phases pursuant to Sections 25.2.1, 22.2.1, 23.2.1, and 24.2.1. No residential units are proposed at this time with this proposal.

ZONING: PDSC – Planned Development Shopping Center

OVERLAY DISTRICT(S): Entrance Corridor, Steep Slopes – Managed, and Airport Impact Area.

ENTRANCE CORRIDOR (EC): Yes

PROFFERS: No

COMPREHENSIVE PLAN: Places 29 Master Plan; Rio/29 Small Area Plan – “Flex” future land use designation, which is an area intended to allow a flexibility of uses including residential, commercial, retail, office, institutional, and employment uses, and intended to have buildings with heights of 2-5 stories built close to the street with pedestrian access and relegated parking.

The Executive Summary forwarded to the Board states that On February 18, 2020, the Planning Commission recommended approval of ZMA201900014 Commercial Development with the noted revisions outlined in the staff report, by a vote of 6:0 (Commissioner Clayborne absent).

At the February 18 Planning Commission public hearing, staff recommended approval of ZMA201900014 with two revisions outlined in the staff report. This ZMA application is a request for approval of an Application Plan for the existing Planned Development Shopping District (PDSC). The proposed Application Plan is consistent with the existing PDSC zoning district, multiple Neighborhood Model Principles, and the Rio29 Small Area Plan’s Connectivity and Conservation chapter recommendations.

The Planning Commission discussed the proposed Application Plan's grading plan and retaining wall. The Planning Commission also inquired about the Application Plan's consistency with the Rio29 Small Area Plan's Future Connectivity Plan (Attachment C).

The applicant revised the Application Plan to address staff's recommended revisions (Attachment D). Staff believes that the revised Application Plan fully addresses staff's recommendations.

Staff recommends that the Board adopt the attached Ordinance (Attachment E) to approve ZMA201900014.

Ms. Michaela Accardi, Senior Planner, presented. She said she would start by sharing the existing zoning and future land use recommendations for the subject property, then move into a short overview of the application, concluding with staff's analysis and recommendation.

Ms. Accardi presented a map of the subject property's location. She said it is Tax Map Parcel #61-134a, which is an undeveloped and forested 0.9-acre parcel and is located south of Route 29, south of Fashion Square Mall and adjacent to BB&T.

Ms. Accardi presented an overview of the property and the adjacent properties' existing zoning. She said there is a Planned District Shopping Center (PDSC), and that the proposed zoning would remain PDSC. She said this is not a conventional rezoning application but is a request to approve the application plan for the property.

Ms. Accardi said this property is also within the Entrance Corridor and Airport Impact Area Overlay Districts and includes some managed steep slopes.

Ms. Accardi said by-right uses for PDSC zoning districts include shopping centers, retail sales and service uses, and residential uses (up to 15 dwelling units per acre, by Special Use Permit only).

Ms. Accardi presented an overview of the future land use designations for the subject property. She said it is included within the Places29 Master Plan as well as the Rio-29 Small Area Plan. She said the Rio-29 Small Area Plan has a series of different place types and that this property is within the "Flex" place type, which is intended to have the highest amount of flexibility in building forms and uses. She said the Small Area Plan states that buildings can have a range of heights and uses, but that their intention is to make pedestrians comfortable. She said the Small Area Plan provides a higher level of specificity than the Master Plans in that it has a series of recommendations for the character, conservation, and connectivity for the area.

Ms. Accardi said the Small Area Plan has form and site design standards, and that the "Flex" area calls for two- to five-story buildings that are set back from the edge of the right of way between 3-10 feet. She said buildings with larger footprints are recommended to avoid large, uninterrupted walls along streets. She said while parking should be relegated to the sides and rear of buildings, it should be screened from streets, and that blocks should be between 300-400 feet long.

Ms. Accardi said the Small Area Plan also includes a series of conservation recommendations and has a conservation network plan. She indicated on the screen to a dark green line that runs along the length of Route 29, which is a recommendation for a shared use path along the subject property's frontage on U.S. 29. She said the intention behind shared use paths is that they are to be multifunctional, serving as both as recreational amenity as well as a commuter route.

Ms. Accardi said this recommendation is repeated in the connectivity portion of the plan. She said there is a series of street types, and Route 29 is designated as a thru corridor. She said it also recommends a shared use path to provide a safe corridor for bicyclists and pedestrians.

Ms. Accardi said the property owner and applicant are requesting approval of the Zoning Map Amendment application plan for the subject property's existing Planned Development Shopping Center. She said the proposal is not a request for the County to rezone the subject property or otherwise amend the Zoning Map. She said the existing zoning for the property is PDSC, and that the proposed zoning is also PDSC.

Ms. Accardi said County approval of an application plan is a requirement of the Zoning Ordinance (Section 8.5). She said this section requires Board of Supervisors approval of the ZMA application plan prior to staff review or approval of a site plan. She said this happens in circumstances when an existing Planned Development Zoning District was established by the Board without a concept application plan that shows the overall development.

Ms. Accardi said this proposal shows the development of the parcel occurring in two phases. She said the first phase uses 0.45 acres along U.S. 29 with a 1.5-story retail structure. She said the frontage of the parcel has a 14-foot shared use path as well as landscaping.

Ms. Accardi said the second phase in the rear portion of the parcel, located above and behind a retaining wall, was undetermined or undisclosed at that time. She said it is labeled as "Future Development" on the application plan and would be subject to a future ZMA application to amend the application plan, similar to the application they were currently moving through.

Ms. Accardi said the applicant's current intended use of the property is for a mattress store, which is consistent with the PDSC allowable uses. She said it is classified as a "furniture and home appliance" retail use.

Ms. Accardi provided a summary of staff's analysis of factors favorable. She said the proposed use for a mattress store is permissible by right within the existing zoning district. She said this proposal for an approved application plan would bring the existing zoning district into compliance with Section 8.5 of the Zoning Ordinance. She said the proposed development is consistent, or partially consistent, with several Neighborhood Model principles. She said the proposed development provides a 14-foot shared use path along U.S. 29, which is consistent with several portions of the Rio-29 Small Area Plan conservation and connectivity recommendations.

Ms. Accardi said the phased approach towards the site allows timely response to future redevelopment of the surrounding Fashion Square Mall property, as well as any construction related to the connectivity plan. She said it allows coordination with any new street development.

Ms. Accardi said the staff report includes one factor unfavorable -- that the building height of 1.5 stories is inconsistent with the recommended standards in the Rio-29 Small Area Plan, which recommends building heights between 2-5 stories.

Ms. Accardi said on February 18, during the Planning Commission public hearing, staff recommended approval of ZMA201900014. She said there were two minor note revisions that staff recommended. She said the first was the addition of a note on the application plan to indicate that the first Phase I building would be built to support multiple stories so that it can be consistent with the Small Area Plan in the future.

Ms. Accardi said the second recommended note revision was removal of a phrase that stated that the proposed landscaping on the application plan is proposed to compensate for the negative visual impact of the proposed use from the Entrance Corridor. She said staff recommended removing this note because it is incorporated into the Entrance Corridor guidelines and therefore was redundant and unnecessary for the application.

Ms. Accardi said the Planning Commission recommended approval with these noted note revisions by a vote of 6:0.

Ms. Accardi said the revised application plan was included in Attachment D, which includes the recommended note revisions. She said staff recommends approval of the application.

Ms. Palmer asked if it was a requirement that the building has to be built in such a way to accommodate more stories later on.

Ms. Accardi replied yes. She said this was included on the application plan and is a requirement of the plan itself.

Ms. Palmer asked if there was a level of building quality that is required in these types of situations where the building is required to accommodate more stories. She asked if it has to be built to support one story, or two stories. She asked for the engineering requirement.

Ms. Accardi replied that this project would have to go through the building permit processes. She said multiple stories had to be indicated as a note on the application plan in order to be consistent with the Small Area Plan's requirement of 2-5 stories. She said simply having a second story would be up to the applicant, or construction would happen if it was more than two stories. She said it would have to meet building permit requirements.

Ms. Palmer asked if it was up to the applicant to decide whether it will be one additional story, or three, for instance.

Ms. Accardi replied that this was correct. She said in order to be consistent with the Small Area Plan, it would be two or more stories.

Ms. Price said her question was limited to removal of the redundant language. She said if the ZMA is approved and the applicant still has to go through a sign approval, one comment she received communication on was whether the structure being in an Entrance Corridor would comply with the expectations of architectural design in that type of a location. She asked if the ZMA was approved if there still had to be approval of the actual building plans.

Ms. Accardi replied yes. She said this application would still need to go through the ARB process to meet the Entrance Corridor guidelines.

Ms. Price asked how much weight the ARB process has with regard to architectural design. She asked if it were a recommendation, or something else that would ultimately come back to the Board of Supervisors if there were questions about it.

Ms. Accardi replied that the series of guidelines are not as specific as code requirements, and that the guidelines are interpreted by ARB members. She said she did not have an answer on how it might come back to the Board of Supervisors, or if there would be a situation like that.

Mr. Kamptner said the ARB has to issue a Certificate of Appropriateness, and that those certificates include conditions that the improvements on the site have to satisfy.

Mr. Gallaway acknowledged that on April 1, the Board received a letter from a Rio District resident and Rio-29 CAC member, Ms. Judy Schlusell. He said the main concern was relative to glass fronting Route 29, and ARB standards. He said it appeared that the landscaping could break up the view of the glass. He said he did not see much conversation about that item in the Planning Commission minutes and asked if there was any reaction to frontage and what the ARB may or may not be looking for there.

Ms. Accardi replied that this was not discussed at the Planning Commission public hearing. She said the project is moving through the ARB process, but that this has not been a topic of discussion.

Mr. Gallaway said he has not yet heard that the ARB has been lenient on applicants, especially with the Entrance Corridor, and so he expected they would do their due diligence in ensuring the requirements are met to their satisfaction. He said he would submit Ms. Schlusell's email to the clerk to ensure it was part of the record, and that she may be speaking during public comment. He said there are some specific questions in the email for form-based code that are larger policy-related questions that would be important for him to respond to. He said he would wait to see if Ms. Schlusell were online that evening to give her remarks and that he would address them afterwards.

Mr. Gallaway said the condition to have the building set up to accommodate multiple stories was one he would agree with. He said there are piecemeal types of applications that will be coming online for the Rio-29 Small Area Plan and that this was an important element. He said the applicant may speak to this as well.

Mr. Scott Collins, representative of the applicant, noted that the applicants worked hard on the project to create a viable project that meets current needs on the site, but also allows for the flexibility to react and adapt to the future development, specifically the property next door which is Fashion Square Mall. He said the mall would ultimately be redeveloped, but that the timing was hard to say. He said it could be a couple years out, or far further out.

Mr. Collins said the applicant has identified that it is hard to develop next to a project that had so much potential to be redeveloped in the future and incorporated many of the aspects that the County is looking for with that development. He said this site could benefit from that redevelopment and tie into it nicely as opposed to being a fixed structure that they would have to work around. He said this was the entire intent of the application and the way it was set up by the applicant. He said he thought they did a good job of setting it up that way, and certainly with the building aspect.

Mr. Collins said the building height will vary between 24-34 feet in height, with variable heights on certain parts of it. He said the footers of the building will be set up so that it could be increased in height, built over top with additional floors, with the ultimately redevelopment of the back half of the site as it wants to go vertical. He said the slope of the site varies from the back of the site to the front, which allows it to ultimately be redeveloped. He said an increase in height would make sense to come in with the next development part.

Mr. Collins said they worked hard on the application to incorporate the elements of the Rio-29 Small Area Plan and meet the other aspects of requirements such as the pedestrian pathways in the front, and others. He said the applicant has worked hard to create a project that meets the current needs but allows for it to be developed in the future as well.

Mr. Collins said there has been a lot of discussion with the ARB, and that they have gone through the initial ARB development process. He said they have received good feedback from the ARB on the project and have been discussing materials on the front. He said otherwise, the ARB has been receptive to what the site looks like so far. He said they would continue with that with the final site plan and Certificate of Appropriateness.

Mr. Gallaway opened the public comment portion of the public hearing.

Mr. Sean Tubbs, Piedmont Environmental Council, said he appreciated that Albemarle County is taking a tentative and experimental approach to moving forward with some public business, and that PEC feels that this item, and the next one, are good ones with which to proceed.

Mr. Tubbs said Attorney General Herring's opinion on local government gives the Board the ability to proceed but does ask them to be careful in whether or not each application is business that should go forward. He said Governor Northam has stated that transparency and accountability are crucial at this time to ensure public faith in the process. He said PEC applauds the Board's efforts to work towards those goals.

Mr. Tubbs said the PEC is tracking all the of land use items that are still in process. He said they would be reviewing each one and letting the Board know what their position is about whether or not they should go forward. He said some land use applications will be more difficult than others and the Board holds meaningful public hearings on. He said the more they go through it, the more they can begin to work through it, and he was happy to have the opportunity to speak.

Mr. Tubbs said that in the case of this application, the Planning Commission meeting has been held, and that there was no serious opposition. He said the Board heard from Ms. Schluskel, who was able to put some comments into the record and would hopefully join the public hearing. He said in terms of this case, it seemed like a suitable matter to proceed at this time, given that it has passed through all the normal stages of community engagement and is now before the Board in this new form.

Mr. Tubbs said in this case, the application is straightforward and involves a minor change to an existing development. He said it is in an important, crucial space that many people are thinking about, which is Fashion Square Mall. He said moving things forward there was both interesting and exciting.

Mr. Tubbs said it appears this application will be consistent with the Places29 Master Plan and the Rio Road Small Area Plan. He said he was glad to hear in this discussion that there was talk about form-based code and how this will fit into what will come forward in the future. He said the Planning Commission approved this unanimously.

Mr. Tubbs said that although the PEC did not have a position on this application, they find that it is a suitable application to move forward with at this time.

Mr. Gallaway closed the public comment portion of the meeting and brought the matter back to the Board.

Mr. Gallaway asked Mr. Collins if there were any ideas, notions, or thoughts about how much glass is on the front of the building.

Mr. Collins replied that this was something the applicant was still working through with the architect. He said the architect has been working on some additional concepts based on the last ARB meeting. He said at this point, he did not have a specific response as to the amount of glass, but that they were working on this with the ARB.

Mr. Gallaway said he trusted the ARB, that they will arrive at a design that is acceptable to them based on how the County handles these types of items. He said it is an interesting corridor. He said going up from Stonefield and making it all the way to the river, and looking left and right, it is an interesting design when considering the collective area. He said he hoped the applicant would find something that gives some flexibility in the future for the form-based code.

Mr. Gallaway said he would make a few follow-up comments after taking the vote, but that they were not pertinent to the application.

Mr. Gallaway **moved** the Board adopt the ordinance (Attachment E) to approve ZMA201900014. Ms. Price **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Gallaway, Ms. LaPisto-Kirtley, Ms. Mallek, Ms. McKeel, Ms. Palmer, and Ms. Price
NAYS: None

Mr. Gallaway said there had been some questions relative to form-based code, and that he received the comments or questions from a few other citizens relative to a couple other applications that are working their way through the process. He referred to Ms. Schluskel's email, and said that she explicitly states a question to the Board: "Are you doing away with the documented guidelines and slipping into a form-based code mode? If so, what exactly does that mean for the citizens of Albemarle County? Does form-based code need to be put before the population as a referendum, and how is the general public notified of this new policy?"

Mr. Gallaway said that they were not slipping into a form-based code. He said the Rio-29 Small Area Plan is the plan going through a form-based code model, which has been a very public process that has allowed for participation and has a steering committee involved. He said many public meetings have gone into this, including work with the Planning Commission and Board, and that it would be coming back before the Board in the near future.

Mr. Gallaway said this meant that the Small Area Plan will have a form-based code in the future, and that there was still time for the public and citizens of the County to provide their input on that.

Mr. Gallaway said the form-based code does not need to be put before the population as a referendum. He said in terms of notification to the public, he would encourage everyone to sign up for Albemarle County A-mail. He said there was plenty of information currently in the Small Area Plan and form-based code that is available on the County's website, and that he was happy to answer additional questions to members of his CAC in terms of availability.

ORDINANCE NO. 20-A(5)
ZMA201900014

AN ORDINANCE TO AMEND THE ZONING MAP
FOR TAX PARCEL 06100-00-00-134A0

BE IT ORDAINED by the Board of Supervisors of the County of Albemarle, Virginia, that upon consideration of the transmittal summary and staff report prepared for ZMA201900014 and their attachments, the information presented at the public hearings, any written comments received, the material and relevant factors in Virginia Code § 15.2-2284 and County Code §§ 18-22.2.1, 18-23.2.1, 18-24.2.1, 18-25.2.1, and 18-33.27, and for the purposes of public necessity, convenience, general welfare and good zoning practices, the Board hereby approves ZMA 201900014.

Mr. Charles Rapp introduced himself as the new Planning Director. He said he looked forward to serving the community. He said he was the Planning Director in Culpeper for eight years and moved to the area from Atlanta, Georgia.

Agenda Item No. 13. **Public Hearing: SP201900007 Tandem Friends School Pavilion.**
PROJECT: SP201900007 Tandem Friends School Pavilion
MAGISTERIAL DISTRICT: Scottsville
TAX MAP/PARCEL: 091000000002A0 LOCATION: 279 Tandem Lane, Charlottesville, VA 22902
PROPOSAL: Addition of a pavilion-type building for dining and meeting space at an existing private school campus.
PETITION: Request to amend existing special use permit SP201500021 to permit the construction of an approximately 4,500-square foot pavilion-type building for use as dining and meeting space at an existing private school campus on a 24.508-acre parcel; private schools under section 13.2.2.5 of the Zoning Ordinance. No increase in student enrollment is proposed. No dwelling units are proposed.
ZONING: R-1 Residential – 1 unit per acre.
OVERLAY DISTRICT(S): Entrance Corridor; Airport Impact Area; Steep Slopes – Managed
COMPREHENSIVE PLAN: Neighborhood Density Residential – residential (3-6 units/acre); supporting uses such as places of worship, schools, public and institutional uses and small-scale neighborhood serving retail and commercial; in Neighborhood 4 in the Southern and Western Urban Neighborhoods Master Plan area.

The Executive Summary forwarded to the Board states that, at its meeting on February 18, 2020, the Planning Commission (PC) conducted a public hearing and voted 6:0 to recommend approval of SP201900007 with the conditions outlined in the staff report. Attachments A, B, and C are the Planning Commission staff report, Planning Commission action letter, and minutes from the meeting.

The Planning Commission did not recommend any changes. However, minor wording changes to Condition #4, which do not change the substance of the condition, were recommended by the County Attorney's office after the PC public hearing, in response to questions of clarity brought up by Commissioners. Attachment D provides the revised condition #4, inclusive of the language recommended by the County Attorney's office. The other conditions remain the same. In addition, the applicant has provided a revised concept plan (Attachment E) since the PC public hearing, depicting new locations for emergency fire access and stormwater management facilities. These revisions were included in the concept plan after discussions with Albemarle County Fire-Rescue and the Engineering division and do not constitute significant changes to the proposed plan, as such facilities are required to be addressed at the site planning stage. Staff has no concerns with the revised concept plan.

Staff recommends that the Board adopt the attached Resolution (Attachment F) to approve SP201900007 with the revised conditions, including the revised concept plan.

Mr. Andy Reitelbach, Senior Planner, presented. He said this a public hearing to amend an existing Special Use Permit, SP2015-21, which is for the Tandem Friends School located off of Mill Creek Drive, near the intersection of Scottsville Road, across from Monticello High School.

Mr. Reitelbach said the request is to amend the SP to permit the school to construct a new pavilion-type building for dining and meeting space. He said this building will be one story, with a mezzanine. He said it will have garage doors along the sides to allow the space to be open to the elements, or to be closed during inclement weather. He said it will have a covered porch, bathrooms, and storage space, and that they are considering the potential to have a kitchen in the future.

Mr. Reitelbach said the building will be about 4,500 square feet of a covered footprint, plus a deck. He said new sidewalks will be constructed to provide for pedestrian access to the building.

Mr. Reitelbach said the maximum number of students is not changing with this request and will remain at 250. He said the entrances and traffic circulation are also not changing with this request.

Mr. Reitelbach presented an aerial view of the site and surrounding uses, including Stone Creek Apartments to the northeast, Monticello Fire Station to the west, and Monticello High School to the north. He said Tandem Friends School is the campus of buildings in the center of the photo, and that the location of the star on the photo was the approximate site of the proposed new building.

Mr. Reitelbach presented zoomed-in aerial views of the site. He said one was a view of the campus from the northwest, looking towards the southeast. He said another photo showed that view flipped at 180 degrees, with the approximate location of the new building.

Mr. Reitelbach presented the zoning and Comprehensive Plan for the site. He said the property of the Tandem School is zoned R1 Residential, which does allow for private schools by Special Use Permit. He said there is R15 zoning to the north and northwest, where the fire station and high school are located. He said to the northeast are the Stone Creek Apartments, which are zoned Planned Residential Development.

Mr. Reitelbach presented an image of the Comprehensive Plan designation for the property. He said the property is designated as Neighborhood Density Residential, which recommends private school campuses as a secondary use. He said to the north and northwest are the high school and fire station, which are designated as Residential, and that the Stone Creek Apartments are designated as Urban Density Residential.

Mr. Reitelbach presented an overview of the concept plan that has been proposed by the Tandem Friends School, with an inset in the center showing a better view of the location and the design of the proposed new dining pavilion. He said the area covered by the inset is the only area of the Tandem School that is proposed to be amended with the Special Use Permit. He said the grayed-out area was the proposed new building with a deck to the east. He said the stormwater management facilities are proposed to the northeast. He said emergency fire access is located to the southeast of the building and connects with an existing road near the existing math and science library.

Mr. Reitelbach presented a slide listing the factors that staff considers when reviewing Special Use Permits. He said for Special Use Permits, Section 33.40b of the Zoning Ordinance specifically identifies several factors that staff must consider when reviewing Special Use Permits and when making recommendations to the Planning Commission and Board of Supervisors. He said these factors include whether there is a substantial detriment to nearby parcels; whether the character of the nearby area is going to be changed or not; harmony with the public health, safety, and general welfare; and consistency with the Comprehensive Plan.

Mr. Reitelbach said in reviewing the Special Use Permit against these factors, staff has noted the four factors listed. He said there was no enrollment increase requested with this SP request. He said there is no substantial detriment expected to the adjacent parcels. He said the character of the nearby area is expected to be unchanged with the addition of one new building on an existing campus.

Mr. Reitelbach said there were no unfavorable factors that were identified when reviewing this application against those listed factors he spoke about.

Mr. Reitelbach said at a public hearing held by the Planning Commission on February 18, the Commission unanimously recommended approval of the application for the Special Use Permit by a vote of 6:0.

Mr. Reitelbach said there were a few minor revisions made to the application after the Planning Commission meeting. He said the concept plan he showed to the Board was revised to shift locations of the emergency fire access and stormwater management facilities, which was done after discussions with the County's Fire Rescue department and Engineering Division. He said Condition #1 in the Special Use Permit was revised to include a reference to this revised concept plan.

Mr. Reitelbach said the language in Condition #4 was also revised for greater clarity by the County Attorney's Office. He said during the Planning Commission meeting, the way the condition was originally written, some Commissioners expressed that there was some confusion with what the condition was trying to convey, so the County Attorney's Office revised that language for clarity. He said Attachment D in the Board's packet provides the strike-through version of that condition.

Mr. Reitelbach said that based on the land use finding described in the staff report and the presentation, along with an analysis of the proposal's impacts on the nearby area; its harmony with public health, safety, and general welfare; and its consistency with the Comprehensive Plan, staff recommends approval of the Special Use Permit application with conditions that include the revisions made after the Planning Commission public hearing. He said these are the same conditions that are found in the resolution for this SP, which is Attachment F.

Mr. Price said she sees this application as being consistent with the use, with no adverse impacts.

Ms. McKeel thanked Mr. Reitelbach for the land-use-centric factors favorable. She said when she reads about the pavilion, it sounds like a great place to have a party or even a wedding. She said she wanted to make sure that the events that happen at this pavilion will be school-centric.

Mr. Reitelbach said this question would be best directed to Ms. Michelle Schlesinger, who is a representative of the Tandem School. He said staff did include Condition #4 to ensure that if there are any events, they maintain the sound levels to prevent any adverse impacts on neighboring properties.

Ms. McKeel said she was hearing that it actually could be used as a wedding venue or for a non-school-affiliated event.

Mr. Reitelbach replied this was correct. He said there were no conditions that were limiting the school from renting out that space.

Ms. McKeel said it sounded like it was a great space to be rented. She said she would be interested from hearing from the school's representative.

Mr. Gallaway said they would park the question and give the applicant a chance to speak about it.

Mr. Kamptner said the property is zoned R1, so the underlying district regulations apply. He said unless the R1 regulations expressly allow weddings, or weddings were determined to be an accessory use to a private school use, then weddings would not be allowed on this property.

Ms. McKeel said she was not only referring to weddings, but any kind of event that is not affiliated with the school.

Mr. Kamptner said they would have to be within the scope of the Special Use Permit or would have to be accessory to school use. He said this is the type of determination that the Zoning Administrator makes.

Ms. Palmer said she was still confused on if they can or cannot use it if it is allowed in R1.

Mr. Kamptner said he would pull up the regulations.

Ms. Mallek said she has attended to garden club dinners across the street at Monticello High School and that she would not know what the difference would be regarding events.

Mr. Kamptner said weddings and similar activities are not allowed as a by-right use in the R1 District. He said if weddings were allowed at all, they would only be allowed if weddings are determined to be accessory to a private school use, which is a determination that the Zoning Administrator would make. He said perhaps this determination has been made in prior years, as he believed this question has likely come up before.

Ms. McKeel said to address Ms. Mallek's concerns about the difference in what would happen at Tandem versus Monticello High School are alcohol and noise. She said it would be quite a different scenario.

Mr. Gallaway said he understood that the County Attorney was deferring to the Zoning Administrator, as it was their call to make, but that a wedding as an accessory use to an educational institution seems not to be likely, in his opinion.

Ms. Michelle Schlesinger, Director of Finance and Operations for Tandem Friends School and project lead, said Tandem is currently in its 50th year of operation, and enrolls approximately 220 students in grades 5-12. She said the school offers a rigorous college preparatory curriculum in an environment built on Quaker values. She said at Tandem, they believe the finest education is achieved through an active partnership between faculty and students.

Ms. Schlesinger said at Tandem, the entire community of students and teachers share a common lunchtime. She said students either bring their lunch from home or purchase a lunch from the school's modest lunch program, which is run from a small kitchen and serving area as they do not have a cafeteria. She said that area is located in Community Hall, which is the building immediately adjacent to the proposed building site.

Ms. Schlesinger said most of the time, students eat at a series of about a dozen picnic-style tables that are located just outside of Community Hall, on the lower level. She said they also have a few tables located at a couple other places around campus. She said most of the time, students eat there, or on the grass on the quad, or in other shady areas in the front of campus.

Ms. Schlesinger said not only do they not have enough seats for all existing students at those tables, but if there is any inclement weather, students are then left to eat in hallways and classrooms. She said having adequate space for eating lunch during inclement weather, and the addition of shared community space, emerged as key priorities during the school's recent strategic planning process that identified key strategic priorities that will take the school through the year 2024.

Ms. Schlesinger said to address these issues, Tandem seeks to build a covered dining pavilion. She said the pavilion will be open on three sides, with large garage-style doors that will allow flow between the café and the quad and will allow the school to maintain access to the outdoors, as well as a feeling of community. She indicated on the slides to the locations of Community Hall and the proposed pavilion.

Ms. Schlesinger said the covered dining pavilion will include large fans for air circulation during the warm months and will be heated using unit heaters for use during the winter months. She said when it is not being used for lunch, it will provide a much-needed space for a large gathering space for an entire division of the school for grade level meetings or can be used by individual classes. She said community division meetings and grade meetings happen daily at Tandem and are important parts of the school's culture.

Ms. Schlesinger said there is currently only one space on campus, an auditorium, that is the only furnished space that will allow large groups to gather, which puts constraints on both the school's

program and its schedule.

Ms. Schlesinger said the new covered dining space can also be used as an inclement weather space for many of the school-related events that already occur at the school. She said these include annual events such as the community picnic and Mother's Day music festival.

Ms. Schlesinger presented some proposed views from the inside of the pavilion, looking back towards the quad and main building. She presented a view that shows the garage doors down. She showed a view from the far northeast corner, looking towards the southwest, with the garage doors open.

Ms. Schlesinger said in response to the question that came up regarding the zoning, at that point in time, the school did not have plans to hold any weddings. She said the school is aware of the current R1 zoning and does not host outside events that are not school-centric events.

Ms. Schlesinger said Mr. Bill Adams, architect, was also present on the call to answer any questions.

Ms. Price said as an individual who actually got married at a school that she had attended, providing that it is permissible under the zoning regulations for a school to get married at their campus, she would have no objection to that. She said this would be different than becoming a commercial rental.

Ms. Price said this looked like a great proposal and clearly fills the need the school has.

Ms. McKeel said she understood what Ms. Price was saying, but that there are so many venues in the area that turn into large facilities for all sorts of events. She said she just had a concern about this because there are neighbors in the area. She said it sounded as if it was not an option anyway, however.

Ms. Palmer said she knew that Tandem is interested in sustainability and environmental issues. She recognized that this was a big space that would be heated and assumed that it would be done so efficiently. She said she would like to hear some comments on the glass garage doors and how it relates to building efficiency. She said she was asking for her own curiosity and recognized that this was not part of the application.

Mr. Adams said the concept was an outdoor pavilion, and that a large energy savings is from the fact that it is not air conditioned. He said for most buildings in this area, air conditioning is the kind of controlling HVAC factor for the mechanical design.

Mr. Adams said for winter use, the use would only be intermittent, and the concept that kids were eating outside already and were used to wearing coats and hoodies, even during winter months. He said the intermittent use for assembly or lunchtime can be handled by radiant heat in a structure such as this, which is in keeping with the 2015 Virginia Energy Efficiency Code.

Ms. LaPisto-Kirtley said that as a former school principal, she thinks this an outstanding idea. She said she loved the openness of the design that brings one in with nature, which seems to fit with the school's theme. She said having designed an eating area herself for her school, she thought it was wonderful, and that it was a positive thing to have a place for the students to eat or attend assemblies.

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

Mr. Sean Tubbs, Piedmont Environmental Council, said PEC does not take a position on this application per se, but does feel that this is an appropriate land use application to proceed with under the Continuity of Government Ordinance. He said this application does not increase the number of students and does not appear to increase the intensity of the site.

Mr. Tubbs said as the Board is thinking in general about the greater region this is working in, within somewhat proximity to the proposed Center 2 facility, there are many opportunities to talk broadly about how this fits into a better urban area, in the future. He said although there were not necessarily opportunities to talk about this with this application in terms of connectivity, he wondered if there was a possibility for the community to be able to use this space as a public space, from time to time. He said in this area, there is not as much public community space as there are in some other areas. He said the question was about how this fits into the greater urban planning goals of this particular region.

Mr. Tubbs said PEC does support the condition on the curfew for the amplified sound, as on general principle, people should agree to be good neighbors and back it up through a solid agreement to comply, such as in that condition. He said he appreciated the earlier comments about weddings and that when he talks about community space, he is asking if this could be that kind of space. He said the PEC feels that this is an appropriate application to move forward with during these times.

Ms. Schlesinger said as a school, Tandem would be willing to take part in any discussion that the Board of Supervisors, Planning Commission, and community groups have going forward to figure out how they can utilize the space for the greater good for the community.

Mr. Gallaway closed the public hearing and brought the matter back to the Board.

Ms. Price **moved** that the Board adopt and approve SP201900007 Tandem Friends School

Pavilion, Attachment F, with conditions contained therein. Ms. LaPisto-Kirtley **seconded** the motion.

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

AYES: Mr. Gallaway, Ms. LaPisto-Kirtley, Ms. Mallek, Ms. McKeel, Ms. Palmer, and Ms. Price

NAYS: None

**RESOLUTION TO APPROVE
SP 201900007 TANDEM FRIENDS SCHOOL PAVILION**

NOW, BE IT RESOLVED that, upon consideration of the staff report prepared for SP 201900007 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 §§ 18-13.2.2(5) and 18-33.40, the Albemarle County Board of Supervisors hereby approves SP 201900007, subject to the conditions attached hereto.

Signed this 15th day of April 2020.

* * *

SP 201900007 Tandem Friends School Pavilion Special Use Permit Conditions

1. The development of the use shall be in general accord with the concept plan entitled "Tandem Friends School Outdoor Pavilion," prepared by Train Architects, dated 24 March 2020, as determined by the Director of Planning and the Zoning Administrator. To be in general accord with the specified plan, development and use shall reflect the following major elements as shown on the plan:
 - a. Building orientation
 - b. Building size (including height)
 - c. Location of buildings
 - d. Limits of disturbance
 - e. Parking lot layout and landscaping

Minor modifications to the plan which do not conflict with the elements above may be made to ensure compliance with the Zoning Ordinance;

2. Additional buildings may be authorized only by a new special use permit;
3. Total school enrollment may not exceed two-hundred fifty (250) students; and

Amplified sound from the pavilion will be subject to maximum sound level regulations as provided in County Code § 18-4.18.04. Amplified sound is prohibited beginning Sunday through Thursday nights at 10:00 p.m. through 7:00 a.m. the following morning, and beginning Friday and Saturday nights at 11:00 p.m. through 7:00 a.m. the following morning. Unamplified sound will not be subject to the maximum sound level regulations, as provided in County Code § 18-4.18.05(N).

Agenda Item No. 14. **Public Hearing: Ordinance to Ensure Continuity of Government During the COVID-19 Disaster.** To receive public comment on its intent to adopt an ordinance to ensure the continuity of County government as authorized by Virginia Code § 15.2-1413 during the novel coronavirus ("COVID-19") disaster. The ordinance would identify essential governmental functions, provide for the succession of elected officials and appointed officers, provide for how public meetings are conducted, modify certain deadlines imposed by State law and the County Code, state how long the ordinance will be in effect, and provide for when and how normal governmental authority will resume..

The Executive Summary forwarded to the Board states that, in a series of actions over the past five weeks, the County Executive, acting as the Director of Emergency Management, has declared a local emergency, and Governor Ralph S. Northam has declared a state of emergency, both as a result of the novel coronavirus ("COVID-19") pandemic. The Governor has issued four subsequent executive orders that increase restrictions on public and private gatherings, businesses, and other measures intended to slow the spread of the COVID-19 virus.

On March 27, 2020, the Board adopted an emergency ordinance designed to ensure the continuity of government as authorized by Virginia Code § 15.2-1413. The primary elements of that ordinance identified essential governmental functions, established a succession plan for elected officials and appointed officers, established rules for public meetings, extended certain deadlines requiring public body or staff action, and provided a method for resuming normal governmental operations. Virginia Code § 15.2-1427(F) limits the duration of an emergency ordinance to not more than 60 days.

The proposed ordinance would extend the substance of the March 27 emergency ordinance for

the duration of the COVID-19 disaster and for up to six months thereafter, as provided by Virginia Code § 15.2-1413.

The proposed ordinance includes the following key changes to the March 27 emergency ordinance by: (1) refining the information provided and stated in public meeting agendas, notices, and in the chair statements in Sections 6(C), (D), and (E), respectively; (2) removing certain tax deadlines from Section 7, which are addressed in a separate ordinance for the Board's consideration; (3) adding a new Section 8 to authorize the County Executive to adjust procurement procedures to minimize the need for exchanging paper documents and for personal gatherings; and (4) adding a new Section 12 to expressly provide that the proposed ordinance does not apply to the County's courts and constitutional officers.

Any increased workload could be managed by existing staff.

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

Mr. Greg Kamptner, County Attorney, presented. He said three weeks earlier, the Board had considered the Emergency Continuity of Government Ordinance. He said because emergency ordinances have a short duration, the Board was back that day for a non-emergency ordinance that was advertised for public hearing.

Mr. Kamptner said the enabling authority for this ordinance is Virginia Code Section 15.2-1413.

Mr. Kamptner said there had been a lot of talk about essential government functions, but the key part of the enabling authority is that the ordinance is intended to ensure the continuity of government. He said he would share what "continuity" means, as it gets lost in the discussion regarding essential government functions.

Mr. Kamptner said with continuity, they focus on the uninterrupted activities of County Government. He said the ordinance focuses on "how" County Government continues and not the "whats" as far as what the Board considers. He said some of the key sections of this ordinance focus on continuity.

Mr. Kamptner presented the sections of the ordinance, noting that the sections highlighted in red are new sections, with a brief provision that deals with procurement issues and is intended to allow certain steps in the procurement process to be handled virtually. He said a section was also added to clarify that the courts and Constitutional officers are not subject to this ordinance, and that they continue to operate with the court under the direction of the Virginia Supreme Court. He said with the Constitutional officers being independent, they operate on their own guidance from the State.

Mr. Kamptner said despite the focus on essential government functions, and the focus on continuity of government, the ordinance does continue in Section 4, which lays out essential governmental functions. He said if the Board had an opportunity to see the compare version of the ordinance that was distributed the day prior, they would see that some of the departments and agencies that were [inaudible] of this ordinance, their essential governmental functions have been expanded and, in some cases, fairly significantly, because what many of the departments and other agencies do, in and of itself, is essential.

Mr. Kamptner said the ordinance continues the plan of succession in the event that the elected officials and the appointed officials are unable to participate during the COVID-19 disaster. He said for elected officials, there have been minimal changes.

Mr. Kamptner said based on some comments that were received with respect to the ordinance, on page 9, Section 5(-a)(1), he wanted to clarify the language. He said the last clause of that language currently refers to the judges of the Albemarle County Circuit Courts making appointments, and that he wanted to replace this with the language that also appears in Subsection 5(-a)(5). He said that clause, after the final comma, would be replaced with, "The vacancy must be filled by judicial appointment as provided in Virginia Code Section 24.2-227." He said this is the same language that applies for other types of judicial appointments when the need arises.

Mr. Kamptner said that otherwise, the succession for elected officials is the same as it was in the Emergency Ordinance.

Mr. Kamptner said that for appointed officials, the succession plan is the same as it was in the Emergency Ordinance.

Mr. Kamptner said for public meetings, there have been a couple minor changes. He said one was that they simplified the notice and agenda requirements. He said there was a notice provision in the Emergency Ordinance that referred to identifying who the commenters would be speaking to. He said for public bodies, it is self-evident, that the comments for a Board meeting are being made to the Board of Supervisors, and so they removed that language.

Mr. Kamptner said based on a comment from SELC, they propose clarifying the meeting format in Section 6(b), which currently focuses on electronic meetings where the entire meeting is held virtually, meaning that the Board and members of the public are all participating virtually. He said this subsection does recognize that it is possible for the Boards to physically assemble but does not explain how

members of the public would participate.

Mr. Kamptner proposed adding some language to Subsection (b) to create a Subsection (b)(1) and (b)(2). He said (b)(1) would clarify that the agenda, notice and statement by the Chair and public participation provisions of the ordinance would apply to any meeting where the Board will physically assemble to conduct the meeting, but where the public is not allowed to attend for public health or safety reasons. He said it provides the same ability for the public to participate when they have to participate virtually, but the Board is physically assembled.

Mr. Kamptner said another scenario would be if both the Board and the public are able to physically assemble, like the Board did on March 18 and March 27 where Lane Auditorium was set up in a particular way. He said in that circumstance, Subsection (2) would simply provide that the meeting would proceed under the normal Freedom of Information Act and Title 15.2 rules, as well as the Board's rules of procedure. He said this type of meeting would be a regular meeting.

Mr. Kamptner said the same provisions for public meetings in the Emergency Ordinance would be used, except for the change to the one piece of information that will no longer need to be provided in the agendas, notices, and statements.

Mr. Kamptner said there was a question that SELC raised about how special emergency meetings would be noticed. He clarified that his response was that the rules laid out in Subsection (6) generally apply just to regular meetings of the Board, and that the other public bodies would rely on these rules. He said the other requirements of the Virginia Freedom of Information Act and Title 15.2 that apply to special and emergency meetings are not changed. He said Subsection (M) was intended to apply to all other public meetings.

Mr. Kamptner said one thing that has been removed from the ordinance was the set of tax deadlines included in the Emergency Ordinance. He said as the Board took action that day on the Consent Agenda, some of the specific types of COVID-19-related matters that are more specific in nature are being brought forward as special ordinances. He said the tax return and payment due date ordinance were before the Board that day, and that they would come back with the non-emergency version of that ordinance, likely at the second meeting in May.

Mr. Kamptner said procurement is a new section of the ordinance, particularly around the purchasing manual, revisions, and practices being hard copy submittals, and bid openings where participants usually physically assemble. He said the ordinance will allow for electronic documents to be submitted, and for bid openings to be done in alternative formats that do not require participants to physically assemble.

Mr. Kamptner said in terms of duration, the enabling authority states that this type of ordinance is allowed to continue for a period not exceeding six months after the disaster. He said the ordinance has been amended to now incorporate that language. He said there is the hope to resume normal operations before six months after the disaster has ended. He said that disaster would end when the local emergency has been lifted.

Mr. Kamptner said the ordinance goes into more detail about how normal governmental authority and operations will be resumed. He said it lays out steps or actions that will take place once that happens. He said the succession rules will end and the appointment to fill vacancies will be as provided by law. He said public meeting rules would no longer apply, and the deadline extension provisions will no longer apply. He said there was language built in there that will allow the County Executive to establish revised deadlines to allow for a reasonable transition period to normal County operations. He said once all the participants in the procurement process can physically assemble, those provisions would no longer apply, either.

Mr. Kamptner said the other sections in the ordinance have had little or no changes. He said the recitals were expanded to incorporate all the additional reasons for the ordinance.

Mr. Kamptner said the recommended action was that the Board adopt the ordinance identified as Attachment A, with two amendments. He said the Board had also flagged some very minor typographical errors that would be corrected as well.

Ms. McKeel thanked Travis from SELC for copying Mr. Kamptner on his email, which made it possible for Mr. Kamptner to address his concerns.

Ms. Palmer asked if Mr. Kamptner would come back to the Board with a separate ordinance for land use. She asked if so, the reason was that he was trying to develop what the Board can and cannot do during the emergency with respect to land use. She asked if he could state his thoughts on what the Board cannot do, as well as what the differences of opinion are between some of the County Attorneys and City Attorneys in the area.

Mr. Kamptner replied that a number of governmental attorneys are obsessing on the language "essential governmental functions," which was in the Attorney General's opinion. He said he believed that for a number of reasons, focusing on that is somewhat misguided because the enabling authority says nothing about essential governmental functions. He said he believed the Attorney General was trying to reach a middle ground because for whatever reason, they could not trust the attorneys to do everything. He said they would focus on land use because this is an issue that is at the forefront of whether or not

localities consider those matters.

Mr. Kamptner said in the email he distributed to the Board, he quoted some passages from the Virginia Supreme Court and the U.S. Court of Appeals for the 4th Circuit, as well as a dissenting opinion from Justice Thurgood Marshall from an older case. He said the court said that land use matters are core, essential, vital functions, and likely the most important function that local government does. He said if the Board thinks about the types of matters that make for the most vibrant public hearings, it is the land use matters. He said the Board should also consider the amount of money it invests in planning and the Department of Community Development, and how that process has shaped the County to what it is today.

Mr. Kamptner said it is hard to step back and think that land use planning and development is not an essential function. He said it is also important to recognize that the enabling authority refers to the continuity of "its" government. He said someone who is speaking to "its" government is speaking about the County. He said it is about what is important to the County's Board of Supervisors to ensure that "its" government continues, and that in Albemarle County, land use is one of those essential functions.

Mr. Kamptner said the second part of the question was recognizing that there are some controversial matters coming up in May, June, and July surrounding land use. He said the Board wisely decided that the meetings in April would be where they try out the virtual format, and that once they get through April, they will evaluate and decide whether or not this format works well for the types of controversial matters where there will be significant public input and interest.

Mr. Kamptner said so far, the format seemed to be working well, but that they would evaluate it. He said staff will make a recommendation, but it is ultimately the Board's decision. He said there is an interest in these matters not getting backlogged, but there is also the recognition that if the technology is not working well, staff may recommend holding back.

Ms. Palmer said she knew everyone was concerned about transparency, and that this was being considered going forward. She said even though the format might work well, it may not work for the general population or individuals as well as it works for the Board and staff. She urged everyone to keep this in mind, especially with the more controversial applications that still have to go before the Planning Commission or have already done so and are going through revisions.

Mr. Kamptner said it would be helpful for the County to survey those members of the public who are watching and are participating in the process in order to get some feedback on how they think it is working, as a starting point.

Ms. Price asked if she heard correctly that there would be a separate ordinance that would be proposed for land use applications. She said it appears that paragraph (7)(c) specifically addresses that.

Mr. Kamptner replied that (7)(c) extends deadlines. He said if Community Development wants to propose any substantive changes to the ordinances to allow them to continue, those would come through a separate ordinance process, much like what was done with extending the tax return dates and payment deadlines.

Ms. Price asked if this meant there could possibly be a separate ordinance.

Mr. Kamptner replied that there is discussion about an amendment to the ARB-related rules that would allow them to facilitate some reviews. He said this would go through a separate ordinance process.

Ms. Palmer asked if Mr. Kamptner could explain what type of matter in Community Development would come back to the Board in the form of an ordinance.

Mr. Kamptner replied that they were proposing some changes to the County-wide Certification of Appropriateness that would allow them to expand the types of projects that are eligible for those certificates. He said this certificate was established for the types of applications that are amenable to standard types of conditions. He said if one falls within a particular type of project and met all the conditions in the County-wide Certificate of Appropriateness, staff can administratively approve those rather than them going to the ARB and having an individualized review.

Mr. Kamptner said the zoning equivalent would be the performance standards for drive-thru windows that used to go through individualized reviews. He said over time, there were standard conditions that developed, and so they were put into performance standards.

Ms. Price expressed her appreciation for Mr. Kamptner's detailed responses and expertise. She said there has been a frequent comment she has received from constituents that specifically deals with the question of postponing certain matters as it applies to land use, which is an essential function. She said another Supervisor mentioned that transparency is important, and that ensuring that constituents have an opportunity to fully participate in these critical decisions is vital to public trust in what the County does.

Ms. Price said that at the same time, she is potentially concerned with the potentially adverse economic impact on applicants if their proposals or applications before the Board are unduly delayed. She said as a former corporate counsel and former Senior Vice President for a company, as well as an individual submitting her own applications at various times and places, there are property rights involved

and sometimes, if things cannot get approved in a timely fashion, the delay itself can have substantial negative impacts. She said there is a great balancing the Board needs to work with.

Ms. Price said the hope from the beginning was that the medical disaster would be relatively short-lived, but that she was already seeing news reports of second waves in situations where governments have opened their economies. She said she saw a recent report from the CDC of the expectations of a winter wave hitting the country with the pandemic. She said she was also concerned that if the Board unduly delays applications that come before them, they will overburden their own capacity to work on them.

Ms. Price said she was not making a definitive statement on what they should do, but that there were many considerations to take into account to ensure the Board actually does achieve its objective of providing essential services. She said this is a balance they would have to continue to work through. She said she appreciated Mr. Kamptner's comments and that she knew Community Development staff was looking at this as well. She said she was confident they will come up with the best process they can under these circumstances.

Ms. Mallek said someone submitted a question about whether the Governor's declaration make a rule about extending the response times on FOIA, or if this was something the County decided to do themselves.

Mr. Kamptner replied that extending the FOIA deadline was one that the County did itself, and the reason was that the overwhelming majority of County staff are working remotely. He said if a request were to be received where paper documents have to be retrieved, that may take more time. He said they are working on at least one FOIA request currently, which is focused on electronic records. He said assuming the volume of those records is manageable, they will be able to respond in a timely manner.

Mr. Kamptner said that throughout the ordinance, it states that the County's objective is to meet the deadlines, but because of the current situation, it may not be possible or safe to do so. He said this was put into the ordinance for that reason, and for FOIA, it was mainly the paper documents that will be difficult to retrieve.

Ms. Mallek said she agreed about the parallel tracks of keeping land use applications on track, and also making sure that people have a chance to safely participate. She encouraged the County to do what it can to think about ways for people to phone in for people who do not have internet access. She said her own internet had gone out many times that day, and she understood this issue completely. She said if people had the access to be able to telephone in their comments, they could bridge the gap and keep things moving along.

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

Mr. Travis Pietila, Southern Environmental Law Center, said he hoped the Board received the email comments he had submitted that morning. He said he appreciated that the County Attorney has addressed a couple of his points in his presentation.

Mr. Pietila said that as he had mentioned in his email, the SELC recognizes that the emergency requires some changes to business as usual, and that they appreciate the great work the County is doing to respond to this crisis and keep the County moving forward during this difficult time.

Mr. Pietila said when it comes to this ordinance, one of the SELC's main concerns has been to ensure that any adverse effects these process changes may have on public participation are minimized to the greatest extent possible, given the nature of the emergency.

Mr. Pietila said SELC's first suggestion relates to public notice. He said the ordinance requires three days' notice for any regular meeting but does not specify the notice requirements for special or emergency meetings. He said Mr. Kamptner noted that a catchall provision at the end is meant to cover that by reference to the Virginia Code, and that he was glad to hear that is the case.

Mr. Pietila said while SELC does not have any major remaining concerns in this regard, they do still think that it would be much easier for someone reading this ordinance to simply have those special meeting notice requirements spelled out next to the regular meeting requirements, rather than having to find the catchall provision and then track down the relevant Virginia Code section.

Mr. Pietila said SELC's second suggestion was covered in Mr. Kamptner's presentation, which was to provide better guidance in the ordinance about that situation in which the Board is able to meet in person, but public attendance must be prohibited or limited for health or safety reasons.

Mr. Pietila said SELC is glad to see that the ordinance allows the County to postpone nonemergency public hearing and action items. He said as the Board is well aware and, as noted in the discussion earlier, there are certain situations, including some major rezonings and Special Use Permits, that will have a significant effect on the lives of residents and for many, long after this emergency is over. He said in these cases, the ability to address local representatives in person, face to face, and with fellow citizens in attendance, is often crucial.

Mr. Pietila said if some of these very impactful or controversial, nonemergency items arise during this time period, SELC encourages the Board to strongly consider postponing them until the emergency

passes and the public can safely attend. He said as Ms. Price noted, however, SELC does understand that this decision may depend somewhat on the expected duration of the emergency.

Mr. Sean Tubbs, Piedmont Environmental Council, said he appreciated the inclusion of the redline version of the ordinance that allows everyone to see exactly what is being changed. He said this is an example of transparency.

Mr. Tubbs said he was curious why the term “emergency” was stripped from the title of the ordinance. He said these are not normal times, and the usage of the word “emergency” signals that the Board is taking extraordinary measures to move forward.

Mr. Tubbs said he appreciated the discussion about land use, and that PEC recognizes there is a need to carry on with business. He said the last two land use applications the Board reviewed were appropriate, and that others may be as well depending on how the County moves forward and how they use the technology. He said some stated that they were not quite all there yet in terms of getting used to the videoconferencing technology.

Mr. Tubbs said the last meeting he attended in person, there was a full auditorium for the 999 Rio Road project. He said it was hard to imagine how something of that magnitude might proceed during this time. He recognized that the County is trying to reinvent how the organization works, going forward.

Mr. Tubbs said they were in the middle of April and applauded that the Board canceled most of the April meetings so that they can perfect the technology and allow for public comment. He said PEC hopes the Board will proceed cautiously and provide access to meetings that will bring out a humanity in everyone, moving forward. He urged the Board to remember this as they move forward with larger public hearings.

Mr. Neil Williamson, President of the Free Enterprise Forum, said the Free Enterprise Forum is a privately funded public policy organization focused on Charlottesville and the surrounding municipalities. He said earlier, Mr. Tubbs shared his admiration for Albemarle’s decision that government operations, including land use applications, are important and should move forward during the COVID-19 emergency. He said not all localities have made this choice.

Mr. Williamson said the Free Enterprise Forum appreciates Ms. Price’s concern regarding the balance of property rights and the proper ability for public engagement. He said Mr. Tubbs and Mr. Pietila commented that applications may be appropriate for virtual review while some applications are not, and that he found this to be problematic. He said all applications and all applicants are created equal.

Mr. Williamson said the Free Enterprise Forum is appreciative of all that the County has done, and that they believe this important decision reflects Robert Frost’s 1916 poem, where two roads diverged. He read the poem aloud. He said he shares Mr. Tubbs’ admiration of staff to virtually continue government operations and public engagement. He said he appreciates the Board showing leadership to take the more challenging path, as he doubted, they will ever go back and take the other path, and that this will make all the difference for this community.

Mr. Gallaway said Ms. Mallek referenced an email that came in for public comment that was asked to be added by Mr. Gary Grant. He said this included a question about whether a local ordinance can overrule State Code, as the current language in the proposed ordinance was that the County can indefinitely extend a reply to a FOIA inquiry, and that this was not permitted to Mr. Grant’s knowledge in State Code.

Mr. Gallaway said the Board also received an anonymous comment asking if it would be beneficial for the public meeting amendments to remain after the crisis. He said this commenter expressed that the digital participation option allows for greater public input. He said this was received through the webinar chat, and that the commenter chose not to leave contact information.

Mr. Gallaway closed the public hearing and brought the matter back to the Board.

Mr. Richardson said that when the Board was discussing the process, there was a reference to having the public call in. He said this technology does not invite the public for calling in, although it is a part of the technology they are using and is advertised on the website.

Mr. Gallaway said there were a few participants that evening who did, in fact, call in.

Mr. Kamptner said he would answer questions raised by the speakers. He said to address Mr. Pietila’s question about having the ordinance clearly recognize the notice requirements for emergency meetings that they will continue with what is identified on page 12 of the ordinance. He said it would read, “Any requirements for conducting a public meeting in Virginia Code Sections 2.2-3700, 15.2-1400 that are not modified by this section,” and that the new language would include the clause “including those pertaining to special and emergency meetings” and apply to conducting a public meeting. He said this makes it clear that the notice requirements for special and emergency meetings currently existing in State law will continue to apply.

Mr. Kamptner said Mr. Tubbs had asked why the term “emergency” was removed from the ordinance. He said the term is for a particular type of ordinance that can be adopted without notice for a public hearing. He said it has a life of only 60 days. He said what is before the Board now is the

nonemergency version of the ordinance. He said this was not about moving away from the fact that they are operating under both State and local emergencies.

Mr. Kamptner said Mr. Grant had asked about whether the County's ordinance overrules State law. He said the enabling authority does state that notwithstanding any other provision of general or special law, the County can adopt an ordinance such as this one in order to continue County Government. He said the intention is to adhere to all the deadlines imposed by State law, but that the current circumstances may prevent the County from meeting those State deadlines.

MOTION: Ms. Price **moved** that the Board adopt the attached proposed ordinance, Attachment A, subject to the modifications and amendments as articulated by the County Attorney. Ms. Mallek **seconded** the motion.

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

AYES: Mr. Gallaway, Ms. LaPisto-Kirtley, Ms. Mallek, Ms. McKeel, Ms. Palmer, and Ms. Price
NAYS: None

ORDINANCE NO. 20-A(6)

AN ORDINANCE TO ENSURE THE CONTINUITY OF GOVERNMENT DURING THE COVID-19 DISASTER

WHEREAS, on March 11, 2020, the World Health Organization declared the novel coronavirus ("COVID-19") outbreak a pandemic; and

WHEREAS, on March 12, 2020, the County Executive, acting as the Director of Emergency Management, declared a local emergency because of the COVID-19 pandemic pursuant to his authority under Virginia Code § 44-146.21, and this declaration was confirmed by the Board of Supervisors on March 17, 2020; and

WHEREAS, also on March 12, 2020, Governor Ralph S. Northam issued Executive Order Fifty-One declaring a state of emergency for the Commonwealth of Virginia because of the COVID-19 pandemic; and

WHEREAS, Executive Order Fifty-One acknowledged the existence of a public health emergency arising from the COVID-19 pandemic and that it constitutes a "disaster" as defined by Virginia Code § 44-146.16 because of the public health threat presented by a communicable disease anticipated to spread; and

WHEREAS, Executive Order Fifty-One ordered implementation of the Commonwealth of Virginia Emergency Operations Plan, activation of the Virginia Emergency Operations Center to provide assistance to local governments, and authorization for executive branch agencies to waive "any state requirement or regulation" as appropriate; and

WHEREAS, on March 13, 2020, the President of the United States declared a national emergency in response to the spread of COVID-19; and

WHEREAS, on March 17, 2020, Governor Ralph S. Northam and the Virginia State Health Commissioner issued an Order of the Governor and State Health Commissioner Declaration of Public Health Emergency (amended on March 20, 2020) limiting the number of patrons in restaurants, fitness centers, and theaters to no more than 10 per establishment; and

WHEREAS, on March 18, 2020, the Board of Supervisors consented to the County Executive, acting as the Director of Emergency Management, issuing an amended declaration of local emergency to refer to the COVID-19 pandemic as not only an emergency, but also as a "disaster," as the Governor had included in Executive Order Fifty-One, and the County Executive issued the amended declaration on March 20, 2020; and

WHEREAS, on March 20, 2020, the Attorney General for the Commonwealth of Virginia issued an opinion in which he concluded that the COVID-19 pandemic, which the Governor declared is a "disaster" as defined in Virginia Code § 44-146.16, is also a "disaster" as that term is used in Virginia Code § 15.2-1413; and

WHEREAS, Virginia Code § 15.2-1413 provides that, notwithstanding any contrary provision of law, a locality may, by ordinance, provide a method to "assure continuity in its government" in the event of a disaster for a period not to exceed six months; and

WHEREAS, on March 23, 2020, Governor Ralph S. Northam issued Executive Order Fifty-Three, which closed all public and private K-12 schools throughout the Commonwealth of Virginia for the remainder of the 2019-2020 school year, imposed further restrictions on public and private gatherings on several classes of dining establishments, closed many classes of "recreational and entertainment businesses" in their entirety, imposed limitations on the number of patrons allowed in other businesses, and encouraged businesses to use teleworking when feasible and, if not feasible, to adhere to social distancing recommendations, enhanced sanitizing practices on common surfaces, and other appropriate

workplace guidance to the extent possible; and

WHEREAS, Executive Order Fifty-Three states that, despite the measure taken to date, “COVID-19 presents an ongoing threat to our communities,” that there are occurrences of the virus in every region of the Commonwealth, and that the data suggests that in several regions there may be community spread of the virus; and

WHEREAS, Executive Order Fifty-Three states that further measures are needed because “[u]nnecessary person-to-person contact increases the risk of transmission and community spread” and that “we must limit such interactions to those necessary to access food and essential materials”; and

WHEREAS, on March 27, 2020, the Virginia Employment Commission reported that the number of initial claims for unemployment insurance benefits filed statewide for the week ending March 21 was 46,277, an increase of 43,571 claimants from the previous week’s total of 2,706, a more than 2000% increase in one week; and on April 3, 2020, the number of initial claims for unemployment insurance benefits filed statewide for the week ending March 28 was 112,497; and

WHEREAS, on March 28, Governor Ralph S. Northam issued Executive Order Fifty-Four, in which he affirmed and delegated to the Commissioner of the Virginia Employment Commission the authority and responsibility for executing agreements with the United States Department of Labor related to implementing Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) and requesting Title XII advances from the Federal Unemployment Account; and

WHEREAS, Executive Order Fifty-Four was issued because “many Virginians are out of work due to temporar[y] business closures, school closures, and other health-related emergencies;” and

WHEREAS, on March 30, 2020, Governor Ralph S. Northam issued Executive Order Fifty-Five, entitled a “Temporary Stay at Home Order Due to Novel Coronavirus (COVID-19)” which, among other things, ordered that all “individuals in Virginia shall remain at their place of residence,” with specific exceptions, continued to prohibit all public and private in-person gatherings of more than 10 individuals, with specific exceptions, prohibited all institutions of higher education cease all in-person classes and instruction, and closed all public beaches; and

WHEREAS, on April 2, 2020, President Donald J. Trump declared that a major disaster exists in the Commonwealth of Virginia and ordered Federal assistance to supplement Commonwealth, tribal, and local recovery efforts in the areas affected by the COVID-19 pandemic beginning on January 20, 2020, and continuing; and

WHEREAS, the Board of Supervisors finds that the COVID-19 pandemic constitutes a real and substantial threat to public health and safety and constitutes a “disaster” as defined by Virginia Code § 44-146.16 and within the meaning of Virginia Code § 15.2-1413; and

WHEREAS, the General Assembly recognizes the extreme public danger created by contagious diseases such as the COVID-19 virus by enabling counties, through the exercise of their police powers expressly granted in Virginia Code § 15.2-1200, to “adopt necessary regulations to prevent the spread of contagious diseases among persons” and to adopt “quarantine regulations” affecting persons; and

WHEREAS, Virginia § 15.2-1413 authorizes the County, by ordinance adopted by the Board of Supervisors, to “provide a method to assure continuity in its government” in the event of a disaster such as the COVID-19 disaster, and that this authority is granted “[n]otwithstanding any contrary provision of law, general or special”; and

WHEREAS, the Board has tailored this ordinance to “assure continuity in [the County’s] government” during the COVID-19 disaster by attempting to vary from existing State law and County Code procedures and requirements to the minimum extent necessary, recognizing the danger to public health and safety posed by public bodies physically assembling to conduct public meetings, and the difficulty in adhering to all of the procedures and deadlines imposed on the County and its public bodies by State law and the County Code, which are routine during normal governmental operations but which may be impossible to completely and timely satisfy during the disaster because most County staff are working remotely and significant staff resources are dedicated to, in effect, designing County government to address the unique issues arising daily during the disaster; and

WHEREAS, the Board has identified in Section 4 of this ordinance the functions of County government that it deems to be essential in order for it to continue during the COVID-19 disaster and, in doing so, observes that State and local government is complex, and the powers, duties, and obligations imposed on localities by the State to promote the public health, safety and welfare of their residents are numerous and varied, and that they extend well beyond merely those functions related to survival during a disaster; and

WHEREAS, this ordinance is solely in response to the disaster caused by the COVID-19 pandemic, promotes and protects the public health, safety, and welfare of the residents of the County, the City of Charlottesville, and the Commonwealth of Virginia, and is consistent with the laws of the Commonwealth of Virginia, the Constitution of Virginia, and the Constitution of the United States of America.

NOW, THEREFORE, BE IT ORDAINED by the Board of Supervisors of the County of Albemarle,

Virginia, that:

Sec. 1. Purpose

The purpose of this ordinance is to ensure the continuity of the government of the County of Albemarle, Virginia, during the novel coronavirus ("COVID-19") disaster, which is currently a pandemic, by identifying the many essential governmental functions that must continue and establishing regulations to ensure these functions continue by providing for: (1) the succession of elected officials and appointed officers; (2) meeting procedures that allow the County's public bodies, whose members are elected or appointed, to meet and conduct business in a manner that is safe for the members of the public bodies, staff, and the public, and allow the public to participate in these meetings to the fullest extent practicable given the current circumstances; (3) provide alternative deadlines for certain matters that are different than those provided by State law or the County Code; (4) establish the method for resuming normal governmental operations; and (5) other matters related to the foregoing.

The requirements, procedures, deadlines, and other provisions of this ordinance vary from those that apply to County government under normal governmental operations. However, for the reasons explained in the recitals, these alternative regulations are deemed to be essential in order to ensure the continuity of government during the COVID-19 disaster without further risking the health and lives of the public and County officers, appointees, and employees resulting from exposure to the COVID-19 virus and its further spread. The regulations that apply during normal governmental operations will be followed to the extent they can be in a manner that is consistent with State and Federal orders and declarations and without risking the health and lives of the public and County officers and employees.

Sec. 2. Authority

This ordinance ensures the continuity of government during the COVID-19 disaster and is authorized by Virginia Code § 15.2-1413, which enables the Board of Supervisors to provide by ordinance "a method to assure continuity in its government."

Sec. 3. Scope

This ordinance applies not only to the government of the County of Albemarle, Virginia, but also to the Albemarle County Public Schools, the County's authorities identified in this ordinance, public bodies established pursuant to a joint exercise of powers agreement or other agreements, and other public bodies and offices described in Section 4.

Sec. 4. Essential Governmental Functions

Under the county executive form of government, the "powers of the county as a body politic and corporate" are vested in the Board of Supervisors. *Virginia Code § 15.2-502*. Any actions of the Board in which it exercises its powers are essential governmental functions. By providing vital support for the Board, the activities of the Clerk of the Board and her office are also essential governmental functions.

The Board of Supervisors also finds that the essential governmental functions that must be performed in order to ensure the continuity of government during the COVID-19 disaster are those activities or functions of the County established by Virginia Code § 15.2-518 (departments of finance, social services, law enforcement, education, records, and health), those that the Board has previously deemed to be "necessary to the proper conduct of the business" of the County pursuant to Virginia Code § 15.2-518, the authorities that provide essential public services, the County public bodies that oversee the proper administration and enforcement of State laws and the County Code, and the other public bodies and offices that facilitate the proper administration and implementation of State laws and the County Code to the extent necessary and practicable during the COVID-19 disaster.

A. Essential governmental functions provided by County offices and departments. The following offices and departments provide essential governmental functions as described below:

1. County Executive's Office. The County Executive is the administrative head of the County, whose duties include executing and enforcing all Board resolutions and orders, that all laws of the Commonwealth required to be enforced through the Board, or some other County officer subject to the control of the Board, are faithfully executed, and performing other duties as may be required by the Board and as may be otherwise required by law. *Virginia Code § 15.2-516*. The functions of the Office of Equity and Inclusion and the Communications and Public Engagement Office, which exist within the County Executive's Office, are included in this designation. The Office of Management and Budget and the Project Management Office are also within the County Executive's Office, but their functions are identified separately below.
2. County Attorney's Office. The County Attorney is the legal advisor to County government whose duties are to advise the Board and "all boards, departments, agencies, officials and employees" of the County on civil matters, draft or prepare ordinances, and defend or bring actions in which the County or any of its boards, departments, agencies, officials, or employees are a party; and in any other manner advising or representing the County, its

boards, departments, agencies, officials and employees. *Virginia Code § 15.2-1542(A)*.

3. Department of Finance. The Finance Director's duties include administering the financial affairs of the County, including the budget; assessing property for taxation; collecting taxes, license fees, and other revenues; being the custodian of all public funds belonging to or handled by the County; supervising the expenditures of the County and its subdivisions; disbursing County funds; keeping and supervising all accounts; and performing other duties as the Board of Supervisors requires. *Virginia Code § 15.2-519*.
4. Economic Development Office. Under normal governmental operations, this office is responsible for promoting the economic development of the County and the region, consistent with the County's Economic Development Strategic Plan, and providing staffing assistance to the Economic Development Authority. During the COVID-19 disaster, promoting the economic development of the County and the region and providing economic assistance to County businesses are essential functions of this office, and its services will also include any additional State or Federal assistance or services programs, either on its own or in its work with the Economic Development Authority.
5. Department of Community Development. Under normal governmental operations, this office oversees a wide range of functions related to the physical development of the County. During the COVID-19 disaster, developing proposed plans for the physical development of the County, ensuring that its zoning, subdivision, and water protection regulations are current and continue to be reasonable, administering and enforcing the Albemarle County Zoning, Subdivision, and Water Protection Ordinances, and administering and enforcing the Virginia Uniform Statewide Building Code and other related codes are essential functions.
6. Department of Facilities and Environmental Services. This department maintains and operates the County's buildings, manages the lands owned by the County, manages County capital projects and administers related construction contracts, and oversees environmental-related County responsibilities including, but not limited to, ensuring the County's compliance with the County's Clean Water Act permit, and its obligations as a municipal separate storm sewer system (MS4) program.
7. Department of Fire Rescue. This department provides fire protection and emergency medical services and, through the Fire Marshal, administers and enforces the Virginia Fire Prevention Code.
8. Department of Human Resources. This department provides human resources support for the County and Albemarle County Public Schools. The department provides services in seven key human resources functional areas: (1) recruitment/staffing support; (2) classification and compensation; (3) benefits and leave administration; (4) training and development; (5) employee relations; (6) workplace safety; and (7) teacher licensure and certification.
9. Department of Parks and Recreation. This department maintains and operates the County's parks and provides numerous recreational programs, which during normal governmental operations, are essential to the public health and welfare. During the COVID-19 disaster, ensuring that the County's parks are protected and maintained are essential functions.
10. Department of Social Services. This department provides a range of: (1) child welfare services including child protective services, family support, family preservation services, a foster care program, and adoption services; (2) economic assistance for those in need, including administering the supplemental nutritional assistance program (SNAP), the temporary assistance to needy families (TANF) program, energy assistance, and auxiliary grants; (3) self-sufficiency services, including services related to employment training, career services, and child care services; (4) health care services, including administering the Medicaid program; (5) adult and elder care services, including adult protective services; (6) housing assistance; and (7) language assistance. During the COVID-19 disaster, these services will also include as essential functions any additional State or Federal assistance or services program.
11. Office of Management and Budget. This office, which is part of the County Executive's Office, has the following responsibilities: (1) developing and implementing the County's operating and capital budgets; establishing budget policies, and monitoring departmental and agency budgetary and program performance; (2) preparing the five-year Financial Plan, five-year Capital Improvement Plan, and the long range Capital Needs Assessment; (3) developing and managing the performance management system; and (4) managing the local government grants application and awards process.
12. Police Department. This department provides law enforcement and community safety services.
13. Project Management Office. This office, which is part of the County Executive's Office, provides planning, organizational, and management responsibilities for the County's project portfolio, including organizational projects, strategic plan objectives, and technology solutions. During the COVID-19 disaster, one of this office's essential functions is having a

critical role in planning, organizing, and managing a range of projects related to the County's response to the COVID-19 disaster.

14. Department of Information Technology. This department provides, manages, and supports the use of critical technology that allows the County to operate and communicate internally and with the public.
- B. Albemarle County Public Schools. Under the County Executive form of government, the County is required to have a "department of education." *Virginia Code § 15.2-518*. The "department of education" is composed of the Albemarle County School Board, the Superintendent of the "school division," and the "officers and employees thereof." *Virginia Code § 15.2-531*. Article VIII, Section 1 of the Constitution of Virginia states: "The General Assembly shall provide for a system of free public elementary and secondary schools for all children of school age throughout the Commonwealth, and shall seek to ensure that an educational program of high quality is established and continually maintained."
- C. Authorities. The following authorities and their boards provide essential governmental functions:
 1. Albemarle Conservation Easement Authority. The Albemarle Conservation Easement Authority ("ACEA") was created as a parks and recreational facilities authority by resolution adopted by the Board of Supervisors on November 20, 1989 pursuant to the Public Recreational Facilities Authority Act (*Virginia Code § 15.2-5600 et seq.*). The ACEA was called the Public Recreational Facilities Authority until its name was changed by resolution adopted by the Board of Supervisors on July 11, 2018. The ACEA's articles of incorporation state that its purpose is to accept, hold, and administer open-space land and interests therein under the Open-Space Land Act (*Virginia Code § 10.1-1700 et seq.*). *Amended Articles of Incorporation adopted July 11, 2018*. The types of interests held include open-space easements that are donated by landowners, easements acquired by the County under its Acquisition of Conservation Easements ("ACE") program, and easements created pursuant to Rural Preservation Developments allowed under the County's zoning regulations. Monitoring and enforcing these easements are essential functions.
 2. Albemarle County Broadband Authority. The Albemarle Broadband Authority ("ABBA") was created as a wireless service authority "to provide qualifying communications services as authorized by Article 5.1 (*Virginia Code § 56-484.7:1 et seq.*) of Chapter 15 of Title 56 of the Virginia Code." Facilitating the ongoing deployment of broadband infrastructure and services in the underserved areas of the County is an essential function.
 3. Albemarle-Charlottesville Regional Jail Authority. The Albemarle-Charlottesville Regional Jail Authority ("Jail Authority") was created as an authority under the Jail Authorities Law (*Virginia Code § 53.1-95.2 et seq.*) by agreement among the County, the County of Nelson, and the City of Charlottesville on November 15, 1995. The Jail Authority replaced the Regional Jail Board as the operator of the Albemarle-Charlottesville Joint Security Complex.
 4. Albemarle County Service Authority. The Albemarle County Service Authority ("ACSA") was created as an authority under the Virginia Water and Waste Authorities Act (*Virginia Code § 15.2-5100 et seq.*). The ACSA's articles of incorporation state that its purpose is to undertake projects for distributing and selling potable water to retail customers, collecting wastewater from retail customers, and delivering the wastewater to the Rivanna Water and Sewer Authority. *Amendment to the ACSA Articles of Incorporation, dated December 16, 1985; County Code § 2-701*.
 5. Economic Development Authority of Albemarle County, Virginia. The Economic Development Authority ("EDA"), officially identified as the "Economic Development Authority of Albemarle County, Virginia," was created as an industrial development authority (now, an economic development authority) by ordinance adopted by the Board of Supervisors on May 12, 1976 pursuant to the Industrial Development and Revenue Bond Act (*Virginia Code § 15.2-4900 et seq.*). *County Code § 2-600*. The EDA has all of the powers of such an authority under the Act. The EDA operates in cooperation with the County pursuant to a Memorandum of Understanding and the Albemarle County Economic Development Strategic Plan, also known as Project ENABLE (Enabling a Better Life Economically). During the COVID-19 disaster, promoting the economic development of the County as it is enabled to do pursuant to *Virginia Code § 15.2-4900 et seq.*, providing economic assistance to County businesses within the scope of its enabling authority, and providing any services related to any additional State or Federal assistance or services program either on its own or in its work with the Economic Development Office, are essential functions.
 6. Rivanna Solid Waste Authority. The Rivanna Solid Waste Authority ("RSWA") was created on November 5, 1990 by the Solid Waste Organizational Agreement entered into between the County and the City of Charlottesville, together with a concurrent resolution of the Charlottesville City Council and the Albemarle County Board of Supervisors and the RSWA's articles of incorporation, all pursuant to what is now the Virginia Water and Waste Authorities Act (*Virginia Code § 15.2-5100 et seq.*). The RSWA's articles of incorporation state that its purposes are to "develop a regional refuse collection and disposal system, as such terms are defined in Virginia Code Section 15.2-5101 of the Virginia Water and Waste Authorities Act, including development of systems and facilities for recycling, waste reduction and disposal alternatives with the ultimate goal of acquiring, financing, constructing, and/or operating and

maintaining regional solid waste disposal areas, systems and facilities, all pursuant to the Virginia Water and Waste Authorities Act.” *Concurrent Resolution of the City Council of the City of Charlottesville, Virginia and the Board of Supervisors of the County of Albemarle, Virginia to Amend and Restate the Articles of Incorporation of the Rivanna Solid Waste Authority, dated November 6, 2009.*

7. Rivanna Water and Sewer Authority. The Rivanna Water and Sewer Authority (“RWSA”) was created on June 7, 1972 by the City of Charlottesville and the County pursuant to what is now the Virginia Water and Waste Authorities Act (Virginia Code § 15.2-5100 *et seq.*). The RWSA’s articles of incorporation state that its purpose “is to acquire, finance, construct, operate and maintain facilities for developing a supply of potable water for the City of Charlottesville and Albemarle County and for the abatement of pollution resulting from sewage in the Rivanna River Basin, by the impoundment, treatment and transmission of potable water and the interception, treatment and discharge of wastewater, together with all appurtenant equipment and appliances necessary or suitable therefore and all properties, rights, easements or franchises relating thereto and deemed necessary or convenient for their operations. *Concurrent Resolution of the City Council of the City of Charlottesville, Virginia and the Board of Supervisors of the County of Albemarle, Virginia to Amend and Restate the Articles of Incorporation of the Rivanna Solid Waste Authority, dated May 5, 2017.* The RWSA operates five reservoirs at Ragged Mountain, Sugar Hollow, South Fork Rivanna, Totier Creek, Beaver Creek, along with five water treatment plants, and wastewater treatment plants.
- D. Public bodies existing under joint exercise of powers agreements. The following public bodies exist under joint exercise of powers agreements, and they and their boards exercise essential governmental functions:
 1. Charlottesville-Albemarle Convention and Visitors’ Bureau. The Charlottesville-Albemarle Convention and Visitors’ Bureau (“CACVB”) has existed in various forms for more than 20 years. Its current iteration was established by the County and the City on June 28, 2018, and it became effective July 1, 2018. Individually, both the County and the City are enabled by Virginia Code § 15.2-940 to “expend funds from the locally derived revenues of the locality for the purpose of promoting the resources and advantages of the locality.” The purpose of the CACVB is to jointly promote the resources and advantages of the County and the City, including marketing of tourism and initiatives that attract travelers to the City and County, increase lodging at properties located within the City and County, and generate tourism revenues within the City and County. *Second Amended Agreement to Operate a Joint Convention and Visitors’ Bureau, dated October 2, 2019.* The County and the City contribute funds to support the CACVB’s facilities and operations from their respective transient occupancy tax revenues. During the COVID-19 disaster, the CACVB provides an essential function to support the County’s hospitality business sector.
 2. Emergency Communications Center. The Emergency Communications Center (“ECC”) was established by the County, the City of Charlottesville, and the University of Virginia on January 20, 1984. The ECC was established to provide a centralized dispatching facility for the respective parties’ law enforcement and emergency service providers operating in the County and the City, and to provide a 911 emergency system. *Agreement By and Among the County of Albemarle, Virginia, the City of Charlottesville, Virginia, and the Rector and Visitors of the University of Virginia, dated January 20, 1984.* The ECC also provides coordination and assistance in emergency management for the Emergency Operations Plan adopted by its participating agencies.
- E. Other public bodies and offices. Other public bodies and offices of the County also exercise essential functions. They include, but are not limited to, the Planning Commission, the Architectural Review Board, the Board of Equalization, the Board of Appeals, the Board of Zoning Appeals, the Electoral Board, any advisory bodies established by the Board of Supervisors, and the office of the General Registrar.

Sec. 5. Succession

This section establishes the procedures to fill vacancies in elected and appointed offices arising during the COVID-19 disaster in order to ensure the continuity of County government. This section also applies to Albemarle County Public Schools and may be applied by the authorities and the other public bodies identified in Section 4 to the extent practicable. The Albemarle County School Board, in its discretion, may establish by resolution its own procedures to fill vacancies in elected offices arising during the COVID-19 disaster.

- A. Elected officials. When a vacancy occurs either on the Board of Supervisors or the Albemarle County School Board, the vacancy shall be filled according to the procedure generally established by Virginia Code § 24.2-228, as modified below:
 1. Appointment by remaining members. When a vacancy occurs, the remaining members of the Board, within 45 days of the office becoming vacant, may appoint a qualified voter of the magisterial district in which the vacancy occurred to fill the vacancy. If a majority of the remaining members of the Board cannot agree, or do not act, the vacancy must be filled by

judicial appointment as provided in Virginia Code § 24.2-227.

2. If a qualified voter from the magisterial district cannot be found. If the Board is unable to find and appoint a qualified voter from the magisterial district in which the vacancy exists after a reasonable effort, it may appoint a qualified voter from any other magisterial district.
 3. Duration of appointment. The person so appointed shall hold office only until the qualified voters fill the vacancy by special election pursuant to Virginia Code § 24.2-682 and the person so elected has qualified.
 4. Effect of being appointed. Any person appointed to fill a vacancy holds office the same way as an elected person, is authorized to exercise all powers of the elected office, and this includes having that person's vote be considered the vote of an elected member.
 5. Majority of seats are vacant. If four or more seats on the Board are vacant, the vacancies must be filled by judicial appointments as provided in Virginia Code § 24.2-227.
 6. Holding over. If, during the COVID-19 disaster, a general election cannot be held, any member whose term expires may continue to hold over in office until a successor is appointed.
 7. Temporary vacancies. If a member is unable to participate in any meeting of the Board for more than 30 days and the number of members available to meet and act falls below that required for a quorum as provided in Section 6, and action by the Board is determined to be essential to continue the functions of the County or the Albemarle County Public Schools, as applicable, the remaining members may, in their discretion, appoint a qualified voter to temporarily exercise the powers and duties of the office until the permanent member is able to participate.
- B. Appointed officers. This subsection applies to the County government and not to Albemarle County Public Schools, which is recommended to establish its own succession plan for appointed officers.
1. If the County Executive and the Deputy County Executive are incapacitated. If the County Executive and the Deputy County Executive are both incapacitated such that they cannot perform the duties of the County Executive, the Board of Supervisors may appoint any person it deems qualified to serve as Acting County Executive.
 2. If the County Attorney and the Deputy County Attorney are incapacitated. If the County Attorney and the Deputy County Attorney are incapacitated such that they cannot perform the duties of the County Attorney, the Board of Supervisors may appoint any person it deems qualified to serve as Acting County Attorney.
 3. If the Clerk and the Senior Deputy Clerk are incapacitated. If the County Clerk and the Senior Deputy County Clerk are incapacitated such that they cannot perform the duties of the County Clerk, the Board of Supervisors may appoint any person it deems qualified to serve as Acting County Clerk of the Board of Supervisors.
 4. If any department head and deputy department head or equivalent position are incapacitated. If any department head and any deputy department head, or any equivalent position are incapacitated, the County Executive may appoint any person he deems qualified to serve as the acting department head.

Sec. 6. Public Meetings

This section establishes the procedures for public meetings of the Board of Supervisors, the Planning Commission, the Architectural Review Board, the Board of Equalization, the Board of Appeals, the Board of Zoning Appeals, the Electoral Board, and any advisory bodies established by the Board of Supervisors. These procedures may also be applied by the Albemarle County Public Schools, the authorities, and the other public bodies identified in Section 4 to the extent this section is practicable for their public bodies. These procedures may be used during the COVID-19 disaster in order to ensure the continuity of government. References to the "Board" and the "Supervisors" in this section should be modified as appropriate when applied by public bodies other than the Board of Supervisors.

- A. The need to change how meetings are conducted during COVID-19. The Board fully endorses the statements in Virginia Code § 2.2-3700, which is the introductory section of the Virginia Freedom of Information Act, that the "affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government," and that unless an exception to open meetings is invoked "every meeting shall be open to the public." The regulations in this section for conducting public meetings are necessary because the COVID-19 disaster makes it unsafe for public bodies, as well as their staff and the public, to physically assemble in one location or to conduct meetings in accordance with normal practices and procedures. Although the regulations in this section establish rules for conducting public meetings that are different from normal practices and procedures, the regulations are intended and designed to continue the policies expressed in

Virginia Code § 2.2-3700.

- B. Meeting format. Any meeting or activity that requires the Board to physically assemble may be held through real time electronic means (including audio, telephonic, video, or any other practical electronic medium) without a quorum physically assembled in one location. Nonetheless, this ordinance does not prohibit the Board from holding in-person public meetings provided that public health and safety measures as well as social distancing are taken into consideration, and that doing so does not violate any order or declaration from Governor Ralph S. Northam or the State Health Commissioner. In addition:
1. If the Board will physically assemble, but the public will not be allowed to attend. Subsections (C), (D), (E), and (F) apply to any meeting where the Board will physically assemble to conduct the meeting but the public is not allowed to attend for public health and safety reasons.
 2. If the Board will physically assemble and the public will be allowed to attend. The general laws for conducting a public meeting, including those in Virginia Code §§ 2.2-3700 *et seq.* and 15.2-1400 *et seq.*, and the Board's Rules of Procedure, apply to any meeting where the Board will physically assemble and the public will be allowed to attend, provided that any applicable public health and safety measures are followed.
- C. Agenda. The agenda for an electronic meeting should: (1) state that the meeting is being held pursuant to this ordinance; and (2) identify the opportunities for the public to access and participate in the electronic meeting. The failure to state these items on the agenda neither makes the electronic meeting illegal nor invalidates any action taken at the meeting.
- D. Notice. Before holding a regular electronic meeting, the Board of Supervisors must provide public notice at least three days in advance of the electronic meeting identifying how the public may participate or otherwise offer comment. The notice must: (1) state that the meeting is being held pursuant to this ordinance; and (2) identify the opportunities for the public to access and participate in the electronic meeting. Any notice provided before the effective date of this ordinance, for a public meeting or public hearing after its effective date, that complied with the law when it was given but which is inconsistent with this ordinance, including with respect to the location of the meeting or public hearing, is deemed to satisfy any notice requirements and no action taken at that meeting or regarding any public hearing is invalid for that reason.
- E. Statement by the Chair. At the beginning of the meeting, the Chair should: (1) state that the meeting is being held pursuant to and in compliance with this ordinance; (2) identify the Supervisors physically and electronically present; and (3) identify the opportunities for the public to access and participate in the electronic meeting. The failure to state these items neither makes the electronic meeting illegal nor invalidates any action taken at the meeting.
- F. Public participation. Any electronic meeting must be open to electronic participation by the public and closed to in-person participation by the public. In addition, for any matters requiring a public hearing, public comment may be solicited by electronic means in advance and must also be solicited through telephonic or other electronic means during the electronic meeting. The public comments received before the electronic meeting will be provided to the Supervisors at or before the electronic meeting and made part of the record for the meeting.
- G. Postponing certain matters. Any non-emergency public hearing and action item on the Board's agenda may be postponed to a later date provided that public notice is given so that members of the public are aware of how and when to present their views.
- H. Quorum. If three Supervisors are unable to participate in a public meeting because each of those three Supervisors is sick from the COVID-19 virus, and at least one temporary vacancy has not been filled pursuant to Section 5, a quorum of the Board of Supervisors to conduct business is reduced from four to three. If four or more Supervisors are unable to participate in a public meeting for the reasons stated above, the only action that the participating Supervisors may take is to adjourn the meeting until the temporary vacancies can be filled.
- I. Voting. State laws, as may be implemented in the County Code, may impose different voting requirements.
1. Vote required to act. Although most actions require the majority vote of those Supervisors present and voting, there are some actions that require a supermajority vote, the majority vote of the elected members, or impose some other requirement. These different voting requirements continue to apply unless: (1) one or more Supervisors is sick from the COVID-19 virus; (2) the sick Supervisors are unable to participate in the public meeting; (3) the temporary vacancy has not been filled pursuant to Section 5 and the voting requirement imposed by State law or the County Code cannot be complied with; and (4) a vote is required by the Board at that meeting in order to ensure the continuity of government. If all four of those prerequisites are satisfied, the Board may approve the matter on the affirmative vote of those Supervisors present and voting. Following are examples of different voting requirements for certain matters, and how they are addressed if the four prerequisites are satisfied:

- a. When the affirmative vote of the elected members is required. Article VII, Section 7 of the Constitution of Virginia and its statutory companion in Virginia Code § 15.2-1428 require, among other things, the affirmative vote of a majority of all members elected to the governing body on certain matters. As provided in Section 5(A)(4), and based on language in Virginia Code § 24.2-228, any appointed Supervisor's vote is considered to be the vote of an elected Supervisor.
 - b. When a supermajority vote is required. Virginia Code § 15.2-2405 requires a two-thirds vote of the elected Supervisors to impose taxes in a service district. The Board is unique because it is a six-member Board and, for it, a majority vote is also a supermajority when a two-thirds vote is required. There are no service districts in the County. If another matter requires a supermajority under Virginia law, the Board may approve a matter by a majority of the Supervisors participating and voting.
 - c. When the vote by those present and voting is required. The requirement that a matter be approved by a majority vote of those present and voting is common, one example being found in Virginia Code § 15.2-1427(A). For the purposes of this voting requirement, any Supervisor who is participating in the matter is "present."
2. Roll call vote. A roll call vote should be taken on all matters requiring a vote and must be taken on any action on an ordinance and any other matter requiring a roll call vote pursuant to State or Federal law.
- J. Closed meetings. In addition to the purposes for the Board to have a closed meeting in Virginia Code § 2.2-3711(A), the Board may have a closed meeting to discuss plans to protect the public health and safety as it relates to the COVID-19 disaster and the discussion may include briefings by staff members, legal counsel, or law-enforcement or emergency service officials concerning actions taken to respond to those matters, to the extent that this purpose is not otherwise covered by Virginia Code § 2.2-3711(A)(19) or any other purpose for a closed meeting in Virginia Code § 2.2-3711(A).
- K. Minutes. The minutes of all electronic meetings must comply with the requirements of Virginia Code § 2.2-3707(H), identify how the meeting was conducted, and the Supervisors participating, and specify what actions were taken at the meeting.
- L. Recordings. An audio recording of any electronic meeting must be made and retained as provided by law. This requirement does not apply to any public body, such as an advisory committee, that is not required to have minutes of its public meetings.
- M. Other requirements not modified. Any requirements for conducting a public meeting in Virginia Code §§ 2.2-3700 *et seq.* and 15.2-1400 *et seq.* that are not modified by this section, including those pertaining to special and emergency meetings, apply to conducting a public meeting.

Sec. 7. Deadlines

This section applies to the County government. State law and the County Code impose many deadlines by which the County, Board of Supervisors, and other public bodies must act. The following deadlines are extended, with the proviso that the Board of Supervisors and the County will endeavor to the extent practicable to meet the deadlines established by State law and the County Code. Subsections (D), (E), and (F) may be applied by the Albemarle County Public Schools, the authorities, and the other public bodies identified in Section 4.

- A. The tax rates. It is the intention of the Board to meet all of the deadlines established by State law to fix the tax rates. However, the May 15 deadline established by Virginia Code § 58.1-3321(E) for fixing the real estate tax rate, and the June 30 deadline to fix other tax rates established by Virginia Code § 58.1-3001, are extended indefinitely as may be necessary in order to allow the tax rates to be fixed.
- B. The budget. It is the intention of the Board to meet all of the deadlines established by State law to approve the County's annual budget. However, the May 15 deadline established by Virginia Code § 22.1-93 requiring the Board to "prepare and approve an annual budget for educational purposes by May 15 or within 30 days of the receipt by the county . . . of the estimates of state funds, whichever shall later occur," and the July 1 deadline to approve the budget established by Virginia Code § 15.2-2503 ("the date on which the fiscal year begins"), are extended indefinitely as may be necessary in order to approve the County's annual budget.
- C. Land use applications. Any deadline established by State law or the County Code for action by the County, the Board of Supervisors, or any County public body within the scope of Chapter 14, Subdivision of Land, Chapter 17, Water Protection, or Chapter 18, Zoning, is extended indefinitely as may be necessary to allow any public body or County staff to act. Any provision in State law or the County Code to deem the failure of any County action to be timely taken to be approval of the pending matter is of no force or effect.
- D. Requests for records under the Virginia Freedom of Information Act. Any deadline by which a response to a request for records under the Virginia Freedom of Information Act (Virginia Code § 2.2-3700 *et seq.*) is due, and the time for which the records sought may be inspected or

produced, are extended indefinitely as may be necessary in order to respond to the request or allow any records to be inspected or produced.

- E. Hold harmless. The failure to meet any deadline imposed by State law, including the Prompt Payment Act, or the County Code does not constitute a default, violation, approval, recommendation or otherwise.
- F. Other deadlines may be extended. Any other deadlines not extended by this section may be extended by a separate ordinance.

Sec. 8. Procurement

This section pertains to procuring goods and services by the County. This section also may be applied by the Albemarle County Public Schools, the authorities, and the other public entities identified in Section 4 that do their own procurements, to the extent this section is practicable for their public entities. References to the "County Executive" and other County-specific references in subsections (A) and (C) should be modified as appropriate when this section is applied by public entities other than the County.

- A. Authority to modify requirements or procedures for procurements not directly related to the COVID-19 disaster. The County Executive is authorized to modify any requirement or procedure imposed pursuant to the Virginia Public Procurement Act (Virginia Code § 2.2-4300 *et seq.*), the Albemarle County Purchasing Manual, or by custom, that requires or allows any procurement-related documents to be hand-delivered or delivered by a carrier to the County Office Building, or that requires or allows bidders and vendors to physically assemble for bid openings and other steps in the procurement process. Requirements or procedures may be modified as follows:
 - 1. Documents. Any modification pertaining to documents should require electronic documents to be submitted by any person submitting an inquiry, or responding to a request for information, request for proposals, an invitation for bids, or any other solicitation.
 - 2. Physical assemblies. Any modification pertaining to physical assemblies should require any steps in the procurement process by which people would otherwise physically assemble to participate through electronic communication means or to be conducted in a location that complies with any County, State, and Federal orders or declarations regarding gatherings.
- B. Authority of the County Executive for COVID-19 disaster related procurements is unaffected. Subsection (A) does not affect the County Executive, acting as the Director of Emergency Management pursuant to Virginia Code § 44-146.21(C), to "enter into contracts and incur obligations necessary to combat such threatened or actual disaster, protect the health and safety of persons and property and provide emergency assistance to the victims of such disaster, and proceed without regard to time-consuming procedures and formalities prescribed by law (except mandatory constitutional requirements) pertaining to the performance of public work, entering into contracts, incurring of obligations, employment of temporary workers, rental of equipment, purchase of supplies and materials, and other expenditures of public funds, provided such funds in excess of appropriations in the current approved budget, unobligated, are available."
- C. Notice. Modifications to requirements or procedures made under this section do not need to be published in the Albemarle County Purchasing Manual to be effective. Notice reasonably calculated to make the public aware of these changes, including on the Albemarle County Purchasing Department's website, is sufficient.

Sec 9. Duration

This ordinance is effective immediately and expires not later than six months after the COVID-19 disaster ends. The COVID-19 disaster will be deemed to be ended when the Board of Supervisors adopts a resolution ending the declared local emergency.

Sec. 10. Method for Resuming Normal Governmental Authority and Operations

- A. When normal governmental authority and operations will resume. Normal governmental authority and operations will resume after the County Executive, acting as the Director of Emergency Management, reports to the Board of Supervisors that all emergency actions that can be taken by the County have been taken, the Board ends the local emergency, the Governor ends the state of emergency, and the State Health Commissioner advises that it is safe for people to once again gather in public so that normal governmental authority and operations, including normal public meetings (or words to that effect), may be re-established.
- B. Method to resume normal governmental authority. When the events in subsection (A) have occurred, normal government authority will resume as follows, subject to further amendment to this section as may be necessary:
 - 1. Succession. The appointment of any person to the Board pursuant to Section 5(A)(2) or 5(A)(7) terminates and any resulting vacancy will be filled as provided by law.
 - 2. Public meetings. Section 6 will no longer apply.

3. Deadlines. Section 7 will no longer apply, subject to the County Executive establishing revised guidelines to allow for a reasonable transition period back to full normal County operation.
4. Procurement. Section 8 will no longer apply to any steps in the procurement process that have not already been completed or been substantially completed.

Sec. 11. Effect of this Ordinance on the Powers of the Director of Emergency Management

This ordinance does not affect the powers of the County Executive, acting as the Director of Emergency Management, pursuant to Virginia Code § 44-146.21 during the COVID-19 disaster. The intention of the Board of Supervisors is that this ordinance and any powers exercised by the Director complement one another.

Sec. 12. Effect of this Ordinance on Albemarle County Courts and Constitutional Officers

This ordinance does not apply to the Albemarle County Circuit Court, General District Court, or Juvenile and Domestic Relations District Court. This ordinance also does not apply to the offices of the Albemarle County Clerk of the Circuit Court, Commonwealth's Attorney, or Sheriff.

Sec. 13. This Ordinance Supersedes Prior Continuity of Government Ordinances; Exception

This ordinance supersedes any previous continuity of government ordinance adopted by the Board of Supervisors, including the emergency ordinance for continuity of government, Ordinance No. 20-E(2) adopted by the Board of Supervisors on March 27, 2020, provided that Section 7(C) of that ordinance pertaining to certain deadlines related to the tax on personal property employed in a trade or business continues until Ordinance No. 20-E(2) expires or the subject matter of Section 7(C) is superseded by another ordinance.

Sec. 14. Severability

It is the intention of the Board of Supervisors that any part of this ordinance is severable. If any part is declared unconstitutional or invalid by the valid judgment or decree of a court of competent jurisdiction, the unconstitutionality or invalidity does not affect any other part of this ordinance.

Sec. 15. Liberal Construction

Because its purpose is to ensure the continuity of government, this ordinance should be liberally construed to accomplish this purpose and to facilitate the performance of the governmental functions and related services determined by the Board of Supervisors, either expressed or implied, to be essential.

State law reference – Va. Code § 15.2-1413.

Signed this 15th day of April 2020.

Agenda Item No. 15. From the Board: Committee Reports and Matters Not Listed on the Agenda.

Ms. Mallek said if the Board had not had a chance to read correspondence from staff and the applicant, the County's tenants, about the rent issue, she hoped they would do that, as it will give them a chance to discuss this again at the meeting on April 22. She said this correspondence includes responses and answers to particular questions from an earlier meeting.

Ms. Mallek said she just received notice that afternoon that there was excitement about a federal grant through the Endowment of the Arts that would help in this circumstance, but it turned out that this grant is currently have an award from the Endowment of the Arts, and that no one else may apply. She said these are the types of rebuffs that artisans are finding wherever they go. She encouraged the Board to research this as much as they can.

Ms. Mallek said as Mr. Gallaway pointed out earlier regarding small business loans, time is critical. She said all the County's tenants are feeling that each day is perhaps their last. She encouraged the Board to continue thinking about this and hopefully discuss it on April 22.

Ms. McKeel informed the Board about a financial payment to localities around transit. She said the Board likely saw in the news that day that the Coronavirus Aid Relief and Economic Security Act, CARES Act of 2020, was released on Monday, April 6. She said this relief for localities will provide to Charlottesville Albemarle Airport \$6.3 million. She said it will also provide to their locality \$7.1 million in transit funding. She said they must remember that the County's transit is CAT, through the City of Charlottesville.

Ms. McKeel said she had sent Ms. Mallek, Mr. Gallaway, and staff an email about this earlier, but that there had been a change. She said \$7.1 million to their locality for transit will be split between

JAUNT (at 25%) and CAT (at 75%). She noted this was a rough estimate, and that through the CARES Act, JAUNT will receive approximately \$1.8 million to help them make up for the loss of ridership through the pandemic. She said CAT will receive \$5.3 million.

Ms. McKeel said this amount of funding was about three times what the locality received from the federal government in 2019. She said it is intended for pandemic relief and can be accessed now. She said there is no local match, and that it can be used for operational funds spread over the current year, backdated to January of 2020 and into the next fiscal year. She said according to the act, the money can be used, but does not have to be spent, on capital. She said it is intended to help localities cover losses in revenues.

Ms. McKeel said the thought the week prior, when she had sent out the original email, was that it was going to be required to go to the MPO for what is called a “split letter of approval” from the MPO. She said the federal requirements have now changed, and it does not have to be approved by the MPO. She said the theorized reason for this is because they are trying to reduce federal regulations as some MPOs are not meeting, and they are trying to make it easier for localities to access this amount.

Ms. McKeel said that through the Regional Transit Partnership and MOU, Albemarle County should have a split of about 28% of CAT’s share of that money. She said this would cover the County’s ability to pay CAT the money they need for the upcoming year, as well as provide some extra. She said given the fact it can be accessed at any time, she wanted to make everyone aware.

Ms. McKeel said that through the Virginia Transit Association, she received a copy of the CARES Act itself, and that she would forward everyone this document. She said she would send out another email update, and that the major point was that the split letter would not be going to the MPO for approval. She said the MPO does have to be notified, but that the notifications can happen at any time.

Mr. Gallaway said that with upcoming budget discussions, this would factor into those conversations for further analysis.

Ms. Price said she concurred with Ms. Mallek’s comment, and that she was extremely pleased with the additional information they received from Crozet Arts. She said her objective is to do the things needed to support the organizations and individuals who contribute to the County while ensuring there is documentation that justifies their actions. She said the additional information provided was helpful.

Ms. Price said she is concerned about the balancing of resident participation on any of the Board’s actions and particularly land use decisions. She said she is equally concerned with the property rights of the applicants as they come before the Board, as well as with the continuity of the provision of essential services. She said delaying things during April was fine, but that they did not know how long this emergency would go. She said she was not in favor of a blanket delaying of the actions, and that they need to come up with a balance. She said she was confident that the County will help them reach the right decision.

Ms. Price said she could not image what Mr. Richardson and his staff were working on with regard to the changes as a result of the economic impact of the pandemic. She said as they work to finalize the fiscal year and move into the next one, she is confident that as they discussed earlier that evening, looking at the FY 21 budget, he will be taking into consideration the financial impact of what she believes will be a drop in property values. She said this will then affect the County’s revenues and based on those, what their expenditures are and how they will be able to then continue essential services.

Agenda Item No. 16. From the County Executive: Report on Matters Not Listed on the Agenda.

There was none.

Agenda Item No. 17. Adjourn.

At 9:08 p.m., the Board adjourned their meeting to April 22, 2020 at 3:30 p.m. via an electronic meeting, using Zoom and a telephonic connection pursuant to Ordinance No. 20-A(6), “An Ordinance to Ensure the Continuity of Government During the COVID-19 Disaster.”

Approved by Board
Date 2/16/2022
Initials CKB

Chair