

A regular meeting of the Board of Supervisors of Albemarle County, Virginia, was held on February 19, 2020 at 1:10 p.m., Lane Auditorium, Second Floor, County Office Building, McIntire Road, Charlottesville, Virginia.

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 Richardson, Assistant County Executive, Trevor Henry, Deputy County Executive, Doug Walker, County Attorney, Greg Kamptner, and Clerk, Claudette K. Borgersen.

Agenda Item No. 1. Call to Order. The meeting was called to order at 1:10 p.m., by the Chair, Mr. Gallaway.

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Agenda Item No. 2. Pledge of Allegiance.

Agenda Item No. 3. Moment of Silence.

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Agenda Item No. 4. Adoption of Final Agenda.

Ms. Palmer asked if it would be okay to cover "From the Board: Committee Reports and Matters not listed on the Agenda" as well as "From the County Executive: Report on Matters not listed on the Agenda" before the closed meeting, since it appeared there was extra time to do so then.

Mr. Gallaway was amenable to the idea.

Ms. Palmer explained that because the Closed Meeting started at 2:30 p.m. it looked like there would be time available then.

Mr. Kamptner said they shouldn't need all 3.5 hours.

Ms. Palmer also said she would have to pull her minutes from the Consent Agenda.

**Motion** was offered by Ms. Palmer to adopt the final agenda. 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.

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**Introductions.** At this time, Mr. Gallaway introduced staff present and the presiding security officers, Lt. Terry Walls and Officer Brian Miller.

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

Ms. Price observed that whenever she flies cross-country, she is impacted by development around the country. She said that on her recent vacation, she had the opportunity to visit several natural parks and commune with nature. She said this reminded her of how fragile the planet is, and how responsible people are to be good stewards of the planet, flora, and fauna. She said she was very close to nature in some areas and that it was so evident that people could destroy the planet if they are not careful.

Ms. Price said she was very pleased that the County and Board are focused on taking actions to help protect their environment.

Ms. Palmer said she also took a recent vacation in the Everglades National Park, and that picking up plastic bottles and Styrofoam there was depressing.

Ms. Palmer informed the Board and the public that the County is now composting pizza boxes at McIntire Recycling Center. She said she recently saw a picture of the huge amounts of pizza boxes now being composted, and that seems to be a success. She said they are always trying to decrease contamination in the recycling bins at McIntire, or increase the purity, so they can get more money for their recycling and so that the products actually do get recycled. She said they are looking forward to starting an ambassador program at the center, where they will have friendly faces helping people to place items in the correct bins.

Ms. McKeel said that week, they received an email about litter, and that she wanted to revisit this at some point. She said it didn't matter whether one is driving in the Rural Area or the Development Area, and that the County was awash in litter. She said she goes to other communities and sees some litter, but that she doesn't see it there like she does in Albemarle. She said they must figure out what is going on, and that working with the School Division could be helpful as well.

Ms. McKeel said she responded back to the email with a couple of thoughts. She said it would behoove the Board to, at some point, have a serious discussion about the litter in the community and how they might be able to have an impact. She said she sees plastic bags hanging from bushes and trees, and that this is appalling.

Ms. McKeel said she knew that the staff has a full work plan, and that the Board has many items on their agenda, but that litter was something they have to deal with. She said this goes back to quality of life.

Ms. Palmer said one thing she wanted to talk about later was about some options and studies for that.

Ms. Mallek said the litter problem is something that is very high on the complaint level for citizens all over the County, and that there are many wonderful citizens putting their lives at risk on the roadside trying to clean up every spring and fall. She said these citizens are truly and justifiable aggrieved by the fact that they spend so much time cleaning up and that by the following Monday, the road looks just the same. She said she didn't know what it is about the population that thinks this is okay, as other states and regions do not act like this. She expressed her irritation over the issue, adding that litter draws predator wildlife to the road, who then get killed, resulting in a downward spiral.

Ms. Mallek acknowledged the staff members working on the Crozet Master Plan. She said they had another fantastic meeting the week before, with about 50 people in attendance who did small group work on the different neighborhoods and regions of the Crozet community. She said staff has designed a new plan of approach compared to 10 years earlier, which was successful and well-received. She said though there is not universal agreement on it, everyone involved is happy to be participating in the project.

Ms. Mallek said that last Thursday, she was fortunate to attend a strategic planning wrap-up for the Thomas Jefferson Soil and Water Conservation District. She said there were brochures on the signup table about this on programs for both rural and urban residents, including cost-sharing and stormwater programs that homeowners and renters can participate in. She said members from the USDA Farm Service Agency, which is more focused on rural residents, has an office in Louisa but are ready to help with all sorts of agricultural cost-sharing programs.

Ms. Mallek said that as people may have heard about in the news, there is discussion at both the state and federal level about changing some of the participation rates for many of those stewardship efforts. She said this was the time to get the work done and participate in those signup programs to benefit your farm, family, and finances. She said she looked forward to hearing more about this in future meetings.

Mr. Gallaway said that at noon that day, the Board received the County Executive's budget recommendation, which would be shared online soon for those interested, along with the calendar of all the Board's budget work sessions that would be coming forward over the next couple months, as they work through the budget.

Mr. Gallaway said with regard to the litter, the constituent who emailed him about Earlysville Road was calling into question whether or not the Adopt a Highway Program continues, which it does. He said the thought was that he hadn't seen any organizations taking on new endeavors.

Mr. Gallaway said he did find out that the local program coordinator (with VDOT) is Ms. Teri Welsh and her contact info is [teri.welsh@vdot.virginia.gov](mailto:teri.welsh@vdot.virginia.gov). He said there are local organizations out there, and that perhaps the Adopt a Highway program has become old hat for volunteering activities. He said it may be time to call attention to that program again, and there might be local organizations who are willing to take that on.

Mr. Gallaway said the inmate crew who are out cleaning litter should be coming out to Earlysville Road in the coming weekend or two. He said he was appreciative to the constituent that had emailed him that they were seeking to participate in some larger volunteer effort to go out and help clean up Earlysville Road. He said he was making a call to action if there are organizations out there who might be looking to that area for an Adopt a Highway program.

Ms. McKeel thanked Mr. Gallaway. She said that as the chair for an Adopt a Highway team for 25 years, she can say that the teams do a great job. She said in all honesty, the organization could use more teams, and could use younger team members. She said she is the youngest person on her team and has 70- and 80-year-olds picking up the litter. She said she could use some 40- and 50-year-olds on the team.

Ms. Mallek asked about high schools perhaps looking for a service project.

Ms. McKeel said that over the years, she has had about three high school kids who have worked service projects on that team. She said the jail crew has worked now for about two years and cannot keep up with the demand, as there is more litter than they can keep up with. She said they are doing a great job, however, and that it is a win-win for the inmates because they are earning money to pay off their fines, and the community gains. She said they do not have enough resources to keep up.

Ms. McKeel said on the Albemarle Charlottesville Regional Jail website, under "Programs," there

is a way to report an area that one would like the litter picked up.

Mr. Gallaway said a lengthy list was provided to him of the coming work.

Ms. Palmer asked if Mr. Gallaway could share the list.

Mr. Gallaway said he would send it out to the other Supervisors.

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Agenda Item No. 6. Proclamations and Recognitions.

Item No. 6.a. Proclamation Recognizing March 3<sup>rd</sup> as Liberation Day.

Mr. Gallaway **moved** to approve Proclamation Recognizing March 3<sup>rd</sup> as Liberation Day and read it aloud. 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

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**PROCLAMATION  
RECOGNIZING MARCH 3<sup>RD</sup> AS LIBERATION DAY**

**WHEREAS**, the County of Albemarle, in keeping with the core principles of our great United States of America, believes that all persons are created equal and possess unalienable rights to life, liberty, and the pursuit of happiness; and

**WHEREAS**, on the twenty-second day of September, in the year 1862, a proclamation was issued by the President of the United States, containing, among other things, an emancipating declaration that: on the first day of January, in the year 1863, all persons held as slaves shall be then, thenceforward, and forever free; and

**WHEREAS**, on the third day of March, in the year 1865, the liberation of the estimated 14,000 enslaved persons in the Charlottesville/Albemarle area was enforced; and

**WHEREAS**, the Board of Supervisors recognizes the enduring cultural and historical significance of emancipation, acknowledges the universally cherished values of liberty and justice, and emphasizes our common humanity.

**NOW, THEREFORE, BE IT RESOLVED**, that the Albemarle County Board of Supervisors do hereby recognize March 3, 2020 as Liberation Day.

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

Mr. Kent Schlussel (Rio District) said in a couple weeks, the Board would be considering the rezoning of 999 Rio Road. He said this rezoning has been before the Board previously and deferred. He said there were many reasons about why the Board should not rezone, and a few comments about why they should. He urged the Board not to rezone.

Mr. Schlussel said that although he would prefer that the property be left in its natural state or made into a nice neighborhood park, he knew that the property would most likely be developed. He said the property is zoned R4 and will allow 11 houses to be built on the approximately 1.91-acre site. He said a developer has repeatedly stated that if the property is developed as a by-right development, there is not a requirement for green space. He said although that is correct, the reality is far different.

Mr. Schlussel said that in the application, one gets the impression that 46% of the development would be devoted to green space and amenities. He said this includes a multiuse path, parking area, and internal roads in an area where houses would be built. He said the developer would meet the 20% green space required by the County. He noted that a multiuse path on Rio Road already exists.

Mr. Schlussel said that from an environmental standpoint, however, keeping this rezoned as R4 would be much better. He said the average footprint of a house in the area is about 1,600 square feet or so. He said the site is 1.91 acres going to the developer, which is 83,199.6 square feet. He said if they assume that footprint that the average home in the area is 1,800 square feet (slightly higher than most homes in the area), the homes will cover 20,000 square feet, which is only 24% of the total square footage. He said even with the driveway alleyways, that could leave potentially 76% green space, assuming most of the homes would have a lawn with grass and trees.

Mr. Schlussel said this is much better for the environment than what is being planned by the developer. He said this would actually help clean the air from the traffic that is and will be in the neighborhood due to the current situation.

Mr. Schlussel said to summarize why the Board should not rezone this to neighborhood model, as stated by the developer, this is infill and should be compatible with existing neighborhoods. He said a commercial property would not be appropriate for the site, as well as the apartments that were previously proposed. He said as this is an Entrance Corridor, it is not suited to the type of development with commercial, as proposed. He said the Comprehensive Plan is out of date in the area and needs to be updated, the infrastructure is not in place, and the traffic will increase. He made mention again of the environmental concerns he stated.

Mr. Schlussel again urged the Board not to approve the rezoning request when it comes before it.

Mr. Schlussel also expressed appreciation for the fact that the tax rate was not increased in the recommended budget.

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Ms. Judy Schlussel (Rio District) said she is a member of the Rio-29 CAC. She said Albemarle County has an image of gently rolling hills, green space, and farmland. She said the gently rolling hills still exist, as well as some farmlands in certain areas of the County. She said they can only have an image of green space, however, since developers are leveling the land to build in every nook and cranny, especially in the 29 North Corridor.

Ms. Schlussel said VDOT has indicated that they are looking for viable options for the horrible traffic situation in the Rio-29 area. She said words give them an inkling of hope, but that the reality is that solutions are many years down the road, depending on funding.

Ms. Schlussel said a few weeks earlier, her remarks to the Board took them on a journey with Thomas Jefferson, from Monticello to the Dunlora Plantation. She said she would continue that journey and bring up some concerns of traffic woes in 2020. She offered up the scenario that a driver had just left the newly opened Center at Belvedere. She said if the driver turns left onto Belvedere Boulevard, he or she is likely to get struck in a line of traffic. She said the driver is anxious and doesn't want to wait, so he or she makes a gutsy move, making the U-turn and driving towards Loring Run onto Dunlora Drive. She said perhaps some of the stress could have been eliminated by turning right, driving towards Loring Run onto Dunlora Drive to start with.

Ms. Schlussel offered a second scenario, noting it was somewhat the same, except it could be a parent or a newly-licensed driver coming from soccer practice. She said some added factors are that the adult is thinking of all the things on his or her agenda for the evening, or the young driver is thinking about homework.

Ms. Schlussel said that traffic is not just limited to these two scenarios, and that any one of the proposed 775 residents of Belvedere could choose to drive through Dunlora. She said the common elements are that Dunlora Drive is being used as a cut-thru, increasing traffic on a country road that was never meant to have traffic other than the traffic generated by the residents. She said VDOT has acknowledged, on many occasions, they are aware that the traffic is being generated by Belvedere drivers.

Ms. Schlussel said when they built their home 26 years ago, they were told that Dunlora Drive would never have safety features of yellow division lines, streetlights, sidewalks, curbs, and gutters. She said this was to preserve the rural, country atmosphere. She said that today, they have the rural, country atmosphere, but that it also includes deer population due to clear cutting and eliminating their natural habitat, as well as an uptick in traffic due to surrounding development.

Ms. Schlussel said that although the proposed 999 Rio Road has indicated that there will be green space, which includes bushes on the heavily-traveled Rio Road, it is a matter of terminology. She said this actually is an oxymoron, since all the existing natural greenery will be clear cut, eliminating natural habitat for various critters, both large and small.

Ms. Schlussel said in the big picture, at 999 Rio Road, it is small, but that many small factors eventually have a huge impact. She urged the Board not to rezone this particular parcel, or other rezoning requests for future developments in this corridor, until the disastrous and antiquated infrastructure doesn't serve just as a talking platform, but rather, as a springboard jumping to action.

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Dr. Charles Battig (Scottsville) said last month, there was a compelling reason given by an environmental activist group for going on with the Paris Climate Agreement. He said as far as he recalled, it all said that everyone else is doing it and that the County would be in good company. He questioned this argument, noting that the legal team amongst the Board would say that everyone doing it is not a good argument.

Dr. Battig said all the emotional outcry from these groups provides no scientific background. He indicated to his chart, noting there is a graph showing a continuing decrease in all sorts of climate-related deaths. He said it was not going up and that there is no crisis.

Dr. Battig said forest fires were much worse in the 1920s than presently and that they have been trending downwards. He indicated to a diagram showing that from 1950 to 2017, there was no increase in any of the three degrees of the severity of drought.

Dr. Battig said in 2009, there were concerns about the sea levels rising. He said a group went scuba

diving in the Maldives and wrote a proclamation. He said 10 years later, they are crying for more hotels and building a dozen more there with no problem.

Dr. Battig said there is no trend in hurricanes. He said a UVA staff member was scaring children when talking about food production, and countered that food production has gone up.

Dr. Battig said CO2 is a plant food, and that greenhouses put it up two or three times to increase the growth of plants and use less water.

Dr. Battig said if everything was shut down, it would only decrease the temperature by one one-thousandth of a degree. He said rather than worrying about fictitious carbon footprints, the Board has identified a litter problem that requires instilling a sense of personal responsibility throughout the school system and in adults.

Dr. Battig said otherwise, the Board is hearing, speaking, and seeing no signs, and asked if this was the County policy they want. He said the Board had voted that they were all in.

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Mr. Tom Eckman (Rivanna District) said he is a member of IMPACT (Interfaith Movement Promoting Action from Congregations Together). He said he sat in on the budget meeting earlier that day and was somewhat disappointed. He said he heard that the new budget would address the quality of life of all people in the County, and that he didn't think this was truly the case.

Mr. Eckman said there are 660 families that are one paycheck away from homelessness because they pay 50% of their income for housing, which includes 933 seniors. He said many of the County employees are in that situation as well, and that \$15 per hour works out to about less than \$32,000, which is about 30% AMI (Area Median Income). He said they will be struggling and will have to move to other counties. He added that the County already has a hard time finding school bus drivers.

Mr. Eckman said the County needs to get serious about creating more low-income housing. He said rents have increased 42% over the last 7 years.

Mr. Eckman said IMPACT thinks the solution is to have an affordable housing trust fund with money available in it so that when the housing policy is adopted, they can move quickly. He said they cannot wait another year for that policy program to be adopted, then put money into a fund, as it needs to be there now.

Mr. Eckman said every dollar contributed to a housing trust fund, locally, can leverage \$8. He said there are 770 similar trust funds used throughout the U.S., with 7 being in Virginia.

Mr. Eckman said there needs to be a significant amount of money in the fund, and that IMPACT believes that \$5 million would be a good place to start. He said this fund could be used to incentivize low-income housing. He said it has been estimated that 167 units could be built each year with \$5 million. He said the fund could purchase land when appropriate, noting that land is very important, and is a high percentage of any investment (e.g. apartment buildings). He said the fund could also be used to encourage developers to build low-cost housing units and have the funds to renovate units where people could put accessory units onto their properties for low-income housing.

Mr. Eckman said the County has a budget of \$451 million and that IMPACT is asking for \$5 million. He said most of that income comes from real estate taxes and asked why they could not dedicate \$5 million to help people find low-income housing in the County. He said they are missing an important point on improving the quality of people's lives, and that this is the people working and making 30% AMI and seniors.

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Mr. Neil Williamson (Free Enterprise Forum) said the Free Enterprise Forum does not take a position on any projects but deals on the policy level. He said he found it most interesting in the comments from the public that afternoon regarding housing, both about the need for it and that it is not needed. He said some may recall Land Use Regulation Committee (LLURC), which was a committee designed to maximize land use that morphed into DISC (Development Initiative Steering Committee) and then DISC II. He said they then had the Development Process Review Committee. He said all of these things were ideas to streamline development in the Development Area.

Mr. Williamson said what they were hearing over the past few months were concerns about development in the Development Area. He said the night before, one of the Planning Commissioners suggested that they should start evaluating how much cut and fill is being done on a site in order to make it level for a building site, and that the Planning Commission should utilize this for an evaluation tool. He said there is State law that covers that and engineering, and that he didn't think that this belongs in this purview, acknowledging at the same time that he is not a sitting Planning Commissioner.

Mr. Williamson said the County has a role in topography and a limited Development Area. He said if the County is not going to allow development in the Development Area, they should think about the fact that more housing is needed at all price points everywhere, and for everyone (which was a quote he took from Sunshine Mathon).

Mr. Williamson said the idea of development in the Development Area is something that needs to be embraced. He said if it is not going to be embraced, he would return to his call he mentioned the prior month, which was to consider expanding the Development Area. He said he knew how most of the Board members felt about that issue and encouraged the Board to consider how they choose to develop in the Development Area to make the people who are coming to the county happy.

Mr. Gallaway closed Matters from the Public.

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Agenda Item No. 8. Consent Agenda.

Mr. Gallaway noted that the minutes had been pulled from the Consent Agenda during Agenda Item No. 4. Adoption of the Final Agenda.

**Motion** was then offered by Ms. McKeel to approve the consent agenda as amended. 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

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Item No. 8.1. Approval of Minutes: August 7 and August 21, 2019.

Ms. Palmer had not read the minutes of August 7 and August 21, 2019 and asked that they be pulled and carried forward to the next meeting.

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Item No. 8.2. Revised Charge for the Solid Waste Alternatives Committee.

The Executive Summary forwarded to the Board states that the Solid Waste Alternatives Advisory Committee (SWAAC) was established by the Board of Supervisors at its March 9, 2016 meeting as a standing advisory committee. The SWAAC charge is to develop sustainable materials management policies for consideration by the Board, with focus on public education and outreach, waste and litter reduction, material reuse, recycling and composting, greenhouse gas reduction and waste disposal.

The Solid Waste Alternatives Advisory Committee seeks to revise the committee's charge (Attachment A) to allow up to 12 voting members and refine the scope. The current number of committee members has been limited to 8. The committee is seeking this change to adequately support and advance the near- and long-term Sustainable Materials Management (SMM) objectives of the committee. Given the volunteer nature of committee and competing demands on their time, the committee believes a larger committee is justified. The committee has clarified the charge to more accurately reflect the scope of topics addressed by the committee. One addition to the charge is inclusion of the SWAAC committee as a resource to the County to review projects that have a recycling or sustainable materials management component as appropriate and to consider alignment with County SMM goals

There would be no budget impact as a result of changes to the charge.

Staff recommend that the Board approve the revisions to the SWAAC charge as described in Attachment A.

**By the above-recorded vote, the Board approved the revisions to the SWAAC charge as described in Attachment A:**



**County of Albemarle  
Solid Waste Alternatives Advisory Committee  
Revised (2020) Charge Statement, Goals, Membership and  
Organization**

**Introduction**

On October 7, 2015, the Albemarle County Long Range Solid Waste Solutions Advisory Committee – a temporary body appointed by the Board of Supervisors (Board) to identify best practices for the management of solid waste in Albemarle County – submitted its final report to the Board. The report included a recommendation for the creation of a standing committee to advise the Board and a dedicated staff person to support the committee's work.

On March 9, 2016, the Board established the Solid Waste Alternatives Advisory Committee (Committee) and approved an initial charge statement. This revised charge reflects current thinking by Board representatives and County staff on expectations of the Committee and available County resources based on the committee's first year in service.

**Charge**

The Albemarle County Solid Waste Alternatives Advisory Committee (SWAAC) is a standing advisory committee to the Albemarle County Board of Supervisors. The establishment of this Committee is consistent with the County's Comprehensive Plan, the organizational vision of Albemarle County, and the Regional Solid Waste Management Plan facilitated by the Thomas Jefferson Planning District Commission. The Committee will provide general information to the Board in a semi-annual update, including a summary of sustainable materials management (SMM) issues being considered by the Committee and a rolling, six-month work plan. The Committee can provide review and input on actions proposed by the County that contain a solid waste/ SMM component, will submit specific policy recommendations to the Board as they are developed, and will support recommendations with thorough budgetary and relevant impact analyses of the recommended policy implementation. Policy development will focus on longer range planning that considers the role of climate change actions, including greenhouse gas reductions; public education strategies for SMM activities that are current or are planned for future implementation; equitable access to SMM services in the County; evaluation of regional opportunities for programs; and recommending metrics for use in evaluating and validating the effectiveness of SMM activities and programs.

Topics for consideration by the Committee shall include:

- public education and outreach
- materials reuse
- waste disposal
- waste and litter reduction
- recycling and composting

- greenhouse gas reduction
- Ivy MUC waste collection and transfer operations (master planning and recycling plan)
- compliance with state reporting requirements
- information needs to support long term planning and climate action plan

The Committee will also provide input on the job description for a Sustainable Materials Management Coordinator position and a recommendation on the timing of funding. This evaluation will include input on whether the position will serve the County best by being located at the Rivanna Solid Waste Authority (RSWA) or within the Facilities and Environmental Services Department.

#### **Membership**

The Committee will consist of up to 12 voting members appointed by the Board of Supervisors with appropriate background, experience, and interest. Appointments will be based on Board and staff recommendations, nominations from community and business groups, and individual applications. Members will be added to this Committee through the normal Board appointment process.

**Length of Term:** Initial appointments will include two four-year appointments, two three-year appointments, and two two-year appointments. Thereafter, appointments will be for four-year terms with a maximum duration of service limited to eight years.

The voting members of the Committee shall include the following who are interested in furthering sustainable materials management in Albemarle County and the region:

- one or more - Professional Engineer
- one or more - technical expert in any solid waste management-related field
- one or more - representative with public policy interest/experience
- two to four - Albemarle County resident(s)
- two to four - local business community members

The Board shall appoint two members of the Board of Supervisors to serve as liaisons to the Committee; one shall be the Board member serving on the RSWA Board of Directors. In addition, the Committee shall invite appropriate staff from the RSWA, the City of Charlottesville.

Facilities and Environmental Services (FES) staff will support the Committee. The Environmental Compliance Manager will serve as primary support, with the Chief of Environmental Services and the Director of FES contributing, as needed. Support may include:

- managing the membership appointment process
- reserving meeting rooms and securing any necessary equipment (projector, phone)
- developing and maintaining a website specific to the Committee to facilitate information-sharing and to document Committee agendas, decisions, and recommendations
- working with officers to develop and revise work plans and set meeting agendas
- as time and resources are available, researching issues, preparing materials, and communicating with others to inform Committee discussions and implement Board-approved recommendations

**Committee Organization**

The Committee shall elect a Chair, Vice-chair, and Secretary for one-year tenures. Meetings will be held approximately once per month or as otherwise agreed to by the Committee, with the date and time of the meetings kept relatively constant. Additional meetings may be called by the Chair. All SWAAC Committee meeting dates and times will be publicized. All meetings will be open work sessions, where the general public is invited to attend to listen and observe only, unless public participation is deemed appropriate by the Chair.

No quorum shall be necessary to discuss business that is before the Committee, but no vote or action will be taken unless a quorum is present. A majority of the voting members of the Committee shall constitute a quorum. Decisions shall be made, if possible, by an indication of general consensus among the Committee members present. Staff will not participate as decision makers. When this method does not serve to establish a clear direction, the Chair shall call for a roll-call vote. When an agreement cannot be achieved on an issue, business shall proceed and the Secretary shall document and present minority positions for the Board of Supervisors' consideration. Facilitation will be provided in those instances when it is considered beneficial in helping the Committee achieve its stated purposes.

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Item No. 8.3. Authorization to Schedule Public Hearing for Ordinance to Amend County Code Chapter 9, Motor Vehicles.

The Executive Summary forwarded to the Board states that, in 2018, the General Assembly added Albemarle County to the list of localities in Virginia Code § 46.2-1222 enabled to regulate on-street parking on public streets in the State's secondary system of highways ("secondary streets"). Section 46.2-1222 enables the Board of Supervisors to adopt an ordinance that: (1) restricts or prohibits parking on any secondary streets in the County; (2) creates vehicle classifications that would or would not be subject to these restrictions and prohibitions; and (3) provides that the violation of the ordinance would be a traffic infraction and prescribe penalties. The proposed ordinance is intended to allow the County to address on-street parking of commercial vehicles in the County's residential neighborhoods, an issue that has generated complaints from residents.

A team that included representatives from the County Attorney's Office, the Department of Community Development, and the Police Department developed a draft ordinance that would implement Virginia Code § 46.2-1222 and update parking violation fine levels, which have not been changed since at least 1998.

At the November 20, 2019 meeting, the Board scheduled a public hearing on a draft ordinance for December 18, 2019. However, the Board deferred the public hearing for further study and revisions.

The attached proposed ordinance (Attachment A) would amend County Code § 9-102 to prohibit commercial vehicles from being parked on secondary streets in areas zoned for residential use in the County. The proposed ordinance also would prohibit storage containers and dumpsters from being placed on those same secondary streets. A violation of these regulations would be subject to a fine pursuant to County Code § 9-118, which the proposed amendment would increase. The terms "commercial vehicle" and "areas zoned for residential use" are defined in the ordinance.

The Police Department proposes to enforce the ordinance by first educating the residents about the parking restrictions and providing warnings. Subsequent violations by the same vehicle owner could be enforced by issuing a notice of violation.

The proposed increased fines remain in line with state parking and stopping violations filed in court. Those payable fines, including the mandated \$51.00 processing fee, range from \$71.00 to \$81.00, with a handicap parking violation being \$201.00. The purpose of increasing the fines is to deter violations.

The budget impact on the Police Department will depend on whether the ordinance is enforced on a complaint basis or proactively. If it is enforced on a complaint basis, staff has not identified a need for additional staffing at this point. Proactive enforcement may necessitate creating a parking enforcement unit within the Police Department. An increase in the number of parking tickets would also have an impact on the Department of Finance, which processes fine payments and appeals. An increase in the number of parking tickets and the fine amounts is expected to increase the parking fines collected by the County.

Staff recommends that the Board schedule a public hearing on March 18, 2020 to consider the adoption of the attached proposed ordinance (Attachment A).

**By the above-recorded vote, the Board authorized the Clerk to set a public hearing on March 18, 2020 to consider the adoption of the attached proposed ordinance (Attachment A):**

**ORDINANCE NO. 20-9( )**

AN ORDINANCE TO AMEND ARTICLE I, IN GENERAL, OF CHAPTER 9, MOTOR VEHICLES AND TRAFFIC, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Article I, In General, of Chapter 9, Motor Vehicles and Traffic, is hereby amended as follows:

**By Amending:**

Sec. 9-102	General prohibitions.
Sec. 9-118	Removal or immobilization of vehicles with outstanding parking violations— Enforcement of parking regulations; notice of violations; waiver of trial; contesting charges; penalties.

**Chapter 9. Motor Vehicles and Traffic**

**Article I. In General**

**Sec. 9-102 General prohibitions.**

A. *Parking or stopping a vehicle in various locations prohibited.* It shall be is unlawful for any person to park or stop a vehicle, except when necessary to avoid traffic or with the directions of a police officer or traffic-control device, in any of the following locations:

1. On any sidewalk;
2. In or in front of any driveway so as to block the use of such driveway to others;
3. Within fifteen (15) feet of any fire hydrant or any mailbox;
4. Any closer to a corner than is indicated by signs or marks upon the road or curb, or within twenty (20) feet from the intersection of curb lines, or, if no curb lines, then within fifteen (15) feet of the intersection of property lines at any highway intersection;
5. Within any bus zone, as indicated by signs or marks upon the road or curb;
6. Within a marked crosswalk;
7. Abreast of another vehicle parallel to a curb (double parking);
8. Within any loading zone, as indicated by signs or marks upon the road or curb;
9. Within any zone indicated by signs or marks upon the road or curb as a no parking zone;

10. At any location for a longer time than is permissible by signs or marks upon the road or curb (overtime parking);
11. In any fire lane marked or indicated as such;
12. On any grass, unless such parking is indicated by sign as permissive;
13. Within fifty (50) feet of the nearest rail of a railroad grade crossing;
14. Alongside or opposite any street excavation or obstruction, when such parking would obstruct traffic;
15. Upon any bridge or other elevated structure on a highway or within a tunnel; or
16. At any place where official signs prohibit parking.

B. *Parking commercial vehicles, placing portable or mobile storage containers and dumpsters on designated secondary highways prohibited. It is unlawful for any person to park any commercial vehicle, or place any portable or mobile storage container, or dumpster on the state secondary highways in areas zoned for residential use. For the purposes of this subsection, the following terms mean:*

1. “Commercial vehicle” means:
  - a. Any vehicle having a registered gross weight of 16,000 pounds or more, or being more than 25 feet in length, more than eight feet in height including accessories and appurtenances attached to the vehicle, or more than 102 inches in width;
  - b. Any solid waste collection vehicle, tractor truck or tractor truck/semitrailer or tractor truck/trailer combination, dump truck, concrete mixer truck, tow truck, and heavy construction equipment, whether located on a highway, truck, trailer, or semitrailer;
  - c. Any vehicle, trailer, or semitrailer in which food or beverages are stored or sold;
  - d. Any trailer or semitrailer used for transporting landscaping, lawn-care, or construction equipment or supplies, regardless of whether the trailer or semitrailer is attached to another vehicle;
  - e. Any vehicle used to transport passengers or property for compensation, including minibuses; limousines; taxicabs; vehicles performing taxicab, common carrier, medical transportation carrier, or passenger carrier services; and Transportation Network Company (TNC) partner vehicles. However, per each residential address, one motor vehicle used to transport passengers for compensation, which has a seating capacity of not more than six passengers, excluding the driver, and which otherwise is not deemed to be a commercial vehicle under this article may be parked on a state secondary highway in an area zoned for residential use and at a location directly adjacent to the vehicle's registered owner's residential address;
  - f. Any watercraft;
  - g. Any motor home or camping trailer;
  - h. Any school bus or any vehicle previously used as or designed to be used as a school bus;
  - i. Any vehicle carrying commercial freight in plain view;
  - j. Any trailer or semitrailer, including double-axle utility trailers, regardless of whether a state safety inspection is required or if it is attached to another vehicle; and
  - k. Any vehicle with three or more axles.
2. “Commercial vehicle” does not mean:
  - a. Any clearly marked privately owned vehicle displaying accessible parking placards or license plates, not for hire, driven by or for the transport of a person with a disability;
  - b. Any rented moving truck if parked within 48 hours of execution of the lease or any for-hire moving company vehicle within 48 hours of the move;
  - c. Any vehicle when it is picking up or discharging passengers or when temporarily parked pursuant to the performance of work or service at the work or service location; and
  - d. Any portable or mobile storage container or dumpster parked pursuant to a Virginia Department of Transportation permit.

3. "Areas zoned for residential use" means all areas of the County in the Residential (R-1), Residential (R-2), Residential (R-4), Residential (R-6), Residential (R-10), Residential (R-15), Village Residential (VR), and Planned Residential Development (PRD) zoning districts and the residential areas within the Neighborhood Model (NMD) and Planned Unit Development (PUD) zoning districts (a "residential zoning district"), including any secondary highway abutting one or more of these zoning districts as provided in County Code § 18-1.7(C)(2); provided that if a secondary highway serves as a boundary between a residential zoning district and a non-residential zoning district, only the side of the secondary highway abutting the residential zoning district is considered an area zoned for residential use.

C. *Authority of law enforcement officers in the performance of their lawful duties.* In the performance of their lawful duties, ~~law-enforcement officers may move or cause to be moved motor vehicles to any place they may deem expedient without regard to the provisions of this section, when in the performance of their lawful duties.~~

(Code 1988, § 12-3; Ord. 98-A(1), 8-5-98; Ord 19-\_\_\_\_)

**State law reference-Authority**, Va. Code §§ 46.2-1220, 46.2-1222, and 46.2-1305.

**Sec. 9-118 Removal or immobilization of vehicles with outstanding parking violations—Enforcement of parking regulations; notice of violations; waiver of trial; contesting charges; penalties.**

A. *Posting written notice of violation.* Police officers and other uniformed personnel designated by the chief of police to enforce the parking provisions of this ~~code chapter~~ shall must post a written notice of violation on the windshield of each vehicle found illegally parked. ~~The notice of violation shall~~ must state that the recipient of the notice may elect to waive ~~his or her~~ their right to appear and be tried for the offense or offenses indicated in the notice.

B. *Waiving right to trial; payment.* Persons desiring to waive trial may do so by voluntarily remitting to the office of the director of finance the amount of the fine stipulated for each violation marked on the notice and as provided in the schedule in subsection (E). ~~Such fines shall be levied in accordance with the schedule set forth in paragraph (E) of this section.~~ If the required amount is not received in the office of the director of finance or mailed and postmarked within ~~forty-eight~~ 48 hours after the notice of violation is issued, or within up to 96 hours if a request for review is timely made pursuant to subsection (D), the amount of the applicable fine shall be is doubled.

C. *How payment is made.* Whenever the fines are paid by mail, the responsibility for receipt of the payment by the director of finance shall lies with the registered owner of the vehicle parked in violation. ~~The Director of Finance may accept payment of any amount due by any commercially acceptable means, including, but not limited to, checks, credit cards, debit cards, and electronic funds transfers, and may add to any amount due the amount charged to the County for accepting any payment by a means that incurs a charge to the County or the amount negotiated and agreed to in a contract with the County, whichever is less.~~ ~~Payment may be made by personal check; provided, that if such~~ If a check is returned for insufficient funds, the vehicle owner shall remains liable for the parking violations, and ~~shall likewise be~~ will be subject to a service charge of ~~\$25.00~~ twentyfive dollars (\$25.00) for processing the returned check.

D. *Contesting the charges.* Any recipient of a notice of violation desiring to contest the charges cited in the notice shall must appear at the office of the director of finance and, on forms provided by the director of finance, file a written request for administrative review and dismissal of the charges. ~~The recipient of the notice also must indicate on the request for review whether a hearing in court is demanded in the event the request for dismissal is denied.~~ The facts of the request shall must be reviewed and commented upon by a representative of the director of finance and a representative of the police department, who shall must recommend whether the request should be approved or denied. Acting on such request and recommendation, the attorney for the commonwealth or his assistant shall must decide whether the charge shall should be dismissed. ~~The recipient of the notice shall indicate on the request for review whether a hearing in court is demanded in the event the request for dismissal is denied.~~ If the request for review is made within ~~forty-eight~~ (48) hours of the violation, the recipient shall have an additional ~~forty-eight~~ (48) hours after denial of the request to remit the fine, before the amount thereof is doubled.

E. *Schedule of fines.* The ~~schedule of fines~~ shall be for a violation of this section are as follows:

	Offense	Paid before 96 hours	Paid after 96 hours	
		Fine		Fine if Amount Doubled
<u>Pursuant to Subsection (B)</u>				
	Parking on <del>S</del> sidewalk	\$10.00 <u>25.00</u>		\$20.00 <u>50.00</u>
	Blocking <del>D</del> driveway	\$10.00 <u>25.00</u>		\$20.00 <u>50.00</u>
	Park within 15 feet of fire hydrant	\$10.00 <u>25.00</u>		\$20.00 <u>50.00</u>

Park within bus zone	\$10.00 <u>25.00</u>	\$20.00 <u>50.00</u>
Park in crosswalk	\$10.00 <u>25.00</u>	\$20.00 <u>50.00</u>
Double <del>P</del> arking	\$10.00 <u>25.00</u>	\$20.00 <u>50.00</u>
Parking in <del>F</del> ire <del>L</del> ane	\$25.00 <u>50.00</u>	\$50.00 <u>100.00</u>
Parking in loading zone	\$10.00 <u>25.00</u>	\$20.00 <u>50.00</u>
Parking in prohibited zone	\$10.00 <u>25.00</u>	\$20.00 <u>50.00</u>
Overtime parking	\$5.00 <u>10.00</u>	\$10.00 <u>20.00</u>
Parking within 50 feet of railroad crossing	\$10.00 <u>25.00</u>	\$20.00 <u>50.00</u>
Parking alongside or opposite street obstruction or excavation	\$10.00 <u>25.00</u>	\$20.00 <u>50.00</u>
Parking on bridge	\$10.00 <u>25.00</u>	\$20.00 <u>50.00</u>
Parking where prohibited	\$10.00 <u>25.00</u>	\$20.00 <u>50.00</u>
<u>Parking in <del>H</del>andicapped p</u> <u>Parking space when prohibited</u>	\$100.00	\$200.00
<u>Parking commercial vehicle or container/dumpster in residential zone</u>	<u>\$25.00</u>	<u>\$50.00</u>

F. Failure to respond; summons and arrest. Any vehicle owner who fails to respond to a notice of violation, either by paying the stipulated fines or by filing a request for review or hearing with the director of finance within ten days, ~~shall be~~ is subject to summons and arrest pursuant to Virginia Code § 46.2-941.

(10-11-89; Ord. of 6-9-93; Code 1988, § 12-9.1; Ord. 98-A(1), 8-5-98; Ord. 08-9(1), 12-3-08; Ord. 19-\_\_\_\_)

**State law reference**-Va. Code §§ 46.2-1222 and 46.2-1225.

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Item No. 8.4. Virginia Department of Agriculture and Consumer Services Grant for Easement Acquisition.

The Executive Summary forwarded to the Board states that The Virginia Department of Agriculture and Consumer Services ("VDACS"), Office of Farmland Preservation, has awarded a \$58,333.00 farmland and forest preservation grant to the County for FY 20. Albemarle County is one of only five localities in the state to receive the full matching grant requested this year.

Through the years, the County has received numerous grants under this program:

- \$111,619 in 2019
- \$ 61,615 in 2018
- \$ 86,950 in 2017
- \$411,890 in 2016
- \$286,883 in 2015
- \$149,678 in 2014
- \$160,716 in 2013
- \$110,952 in 2012
- \$ 55,290 in 2011
- \$ 93,932 in 2010
- \$ 49,900 in 2009
- \$403,220 in 2008

VDACS has requested that the County enter an Intergovernmental Agreement (the "IGA") (Attachment A) as a condition for receiving this grant. While the County has yet to identify the specific easement(s) to which it would apply these funds, it intends to apply them toward the acquisition of the next qualifying easement(s), most likely from the most recent applicant pool that was received on October 31, 2019. This grant will remain available to (partially) reimburse any qualifying purchase for up to two years from the date of the IGA. As in past years, the key provisions of the IGA are as follows:

1. The IGA would obligate VDACS to set aside the grant amount in a restricted account and reimburse the County for its eligible costs for the purchase of conservation easement(s). The County's funds would be restricted exclusively for the County's qualifying costs for a period of up to two years.
2. The IGA also would restrict conversion or diversion of a subject property from open-space use,

unless the conversion or diversion satisfied the requirements of the Open-Space Land Act. Conversion or diversion of land is permitted under the Open-Space Land Act in limited circumstances upon the concurrence of the County and the Albemarle County Easement Authority (ACEA) and upon the placement of substitute land of equal or greater value and quality under an open-space easement. The Agreement would entitle VDACS to reimbursement of its pro rata share of the market value of the easement if conversion or diversion ever occurred.

3. In exchange for the state's grant commitment, the IGA would obligate the County to:
  - appropriate matching funds equal to the grant amount for the purchase of a subject easement,
  - apply the grant funds to the purchase of the easement,
  - provide VDACS with annual progress reports (while the grant Agreement is in force) describing the County's efforts to obtain easements on other working farms, and its programs for public outreach, stewardship and monitoring, and measuring the effectiveness of the County's efforts to bring working farms under easement,
  - maintain sufficient title insurance for the subject easement(s), which is already a standard County practice, and allow VDACS the opportunity to review easement instruments and the title insurance policy prior to closing,
  - receive copies of the recorded easement instrument after closing,
  - provide notice to VDACS if the County receives an application to convert or divert a subject easement from its permitted easement uses, and
  - enforce the terms and conditions of the deed of easement.

Staff has reviewed the terms of the proposed IGA between VDACS and the County, and recommends their acceptance.

The County's execution of the FY 20 IGA would allow the County to receive \$58,333.00 in state funding to apply to the ACE program. In order for the County to receive these funds, it must appropriate matching funds of \$58,333.00. That local match is available through funds previously appropriated for ACE by the Board for FY 20.

Staff recommends that the Board adopt the attached Resolution (Attachment B).

**By the above-recorded vote, the Board adopted the attached Resolution To Approve The FY 20 Agreement Between The County Of Albemarle And The Commonwealth Of Virginia Department Of Agriculture And Consumer Services (Attachment B):**

**RESOLUTION TO APPROVE THE FY 20 AGREEMENT  
BETWEEN THE COUNTY OF ALBEMARLE AND  
THE COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**

**WHEREAS**, the Board finds it is in the best interest of the County to enter into an Agreement with the Commonwealth of Virginia Department of Agriculture and Consumer Services as a condition of receiving a FY 20 grant award for the preservation of working farms and forest lands through the ACE Program.

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Supervisors of Albemarle County, Virginia hereby approves the FY 20 Agreement between the County of Albemarle and the Commonwealth of Virginia Department of Agriculture and Consumer Services, and authorizes the County Executive to execute the FY 20 Agreement on behalf of the County after approval as to form and substance by the County Attorney.

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Item No. 8.5. Resolution to accept road(s) in the Hollymead Towncenter Abington Place Subdivision into the State Secondary System of Highways.

**By the above-recorded vote, the Board adopted the Resolution to accept road(s) in the Hollymead Towncenter Abington Place Subdivision into the State Secondary System of Highways:**

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

**WHEREAS**, the street(s) in **Abington Place at Hollymead Towncenter Subdivision**, as described on the attached Additions Form AM-4.3 dated **February 19<sup>th</sup>, 2020**, fully incorporated herein by reference, is shown on plats recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia; and

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

**NOW, THEREFORE, BE IT RESOLVED**, that the Albemarle Board of County Supervisors requests the Virginia Department of Transportation to add the street(s) in **Abington Place at Hollymead Towncenter Subdivision**, as described on the attached Additions Form AM-4.3 dated **February 19<sup>th</sup>**,

**2020**, to the secondary system of state highways, pursuant to §33.2-705, Code of Virginia, and the Department's Subdivision Street Requirements; and

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

**FURTHER RESOLVED** that a certified copy of this resolution be forwarded to the Resident Engineer for the Virginia Department of Transportation.

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**Report of Changes in the Secondary System of State Highways**

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**Project/Subdivision Abington Place at Hollymead  
Towncenter**

**Type Change to the Secondary System of State Highways:** **Addition**

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

Reason for Change: New subdivision street

Pursuant to Code of Virginia Statute: 33.2-705, 33.2-334

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**Street Name and/or Route Number**

◆ **Livingston Drive, State Route Number 1756**

Old Route Number: 0

• From: Abington Dr (PVT)

To: 0.09 Miles West to Rt 1501, Deerwood Drive, a distance of: 0.09 miles.

Recordation Reference: DB 5126: PG 0081-0086

Right of Way width (feet) = 0

**Street Name and/or Route Number**

◆ **Lockwood Drive, State Route Number 1755**

Old Route Number: 0

• From: Community Street (PVT)

To: 0.09 Miles South to Rt 1719, Towncenter Blvd, a distance of: 0.09 miles.

Recordation Reference: DB 5126: PG 0081-0086

Right of Way width (feet) = 0

**Street Name and/or Route Number**

◆ **Livingston Drive, State Route Number 1756**

Old Route Number: 0

• From: Rt 1755, Lockwood Drive

To: 0.04 Miles West to Abington Dr (PVT), a distance of: 0.04 miles.

Recordation Reference: DB 5126: PG 0081-0086

Right of Way width (feet) = 0

**Street Name and/or Route Number**

◆ **Lockwood Drive, State Route Number 1755**

Old Route Number: 0

• From: Rt 1756, Livingston Drive

To: 0.13 Miles South to Community St (PVT), a distance of: 0.13 miles.

Recordation Reference: DB 5125: PG 0081-0086

Right of Way width (feet) = 0

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**Street Name and/or Route Number**

◆ **Lockwood Drive, State Route Number 1755**

Old Route Number: 0

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● From: Rt 1721, Timberwood Blvd

To: 0.06 Miles South to Rt 1756, Livingston Dr, a distance of: 0.06 miles.

Recordation Reference: DB 5126: PG 0081-0086

Right of Way width (feet) = 0

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Item No. 8.6. Resolution to accept road(s) in the Dunlora V Subdivision into the State Secondary System of Highways.

**By the above-recorded vote, the Board adopted the attached Resolution (Attachment A) to accept road(s) in the Dunlora V Subdivision into the State Secondary System of Highways:**

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

**WHEREAS**, the street(s) in **Dunlora V Subdivision**, as described on the attached Additions Form AM-4.3 dated **February 19<sup>th</sup>, 2020**, fully incorporated herein by reference, is shown on plats recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia; and

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

**NOW, THEREFORE, BE IT RESOLVED**, that the Albemarle Board of County Supervisors requests the Virginia Department of Transportation to add the street(s) in **Dunlora V Subdivision**, as described on the attached Additions Form AM-4.3 dated **February 19<sup>th</sup>, 2020**, to the secondary system of state highways, pursuant to §33.2-705, Code of Virginia, and the Department's Subdivision Street Requirements; and

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

**FURTHER RESOLVED** that a certified copy of this resolution be forwarded to the Resident Engineer for the Virginia Department of Transportation.

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**Report of Changes in the Secondary System of State Highways**

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**Project/Subdivision Dunlora V**

**Type Change to the Secondary System of State Highways:**

**Addition**

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

Reason for Change: New subdivision street

Pursuant to Code of Virginia Statute: 33.2-705, 33.2-334

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**Street Name and/or Route Number**

◆ **Fowler Ridge Court, State Route Number 1778**

Old Route Number: 0

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● From: Rt 1777, Valcrest Lane

To: 0.07 Miles West to ESM/CDS, a distance of: 0.07 miles.

Recordation Reference: DB 4839: PG 152

Right of Way width (feet) = 0

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**Street Name and/or Route Number**

◆ **Valcrest Lane, State Route Number 1777**

Old Route Number: 0

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- From: Rt 1709, Shepards Ridge Road

To: 0.05 Miles South to Rt 1778, Fowler Ridge Ct, a distance of: 0.05 miles.

Recordation Reference: DB 4839: PG 152

Right of Way width (feet) = 0

**Street Name and/or Route Number**

◆ **Valcrest Lane, State Route Number 1777**

Old Route Number: 0

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- From: Rt 1778, Fowler Ridge Court

To: 0.02 Miles South to ESM/CDS, a distance of: 0.02 miles.

Recordation Reference: DB 4839: PG 152

Right of Way width (feet) = 0

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Item No. 8.7. VDOT Monthly Report (February 2020), **was received for information.**

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Agenda Item No. 9. HS201900019 Homestay Special Exception (200 Ipswich Place).

The Executive Summary forwarded to the Board states that the applicant requests one special exception pursuant to County Code § 18-5.1.48(i)(1)(ii) for a proposed homestay to modify the minimum 125 foot front, side, and rear yard required for a homestay in the Rural Areas zoning district pursuant to County Code § 18-5.1.48(j)(1)(v):

*Minimum yards.* 1) In the Residential or Planned Development districts, the minimum applicable front, side, and rear yard requirements for primary structures apply to all structures used for homestays; 2) In the Rural Areas district, the minimum front, side, and rear yard shall be 125 feet from any abutting lot not under the same ownership as the homestay, for parking and for structures used in whole or in part to serve a homestay.

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.

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Ms. Rebecca Ragsdale, Principal Planner, presented the staff report, noting that Mr. Francis MacCall would also be joining her for the next couple homestay special exceptions that would come before the Board.

Ms. Ragsdale said this is one Special Exception request for a homestay zoning clearance that has been submitted. She said she would give a quick overview of the applicable zoning regulations, and then get into the specifics of the request.

Ms. Ragsdale said this is a request for a Special Exception on a parcel that is zoned less than 5 acres in size. She said the regulations that apply in the Zoning Ordinance are that there are no more than two guest rooms for the homestay use, that there is no use of an accessory structure, that there is no more than one homestay use on the property, and that there is no whole-house rental (i.e. rental when the owner is not present).

Ms. Ragsdale said in this particular case, the topic of discussion for the Special Exception is the 125-foot required yard, which is for any structure or parking that is used for the homestay, from all property lines (including those that are to the roads). She said all homestays must be owner-occupied, obtain a zoning clearance, providing parking on site, provide neighbor notice of an emergency contact or responsible agent, and have annual safety inspections. She said there are uses that are specifically prohibited in the ordinance in terms of restaurants and special events.

Ms. Ragsdale said that this particular homestay will comply with all of the requirements, except for the 125-foot yard from two property lines. She said there are four areas of regulations in the ordinance that may be waived or modified with a Special Exception, and that in this case, the applicant is only requesting one to reduce the setbacks. She said the applicant will comply with all the other requirements, including the two guest room limit.

Ms. Ragsdale said there are no particular findings that the Board is required to make in terms of acting on a Special Exception. She said the Board may approve, approve with conditions, or deny

Special Exceptions.

Ms. Ragsdale said there were a couple of factors to consider that are included in the homestay zoning regulations, and that this includes consideration for any detriment to abutting lots, and if there would be any harm to public health, safety, or welfare.

Ms. Ragsdale said this specific request is to reduce the minimum front and side setbacks from the required 125 feet. She presented a location map, noting that the property is at the corner of Ipswich Place and towards the end of Lambs Road, which is accessed off of Hydraulic Road, in the Ivy Farm Subdivision. She said the particular property itself is a corner lot that complies with the required 125-foot setback from three of the property lines in terms of the location of the homestay. She said the rooms are towards the back of the house as the house faces Ipswich Place.

Ms. Ragsdale said the property lines not meeting the requirement are from Ipswich Place to the property line to the west, which is shown on the exhibit and denotes that it is 50 feet from the line to the west, and that the structure itself is about 23 feet from Ipswich Place.

Ms. Price asked what the structure was on the map that was to the left, which was the 50 feet. She asked if it was a pool and outbuilding.

Ms. Ragsdale replied yes. She said it is an outbuilding and is not proposed for guest rooms.

Ms. Price asked if it was the 125 feet from the building that will be used for the homestay.

Ms. Ragsdale replied yes.

Ms. Price said that the 50 feet is then not relevant to this request, and that it would really be the front.

Ms. Ragsdale replied that it was relevant to the parking, as the parking is not located 125 feet away. She said the parking area is the issue on the western property line.

Ms. Ragsdale said given that the lot is only from the two property lines, and that there is still a good bit of distance between the adjoining houses, as well as some evergreen landscaping that is mitigating, staff has recommended approval, with the two conditions included with Attachment F.

Ms. Palmer asked to go back to the last presentation slide. She said it looked like there were two parking areas there. She asked if when staff is evaluating these requests, they ever say that the parking area should be closer to the homestay building.

Ms. Ragsdale replied that staff does look at the parking areas and can condition the Special Exception but that in this case, the applicant indicated that they would like both areas available for homestay parking. She said staff felt that, given the landscaping around the other parking area that is closer, they would not need to restrict parking areas for this homestay.

Ms. Mallek said Ms. Ragsdale mentioned existing landscaping. She asked if there was some status given to that landscaping that it should remain to continue to provide the buffer it is currently creating.

Ms. Ragsdale replied that staff did not make this a condition of approval.

Ms. Mallek said the situation would dramatically change if the landscaping were all mowed down. She said if someone is claiming an amenity as part of their application, she believes the County can hold them accountable to keep it or maintain it in some similar way.

Ms. Palmer asked if this was an option.

Ms. Ragsdale replied yes. She said the Board can add additional conditions of approval.

Ms. McKeel said she was very familiar with this particular house and had been inside it many times. She said she would encourage seeing if anyone is speaking to it.

Mr. Gallaway reminded Ms. McKeel that it was not a public hearing.

Ms. McKeel said the neighbors in the community are very active and that she hears from them a lot. She said they have a listserv email group as well. She said she has never heard any complaints about this particular short-term rental. She said she knew that this was a former mother-in-law apartment, which has been converted. She asked Ms. Ragsdale if she had heard anything from the neighbors.

Ms. Ragsdale replied that there was one email of support, but that other than this, she did not receive any questions or comments. She said the email came in after staff finished the packet. She said there was an email from 1740 Lambs Road.

Ms. McKeel said she was speaking for herself, but that she had no problem with the Special Exception. She said the way the houses and streets are located, and the fact that the owners have two parking areas is great. She said she understands why they would like to make both of them available.

She said the house that is closest is set back far enough that she didn't think it was a concern.

Ms. McKeel said she was in favor of this particular Special Exception. She noted that the more frustrating situation for the people who live in this area is commercial street parking and dogs running loose. She said those are their concerns and not this particular short-term rental.

Ms. McKeel said her Planning Commissioner lives just down the street from the location. She said she talked to Commissioner Bivins about this at length, and that he agreed, as he lives in the neighborhood. She said Mr. Bivins told her he didn't know of anyone who was opposed to the request.

Ms. Price said when looking at the application and floor plan, it appears that the residence has only two bedrooms. She asked if the owners were asking for the ability to do the homestay for both bedrooms.

Ms. Ragsdale replied that the applicants provided the floor plan of just the area to be rented.

Ms. McKeel clarified that the two bedrooms were only the addition they put on for the mother-in-law apartment. She added that the area Ms. Price asked about earlier is, in fact, a swimming pool. She said the outbuilding is a pool house that contains equipment.

Ms. Price told Mr. Gallaway that she had no further questions about the request, but that after the agenda item was finished, she had a question for the County Attorney about the homestay regulations.

Ms. Palmer asked when the homestays are approved, if they go with the house (e.g. if the person sells the house). She said most of the time when the Board has made these decisions, it goes with the property and not with the owner.

Mr. Kamptner replied that these Special Exceptions are similar to Special Use Permits in that they run with the land.

Ms. McKeel and Ms. Mallek said they had no idea this was the case.

Ms. Mallek said she thought this was completely different, as it is a business dealing with personality, management, and neighborhoods relationships. She said she was horrified by this.

Ms. Palmer said this was the reason she asked the question, because of Ms. Mallek's suggestion that they put the condition of keeping the buffer there. She asked if because this will go with the land and future owners will be able to do the same thing, they want to consider looking at bushes and other types of buffers. She said she had assumed this would go with the land all along.

Mr. Gallaway said he also presumed it did. He noted that the business license does not, and that a new person coming in would have to go through a whole new business application to set up their own Airbnb, if they so choose.

Ms. McKeel asked Ms. Ragsdale to explain how this would work.

Ms. Ragsdale said the Special Exception would run with the land, as Mr. Kamptner said. She said a new owner would have to come in to get a new homestay clearance, as it is required in the ordinance. She said the Special Exceptions conditions would still apply.

Ms. McKeel asked if the house were sold, and the new people who owned it were free to have a short-term rental, they would still have to abide by the County's rules. She asked about the impact.

Ms. Ragsdale replied that with the Zoning Clearance process the County would make sure that it would still be the same proposal as approved before, which is the Special Exception containing the same two guest rooms, and that the guest rooms haven't changed. She said the County makes sure they document all the things they do with the new approval in terms of the safety inspections and Health Department. She said in terms of the way staff looked at it, given the unique characteristics of the property, regardless of the owner, staff was making the recommendations before the Board.

Ms. McKeel said she had to start thinking about this somewhat differently as the requests come to the Board. She said this did not change her mind on this particular request, based on what was discussed, but that she was shocked to learn this information.

Ms. Palmer said this was why she asked, because since this is a Special Exception and new owner would not have to go through that process again, perhaps the Board should be considering requiring buffers and plants.

Ms. Mallek said she assumed this was a home occupation type of category, which was for the person involved in the business. She said it never crossed her mind that this was creating by-right small hotels all over the place, which caused her concern. She said she would again raise the idea that if the applicant is stipulating and staff is recommending that parking is fine because of the greenery, it seems like a condition that would hopefully not be a burden. She said if the storm knocked them down, the owner would hopefully replant the area. She said it was the owner's obligation to buffer their impacts.

Ms. Mallek said that at another time, Mr. Kamptner could advise the Board on if there are any

other options on how to categorize this. She said the previous two requests have been very strongly based upon the community that the people have built there. She said with this new understanding, all of that goes out the window.

Mr. Kamptner said the assumption is that subsequent owners will comply with the County's rules, and that the future homestay use will have the same limited (or no discernible) impacts to the neighborhood. He said it is a future owner that may not abide by all the rules that they anticipate would be the problem. He said if the rules are working correctly, it shouldn't matter who is there.

Ms. Mallek said this was true, in an ideal world.

Mr. Gallaway said they couldn't legislate who is there.

Ms. Mallek said the Board is again saddling its citizens with being the policemen of their neighbors and that she resented this.

Ms. Mallek said the "three strikes, and you're out" concept starts all over again, or if the homestay use is not successful because of people not meeting the regulations, and they have their three complaints and lose their license, this makes the next person have to start all over again. She asked if this was correct.

Mr. MacCall said this was correct. He asked if this was a part of the business license.

Ms. Mallek said this was part of the regulations the Board was developing.

Ms. Ragsdale said three strikes are any violation (not just zoning) of County Code. She said staff would begin to include this in the Board's packet. She said it lives in the Health and Safety section of the County Code.

Ms. Palmer said the Special Exception never goes away.

Ms. Ragsdale said this was right. She said the legislative act is that the Special Exception runs with the land.

Ms. McKeel said this was good to know, and that she was in favor of this particular request. She said it was something to keep in mind, however, because there are people from even outside of the community who are coming in, buying up multiple houses, and turning them into short-term rentals. She said there was recently a single-family home in her neighborhood that was sold, and someone who owns a real estate management company is trying to turn it into a full-house Airbnb without living there. She said this is happening all over the County, and that is why angst goes up.

Ms. Ragsdale said it is in the Zoning Ordinance that the structure be owner-occupied, so if it was not to be owner-occupied, it would require a Special Exception.

Ms. McKeel said she understood that the Board has to deal with those as they come up.

Ms. Mallek asked if the case where there is not going to be owner-occupied for 180 days, it falls in a Special Exception category. She said this should fall in the category of total failure.

Ms. Ragsdale said they were talking about two different things. She said 180 days whole-house rental is only an option for Rural Area parcels greater than 5 acres in size.

Ms. Mallek asked if the owner has to live there for 180 days.

Ms. Ragsdale said in order to have a homestay, one has to have a resident because homestays are accessory to a residence. She said staff put in the ordinance a tool for the County, if there was ever a question if it was someone's residence or not. She said they also decided that the resident had to be the owner unless one gets a Special Exception. She said they can only get a Special Exception to have a resident manager. She acknowledged it was confusing.

Ms. McKeel said it was amazing how many people were buying not just one or two properties, but six or eight. She said a person cannot live in 6-8 houses.

Mr. MacCall said that even with this Special Exception, there are multiple Special Exceptions that the Board has granted for different items. He said this legislative action, regardless of whatever the use was, will also run with that land.

Ms. McKeel **moved** to adopt the Resolution to Approve HS201900019 Homestay Special Exception 200 Ipswich Place (Attachment F) to approve the special exception with the conditions contained therein.

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

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**RESOLUTION TO APPROVE SPECIAL EXCEPTION  
FOR HS2019-00019 200 IPSWICH PLACE**

**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 front, side, and rear yards required for a homestay in the Rural Areas zoning district for HS2019-00019 200 Ipswich Place, subject to the conditions attached hereto.

\* \* \* \* \*

**HS 2019-00019 200 Ipswich Place Special Exception Conditions**

1. No more than two (2) guest rooms may be rented for homestay use within the existing residence as depicted on the Parking and House Location Exhibit dated January 24, 2020.
2. Parking for homestay guests is limited to the existing parking areas as depicted on the Parking and House Location Exhibit dated January 24, 2020.

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Agenda Item No. 10. Proposed Lease of Space for the Office of Voter Registration and Elections.

The Executive Summary forwarded to the Board states that, effective for the November 2020 election cycle, Virginia localities are required to provide for no-excuse absentee, in-person voting, commonly known as "early voting". HB 2790 enables early voting starting the second Saturday immediately preceding an election, continuing through the Saturday before the election (excluding Sunday). Citizens will be allowed to vote at any polling location that's made available to the public, rather than being limited to a specific polling location. Localities must allow voters to cast their ballot at the Office of the General Registrar, locally housed at the 5th Street County Office Building (COB 5th).

In states which have enacted similar laws, 30-60% of voters take advantage of the opportunity to vote early. Based on this, initial estimates indicate the need for the County to accommodate 500 voters per hour, and likely more on peak volume days and/or times of day.

The COB 5th building and parking areas cannot accommodate such volumes. Use of one or more satellite polling locations to supplement the COB 5th facilities are considered untenable for reasons of physical security, cyber security and the limited selection of sites with sufficient parking and floor space for extended durations.

Staff considered and now proposes the permanent relocation of the Office of Voter Registration and Elections (the Office of the General Registrar and the Board of Elections) to a leased location, with sufficient floor space and parking to accommodate both that office and a central polling location.

This alternative has two added benefits. It would make available approximately 5,000 square feet of office and storage space at the COB 5th facility to help meet the space needs of departments located within that building. It would also create a 4,000 square foot space for a community center that would be available as a polling location during voting cycles.

Several locations were identified with available leasable space of appropriate size and with ample parking. Staff initiated negotiations with the owners of each of these properties and recommends that the Board authorize the County Executive to execute a lease of 11,600 square feet of commercial space, located at 206-216 Albemarle Square, Charlottesville, VA 22901, pending subsequent appropriation of funding. The initial term of the proposed lease would commence on the date the Office of Voter Registration and Elections opens for business, but no later than August 1, 2020. The lease would end on July 31, 2025 but would include options to renew for up to five additional, one-year terms.

Initial capital costs are estimated to be up to \$610,000. Ongoing operating costs are estimated at approximately \$11,600 in FY19-20 and \$225,000 in FY20-21, including rent, utilities, and facility and information technology maintenance.

Staff recommends that the Board adopt the attached Resolution (Attachment A) to approve one or more leases for approximately 11,600 square feet of space at 206-216 Albemarle Square as set forth above, and authorize the County Executive to execute the lease(s) after approval as to form and substance by the County Attorney, contingent on the Board's approval of a subsequent Appropriation for that purpose.

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Mr. Lance Stewart, Director of Facilities and Environmental Services, presented the staff report. He said this item is a recommendation and request from staff, who is proposing that they relocate the Office of the Voter Registrar and create an adjacent community center. He said he would give some background, as well as the support of Jake Washburne (the Voter Registrar). He said Mr. Washburne has worked very closely with his team, staff, and the Electoral Board to come up with what they feel is a good solution to a challenging problem.

Mr. Stewart said he would give a background on “No excuse, in person voting” law that was passed in 2019, also known as “early voting.” He said he would speak about the anticipated impacts of that, some pending legislation, then move into more specifics about staff’s recommendation.

Mr. Washburne said he was joined by the Vice Chair of the County Electoral Board, Bill Love. He said all of the members of the Electoral Board would have liked to attend, but that Mr. Kampfner advised them that if two or more showed up, it would be an Electoral Board meeting.

Mr. Washburne said at the last General Assembly session, the General Assembly passed an early voting law that would allow “no excuse” early voting over the last week leading up to an election, beginning with the upcoming November Presidential Election. He said the General Assembly now looks to expand the early voting period out to the full 45 days, which has been the traditional time period for absentee voting, and to make it available both in person and by mail.

Mr. Washburne said when they saw this new law last spring, they started looking at the statistics of other states that have adopted early voting. He said there are about 38 other states that have adopted early voting, and that the numbers in all of them were overwhelming. He said it accounts for between 30-60% of total voter turnout in any given election. He said this got him thinking that unless Virginians behave differently than the people in 38 other states, they will see a significant increase in early voting, compared with the traditional excuse-based absentee voting.

Mr. Washburne said they looked at some of the numbers, and the parking lot at the 5th Street County Office Building, noting that though it is a large lot, it is always full. He said he sent an alert to the County Executive and Operations team, who have been working with coming up with a solution. He said it seems that the best solution is to find a new office location where there is more parking so that they do not have a mess that fall with the introduction of “no excuse” early voting.

Mr. Washburne presented statistics from other states that have early voting. He said looking at what they would see in Albemarle County, they will have 80,000 registered voters for the upcoming Presidential Election, with about 78,000 currently. He said they will likely get a 75% turnout, as they had in 2008, 2012, and 2016, amounting to 60,000 total votes. He said taking 20% of 60,000, this is 12,000. He said half of this is 6,000, which is twice as many as they have ever seen come through in their office as far as in-person absentee voting in any prior election.

Mr. Washburne said personally, if it were possible, he would like the office to stay where it is, but when looking at the numbers, it was worrisome. He said he hoped the Board would consider the request for the new office space.

Mr. Stewart presented a recap of some of the assumptions Mr. Washburne went over when considering the amount of physical space that would be needed for a polling location, as well as the parking requirements. He said they are looking at the potential of about 140 parking spaces needed at any one time, if they assume a relatively efficient voting cycle. He said this assumes that they can get people in and out in about a 15-minute window, plus have some parking for the people who have to be there to support the voting process.

Mr. Stewart said this didn’t account for peak days, such as the Saturday before an election, when things could be worse.

Mr. Stewart said at the current location, parking is extremely limited. He said there is a large conference room (Conference Room A) that could accommodate a polling location, if parking weren’t an issue, but that this would require that they not allow police or other use during that time window.

Mr. Stewart said generally, the building is full now. He said they have expected growth, and so the possibility of relocating the offices and very large storage area for voting equipment does have benefits to help the County avoid investing elsewhere for other purposes at a later date.

Mr. Stewart said staff’s recommendation starts with Albemarle Square shopping center. He said they looked at all potential locations that had available space and took into consideration the amount of parking they could expect to have available. He said Albemarle Square was one of two viable options, and the one that was deemed to be most appropriate.

Mr. Stewart said staff is proposing to use about one-third of the 11,600 square feet that they would rent, about 4,000 square feet, as a community center that would be a community hub for public meetings, used by the public for community meetings, and potentially other programming. He said Mr. Washburne and his operation would essentially own that facility during the early voting window and will help them train people who volunteer for Election Day cycles as well. He said the remaining 7,600 square feet immediately adjacent would house Mr. Washburne’s team, with an equally large storage space in the back, including a loading dock that would facilitate the loading and unloading of equipment on Voting Day.

Mr. Stewart said he would give highlights of the 50-page lease. He said they are asking for a five-year initial term with no cancellation clause. He said there would be five additional one-year optional renewals, so either party could elect not to re-up at that time. He said they would have a better-than full year of notice, if for some reason the owners decided to lease or sell.

Mr. Stewart said there had been some concerns from past tenants about the condition of the roof

and general maintenance, and so the County negotiated that the owner would replace the mechanical equipment, as well as the roof, if needed. He said both parties will be doing independent assessments to come to a conclusion, which he hoped to have done before the lease is actually signed.

Mr. Stewart said it has been stipulated in the lease that the owner, or owner's agents, cannot access the space, unless they are accompanied by a County employee, to make sure that the voting machines and other sensitive information is secure.

Mr. Stewart said the lease itself will commence upon execution, meaning they would be able to begin work, but that the rent and maintenance fees don't start until they are open for business. He said August 1 is the target, and so the operating costs in this fiscal year would be limited to the security deposit, as well as potentially some electrical service.

Mr. Stewart said the estimates for the construction costs were included in the Executive Summary and the operating costs they would bear in this fiscal year, as well as an estimate for FY 21. He said he believed the construction estimate was a safe estimate, and that he hoped they could do the work for less. He said to the best of their knowledge, this was a working number, and that Mr. Richardson has included these figures in his recommended budget assumptions. He said the funding they would need for that year has been earmarked and could be appropriated.

Mr. Stewart said the request was that the Board authorizes the County Executive to execute the proposed lease, contingent upon appropriations funds. He said staff would come back to the Board in a few weeks with an appropriation request, most likely on the Consent Agenda.

Ms. Price commented that she was pleased to see some of the terms included in the lease, that it commences upon execution, but the rent and other expenses do not start until August. She said at first, she had thought that August 1 to October 24 does not allow much time for some of the retrofit. She said she appreciated staff having the foresight to see that.

Ms. Mallek asked if the roof analysis comes back, if it would be written into the lease in order to avoid arguments about it later.

Mr. Stewart replied that it was in the lease.

Ms. Mallek asked if it was written such that the lessor is required to do it, and that it was not up for negotiation.

Mr. Stewart replied that there is some room for assessment and negotiation.

Ms. Mallek asked if Mr. Stewart felt confident that if they decide they need the roof, the lessor will have to do it.

Mr. Stewart replied yes.

Ms. Price said this would be like purchasing a home, when an inspector finds that something is a material defect and that work must be performed in order to effectuate the contract. She asked if her understanding was correct. She said it was not just a matter that the County wants a new roof, but that there must be some objective data to demonstrate that the roof needs to be repaired or replaced.

Mr. Stewart replied that this was the intent.

Ms. McKeel remarked that, anecdotally, at about 9:30 a.m. that morning, she was unable to find parking at COB 5th.

Mr. Gallaway said he was thrilled that the County was putting a priority into the Rio Small Area Plan. He said this could go a long way, and though it was not something that was suggested in the Rio-29 Steering Committee, it was a place where the County is investing in the small area, and so he appreciated this.

Mr. Gallaway said once this is up and running, they will need to get the work to make sure that transit is in the process and working for that prior to the operations getting set up there, noting that Ms. McKeel (as the Chair of the Regional Transit Partnership) would agree.

Ms. McKeel agreed.

Mr. Gallaway added that he was open to all ideas and suggestions about what this would mean.

Ms. McKeel agreed, adding that it meant not only looking at CAT.

Ms. Price **moved** that the Board approve the proposed lease of the space for the Office of Voter Registration and Elections. Ms. Palmer **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

Ms. Palmer asked if Mr. Stewart had to leave right away, as she wanted to bring something up in Matters from the Board in which the Board may have questions he could answer.

Mr. Stewart replied he was happy to stay.

Mr. Gallaway informed Mr. Richardson that the Board had moved Matters from the Board and Matters from the County Executive to this point in the meeting, as they had some extra time before going into closed meeting.

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**RESOLUTION TO APPROVE A LEASE  
FOR 206-216 ALBEMARLE SQUARE**

**WHEREAS**, the Board finds that it is in the best interest of the County to enter into a lease for property located at 206-216 Albemarle Square, Charlottesville, VA 22901, for the Office of Voter Registration and Elections (the Office of the General Registrar and the Board of Elections).

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Supervisors of Albemarle County, Virginia hereby approves entering into a lease for property located at 206-216 Albemarle Square, Charlottesville, VA 22901, for the Albemarle County's Office of Voter Registration and Elections, and authorizes the County Executive to execute the lease on behalf of the County after approval as to form and substance by the County Attorney, and contingent on approval of an appropriation by the Board of Supervisors to appropriate the required FY 20 funding.

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Agenda Item No. 17. From the Board: Committee Reports and Matters Not Listed on the Agenda.

Ms. Palmer said one of the things she wanted to mention was that the City has contracted with a consultant to do a study on all their waste management services. She said they will be looking at everything and have asked Mr. Stewart to sit in on some of their discussions. She said Mr. Stewart suggested that the County might be able to use the services of this consultant to look at some of the County's needs at that time.

Ms. Palmer said she and Ms. Price unfortunately had to miss the Solid Waste Alternatives Advisory Committee (SWAAC) meeting the week before, so she was unsure if there had been discussions about the matter there. She said the day before, she was involved in some brainstorming about what the County might need to know, and one of the topics discussed was littering. She said some in the County have thought that at least some of the littering issue is associated with the fact that unlike many other counties, they do not have any drop-off areas, and people have not learned, in many cases.

Ms. Palmer said there is also a lot of trash blowing out of trash trucks. She said County Waste (who is a major carrier in the area) has been bought by another company, GFL, out of Toronto. She said they did not know yet if the trucks will improve, but anyone who has been behind a County Waste truck knows that trash blows out of them, adding that she frequently picks up trash on her road because of that.

Ms. Palmer said the thought was that the littering issue could be something the consultant could look at. She noted that this had not yet been worked out, but that she wanted to bring it up to the Board, as it was a subject that has frequently come up, to get their feedback and see if any Board members have ideas along the line of finding out reasons why the County has this littering problem. She said since Mr. Stewart has been very involved in this, he may have things to add to the discussion, or perhaps the Board may have other ideas on what they should piggyback on this contract with.

Ms. McKeel asked Ms. Palmer if the consultant she was referring to was from the group doing the County's facility work.

Ms. Palmer replied no. She clarified that this was someone who was hired by the City. She said the City and County have been talking about trying to combine on issues, such as leaf pickup and street cleaning to see where there is some consolidation of services. She said the City is looking at everything, including bulk, and that the City uses many different companies to do different things. She said there is an effort for the County to consolidate and determine where they could benefit from this.

Mr. Stewart clarified that he was on the selection committee when the Request for Proposals was issued for this consultant, so he had the chance to read all the proposals and pitches. He said he was not a voting member, but he could say that the four consultants considered were the top in the country, and that he was extremely impressed with the qualifications of all the groups.

Mr. Stewart said the selected consultant is GBB.

Ms. Palmer added that the County has used GBB before.

Mr. Stewart said they had, adding they are an outstanding firm. He said their proposal calls for a study that includes a lot of public engagement as well as stakeholder engagement. He said the County, Rivanna Solid Waste Authority (RSWA), and UVA are all stakeholders that will be interviewed. He said as part of the focus, they will be looking at efficiencies within the City of Charlottesville as well as regional opportunities. He said this was exciting news for the County.

Mr. Stewart noted that the County is not an all-urban county and has its own sets of concerns. He said the notion is that they will have the ability to "ride" the contract cooperatively, and that the County is named as someone who can ride the contract. He said there would be hourly rates for different kinds of consultants, and that they would come up with some scope alternative options, discuss this with the consultants, and potentially get a price for that without having to go through a protracted procurement process. He said the County would also have the benefit of that regional and cooperative consideration when the consultants are talking with the City, RSWA, and UVA.

Mr. Stewart said this process could offer a focus on the County's urban service level expansion and rural needs as well.

Ms. McKeel asked if she heard that UVA is involved with this as well.

Mr. Stewart replied that UVA would be a stakeholder much like the County is in the consultant's study, to have at the table.

Ms. Palmer said the small group she was involved in the day before was a brainstorm, and that UVA was represented there.

Ms. McKeel remarked that this was intriguing, stressing that her fear was that if the County continues to do what they are doing, they will get the same result. She said she would be interested in this idea. She said she didn't know if this was the right time, and perhaps this would need to come back to the Board at another time to make a decision.

Ms. Palmer said she wanted to bring it up so that the Board could be thinking about it and brainstorming, as well as give information to Mr. Stewart. She said she didn't know how much time they had to do something bigger in the Board meeting, as this was a smaller thing that Facilities is taking up to look at many of the things that the Board members have brought up in the urban area. She said she was not trying to make this into a big decision by the Board, but that she thought it would be nice to have everyone's thoughts, ideas, and questions.

Ms. McKeel asked Mr. Stewart for the timeline.

Mr. Stewart replied that he had asked the Operations Subcommittee of SWAAC to propose what they think a Scope of Services might be. He said he had his own things in his mind about that. He said he would think that they get this and consolidate it, then have an initial discussion with the consultant to talk about how that might fit into their work plan and the City's effort. He said depending on the scale of the work, he thinks he can find money within existing funds that fiscal year to be able to afford to do this and will have a budget number he will be working with.

Ms. Palmer said she thought that the littering issue might fit into this relatively well, which is why she wanted to bring it up that day, given all the issues. She said she thinks of this as a smaller, more contained effort within FES and not to put it into a much larger context. She said she just wanted to get ideas from everyone.

Ms. McKeel agreed, reiterating she was intrigued. She said what she was hearing Mr. Stewart say was this is something that even though it is with the City, the County would have more control over what they would need and would be doing.

Mr. Stewart replied yes, explaining that the County would have a direct contract of its own with the consultant.

Ms. Mallek asked if Mr. Stewart would bring back more details to the Board once he sorts it out.

Mr. Stewart replied yes.

Ms. Mallek said as far as public engagement (which tends to cost a large amount of money), she believes the SWAAC members have built wonderful relationship with the County, and that she would propose that they be the ones to run the public engagement for the citizens, instead of hiring someone from out of town that no one will be willing to talk to.

Mr. Stewart agreed that this was a great suggestion.

Mr. Gallaway asked if there were any other updates or questions from the Board members.

Ms. Mallek said a while back, she asked about a timeline for the update of the 2008 climate baseline, and never received an answer. She said she would like to find this out, as the Board has been talking a lot about three years' worth of information, and that she would like to have something to be able to put their teeth into on the project. She said knowing the schedule would be an important thing to start with.

Mr. Stewart replied that staff would be coming to the Board in March with the draft Climate Action Plan. He said they intend to have an approximately 30-day public engagement period and then would turn to the Board a few weeks later, taking any feedback that the Board has provided them in March and that they hear from the public, and bring it back to the Board for final approval in the summer. He said

they then expect to move towards implementing the Plan and beginning a baselining initiative.

Mr. Stewart said a few months earlier, the Board authorized staff to reestablish its relationship with ICLEI and have access to the software. He said they would most likely be looking at the past calendar year's (2019's) data as the baseline.

Mr. Stewart said there is a key vacancy, as the previous Climate Program Coordinator (Narissa Turner) took a job in Richmond, and so staff is now in the process of reclassifying that position and posting it in the near term.

Mr. Stewart said one of that person's responsibilities would be the fairly sophisticated and difficult baselining exercise. He said he understands from friends who have done these before for other localities that it is about a six-month process and is very labor intensive. He said in the coming winter, they may expect to have a baseline for the previous year to show what progress (or lack of progress) they may have made over the previous 10 years, noting that the community has grown and that it will be a challenge.

Ms. Mallek said the question was if the improvements and process balance out the increased population.

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Agenda Item No. 18. From the County Executive: Report on Matters Not Listed on the Agenda.

Mr. Richardson said he had nothing to report.

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Agenda Item No. 11. Closed Meeting.

At 2:39 p.m., Ms. LaPisto-Kirtley **moved** that the Board go into a closed meeting pursuant to Section 2.2-3711(A) of the Code of Virginia:

- Under Subsection (5), to discuss the expansion of an existing industry in the northern part of the County where no previous announcement has been made of the industry's interest in expanding its facilities in the community; and
- Under Subsection (7), to consult with legal counsel and briefings by staff members pertaining to:
  1. Actual litigation between the Board of Supervisors and the Scottsville Volunteer Rescue Squad; and
  2. Probable litigation related to the compensation of a group of County employees; and
- Under Subsection (8), to consult with and be briefed by legal counsel regarding specific legal matters requiring legal advice relating to the public's access to and use of the County Office Buildings and their grounds located on McIntire Road and 5<sup>th</sup> Street.

Ms. Palmer **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

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Agenda Item No. 12. Certify Closed Meeting.

At 6:00 p.m., Ms. Palmer **moved** that the Board of Supervisors certify by a recorded vote that, to the best of each supervisor's knowledge, only public business matters lawfully exempted from the open meeting requirements of the Virginia Freedom of Information Act and identified in the motion authorizing the closed meeting were heard, discussed, or considered in the closed meeting.

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

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

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Agenda Item No. 13. From the Public: Matters Not Listed for Public Hearing on the Agenda.

Ms. LaPisto-Kirtley arrived at 6:02 p.m.

Ms. Suzanne Smith (Jack Jouett District) said she was representing IMPACT (Interfaith Movement Promoting Action by Congregations Together). She said she wanted to speak about and support the new housing policy presented last meeting by Ms. Stacey Pethia, Principal Housing Planner.

Ms. Smith said IMPACT strongly supports the creation of an affordable housing fund, which is an accepted best practice around the country (including 7 cities and counties in Virginia). She said it is a

flexible tool which can be used by each city or county in a way that best suits them. She said it can be used to rehabilitate and renovate existing properties or to build new properties. She said this is a tool that will help people of all ages, working groups, retired people, and families across the County. She said these funds leverage an average of \$6 for every dollar spent in the counties around the U.S., and so it is a wise use of taxpayer funds.

Ms. Smith said IMPACT supports ongoing, dedicated revenue sources, starting now. She said they know that they are currently in a housing crisis, and that the fund is a good tool. She said there are families who aren't sure, from month to month, if their housing will be stable because they spend more than half of their income on housing. She said these people need help now and have waited a long time. She called upon the Board to consider not asking these people to wait any longer for another budget cycle. She thanked the Board members for their service to the County.

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Ms. Vikki Bravo said she was also with IMPACT, and that she lives in the City. She said that IMPACT was so pleased to see the proposed new housing policy, and that the second priority is an affordable housing fund. She said they were very saddened that day to see that the current budget proposal doesn't include funding for that. She said in other words, if the Board accepts that the County needs a housing fund and it begins in the summer or fall, it will be an empty fund.

Ms. Bravo said IMPACT knows that the housing fund is a tool, which is used all over the country to create affordable housing as well as to renovate housing that is inaccessible or falling down. She said this is the place where, if the money is in the fund, the Board decides how to use it best for the County. She stressed that money was needed in the fund immediately.

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Mr. Martin Meth (Rio District) said he was coming to the Board as the Chair of the Places29 Rio Community Action Committee (CAC), with a resolution approved by the committee addressing a proposed Zoning Map Amendment called Parkway Place. He said a copy of the resolution was provided to the Board.

Mr. Meth said that while the proposed amendment was still under County staff review, the majority of the CAC members wanted to signal their opposition to this proposed amendment. He said the CAC has heard strong opposition from existing adjacent communities (Dunlora and Dunlora Forest).

Mr. Meth said the proposed amendment asks for 328 residential units, at a 16-unit density per acre, which is almost twice the estimated 170 residential unit density allowed by right, with bonuses.

Mr. Meth said the resolution points out that the higher density will increase traffic throughout the day. He said it cites concerns that the developer's proposed road improvements will not be a viable solution to the roads, which are already overcrowded and unsafe. He said in addition, the higher density does not meet the Comprehensive Plan standard for infill development, which requires compatibility with the surrounding neighborhoods.

Mr. Meth said he understands that staffers will likely classify this property as green field, though the Comprehensive Plan does not have a definition for either green field or infill. He said in any event, the higher density apartment community proposed by the developer is much different from the surrounding communities in terms of building height. He said apartment buildings close to each other with little green space between them reminds him of the Bronx. He said the location is close to East Rio Road.

Mr. Meth said in comparison, a similar-sized existing development (Arden Place) located close to the intersection of Rio and 29 is set back from the main roads and the buildings are not bunched together.

Mr. Meth said bringing the Board's attention to this proposed amendment is intended to highlight several issues that the Board should begin to address now in order to rationally assess the proposed Zoning Amendment, if it reaches the Board. He said a Master Plan for Places29 needs to be updated now, as noted in the CAC resolution sent to the Board in October. He said a Rio corridor traffic study should be immediately started, and that this year's County budget should include funding to address traffic flow on East Rio Road.

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Agenda Item No. 14. **Public Hearing: Ordinance to Amend County Code Chapter 4, Animals (Leash Laws).** To receive comments on its intent to adopt an ordinance to amend Albemarle County Code Chapter 4, Animals, Article 2, Dogs, Section 4-225, Dog running at large is prohibited, to establish when a dog must be on a leash rather than merely be under its owner's or custodian's immediate control to not be deemed a dog running at large, and to provide exceptions to these requirements).

The Executive Summary forwarded to the Board states that, County Code § 4-225 provides that a dog is deemed to be running at large and subject to seizure when it is "not under the owner's or custodian's immediate control." Under this description, a dog may be "under the owner's or custodian's immediate control" even when it is not on a leash. As a result, dogs currently may be walked unleashed off of the owner's or custodian's property, subject to exceptions during lawful hunts and field trials. Since Chapter 4 was comprehensively amended in October 2018, some Board members have received complaints from constituents encountering dogs in public places that were not on leashes.

The Board held a public hearing on December 18, 2019 to consider an ordinance that would require dogs to be leashed when the dog is not on the owner's or custodian's property (the "leash law"), again subject to not only the exceptions for hunting and field trials, but also for training, in fenced dog parks or exercise areas, and certain service dogs. The leash law would have applied County-wide.

The Board received many public comments before and during the December 18 public hearing. Some comments supported the proposed ordinance, some opposed it, particularly if it was to apply to the County's agricultural zoning districts (the "Rural Areas" and the Monticello Historic districts, collectively, the "Rural Areas"), and some requested that the exceptions be broadened to apply in additional circumstances.

With respect to whether the leash law should apply in the Rural Areas, the Board discussed options ranging from having it apply in the Rural Areas, to exempting the Rural Areas altogether. One middle option discussed would exempt the Rural Areas from the leash law, but allow subdivisions in the Rural Areas to opt-in, subject to Board approval.

The Board deferred consideration of the proposed ordinance to February 19, 2020 to allow staff to further review the options being considered, particularly the option to exempt the Rural Areas but allow subdivisions in the Rural Areas to opt-in to the leash law.

Since the December 18, 2019 public hearing, staff reviewed the history of the County's running at large regulations, currently in County Code § 4-225, and reviewed the running at large and leash regulations of 31 Virginia localities.

#### History of County Code § 4-225

The County began requiring that a dog be under the owner's or custodian's immediate control in the non-Rural Area portion of the County in 1973, but allowed areas of the Rural Areas to opt-in to the running at large regulations. By 2012, all or part of 16 subdivisions, parts of the "Crozet area," and the County portion of the University of Virginia were subject to the running at large regulations.

In 2012, the Board amended the running at large regulation to have it apply County-wide. The April 11, 2012 executive summary identified several factors favorable and unfavorable for the change. The favorable factors included: (1) a potential reduction in the number of calls related to dog bites, dog versus companion animal complaints, and dog versus livestock incidents; (2) potential reduction in the number of stray dog reports received in the Rural Areas zoning district; (3) potential decrease in the number of hazard calls received for dogs being in the roadway, and dogs being struck by vehicles in the Rural Areas; and (4) elimination of "invisible" boundary lines between areas where dogs can and cannot run at large currently defined by the zoning designation of the property. One of the unfavorable factors was potential resistance from dog owners in the Rural Areas because the owners were not accustomed to restrictions on their dogs.

#### Summary of the regulations of other Virginia localities

The running at large regulations of 31 localities were reviewed. The clear theme of these regulations is that the more urbanized a locality is, the more likely it is to require that dogs be leashed. Of the eight city regulations reviewed, including the City of Charlottesville, seven require that dogs be leashed. Of those seven, only the City of Virginia Beach does not extend its leash law city-wide. However, of the 23 county regulations reviewed, only Arlington, Fairfax, and Prince William Counties require that dogs be leashed county-wide. Three other counties limit their leash laws to specific areas, determined by the land's zoning density (Loudoun), by whether the area is "public" (York) or by subdivision or mobile home park (Stafford).

#### The proposed ordinance

Staff considered a proposed leash law that would exempt the Rural Areas but allow subdivisions to opt-in subject to Board approval. This sample ordinance is included as Attachment B. However, the Albemarle County Police Department has stated that the enforceability of such an ordinance in and around the Rural Areas subdivisions would be difficult, as it was prior to 2012, and therefore recommends that any leash law apply County-wide (Attachment A). Attachments A and B also include the additional exceptions identified by the Board and the public comments. A third option, to have the leash law apply only in the non-RA zoning districts, is also available, though enforceability near the RA-non-RA district boundaries would be difficult because there is industrial, commercial, and residential zoning in the part of the County designated in the Comprehensive Plan as Rural Area, and there is agricultural zoning in the part of the County designated in the Comprehensive Plan as Development Areas.

Any increased workload could be managed by existing staff.

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

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Mr. Greg Kamptner, County Attorney, presented. He said this is the second public hearing on the County's proposed leash ordinance.

Mr. Kamptner said in December, the Board held its first public hearing, and the proposed ordinance at that time would have required dogs to be on leash County-wide, with four exceptions. He said a number of public comments were received by Board members, and at the December 18 public hearing, there were some who supported the ordinance, while others objected (particularly having it apply in the Rural Areas). He said some requested that the exceptions be expanded to include exercising

hunting dogs, search and rescue dogs, and working farm dogs.

Mr. Kamptner said the Board did not act on the proposed ordinance on December 18, and that there was discussion about considering other alternatives, including excluding the Rural Areas or having a middle ground where subdivisions in the Rural Areas could opt in by petitioning the Board, and the Board amending this section to include them.

Mr. Kamptner said since then, there has been consideration of the County's running at large regulations, noting it had an interesting history. He said he conducted a review of 31 Virginia localities, including both cities and counties, looking at ones they typically look at and focusing on about 21-23 counties. He said there is an interesting cross section of how counties deal with dogs and running at large.

Mr. Kamptner said he developed a draft ordinance, and that Attachment B is not the draft opt-in ordinance. He apologized for the mistake. He said he had an example on the screen he could talk about if there were any questions.

Mr. Kamptner said they evaluated the enforceability of the draft opt-in ordinance. He said they would have pockets of areas of the Rural Area that would be subject to the leash law. He said when he spoke to police about this, their issue was about enforceability. He said there are questions of signage and dealing with the boundaries, as dogs move in and out of the areas that are subject to the leash law.

Mr. Kamptner said that because of the problems with enforceability, the recommendation from police and his office was the version of the ordinance (Attachment A) that is a County-wide application, with seven exceptions. He said they did incorporate and expand all of the exceptions that were in the original version of the ordinance in December, and the three new ones.

Mr. Kamptner presented on the screen the specific concerns that were voiced about the opt-in ordinance.

Mr. Kamptner said they also considered other options, which included a leash law that applies only in the Development Areas. He said this would probably be a Comprehensive Plan designation, and that there would be difficulties with enforceability there, as there would then be the boundaries between the Development Areas and Rural Areas.

Mr. Kamptner said there are leash laws that apply in all the Development Areas, and in all the public rights of way within the Rural Areas.

Mr. Kamptner said there are also leash laws that apply depending on the Magisterial District. He said in Gloucester County, for example, they have an interesting running at large ordinance where they have subdivisions, a sanitary district, and a magisterial district to which their running at large regulations apply.

Mr. Kamptner said of the counties he looked at, he only found three counties that require dogs to be leashed county wide, those being Arlington, Fairfax, and Prince William. He said Arlington does allow waivers for dogs that are getting training and participating in dog trials.

Mr. Kamptner said that Loudoun, Stafford, and York Counties have their leash laws apply in designated areas. He said Loudoun does it based upon the minimum acreage under their zoning regulations, and so one is not subject to the leash law if they are on a parcel that is zoned larger than 2 acres. He said Stafford County only applies the leash law in subdivisions and mobile home parks, and that he couldn't find a definition or listing of those. He said somewhere in their regulations, there could be a definition. He said York County has their leash laws apply only in public areas, and that he couldn't find a definition for a public area.

Ms. McKeel said she was confused, stating that none of these apply to Albemarle County, as they were not talking about private property.

Mr. Kamptner said he wanted to give the Board a sense of what the landscape of the regulations are.

Ms. McKeel said what he was comparing it to were restrictions on private property. She said if one owns a private property of 5 acres or more, it sounds as if they are looking at the size of the private property for their leash laws.

Mr. Kamptner said as soon as the dog goes off the property, such as in a place like Loudoun County where the zoning is 5 acres, if all the properties are on 5 acres, the leash law doesn't apply, even if the dog is not on the owner's property.

Mr. Kamptner said of the eight cities he looked at, six of them have city-wide regulations, including the City of Charlottesville. He said Virginia Beach does it in designated areas.

Mr. Kamptner said staff's recommended ordinance was Attachment A, "County-Wide Application of the Leash Law," with seven exceptions.

Ms. McKeel asked Mr. Kamptner how a "bona fide hunt" is defined.

Mr. Kamptner replied that during the applicable hunting season, it is on a bona fide hunt in good faith and that he assumed they would look to an organization (e.g. a hunt club) who is conducting it in the company of a licensed hunter, or that the dog is participating in an organized fox or other game hunt.

Ms. Price asked of the seven exceptions, if the difference between dogs participating in field trials and exercising hunting dogs more in degree rather than kind. She noted there seemed to be a lot of similarity.

Mr. Kamptner replied that there is a common theme. He said other than the service dogs and working farm dogs, these dogs are either in a competition or organized event.

Ms. Price asked if the term "working farm dog" was defined in the ordinance.

Mr. Kamptner replied that it was not defined. He said the entire exemption is, "when the dog is a working farm dog that is either guarding or herding cows, foul, goat, sheep, swine, or other domestic animals normally raised on farm," and that the ordinance looks at the activity itself that the dog is performing.

Ms. Palmer said a question she asked Mr. Kamptner was about how many people have electric fences, and that there are situations where there is a thunderstorm and the fence goes out without knowing it. She said the dog then gets out and off their property. She said this isn't a dog that is attacking anyone or biting other dogs, but is an animal running loose until the fence can be fixed. She said Mr. Kamptner told her that Lt. Walls said if it was not a recurring event, and the dog didn't do anything wrong, the police would simply talk to the owner without charging them with a misdemeanor.

Ms. Price said she had a question pertaining to Paragraph A of the ordinance (Attachment A), Section 4-225, Section A. She said if she takes her dog off her property and goes to her neighbor's house (which is in the country), she is no longer on her property. She asked if that dog would then be subject to a violation, as the dog is not on a leash and she is not on her property.

Mr. Kamptner replied yes.

Ms. McKeel asked about having the neighbor's permission.

Ms. Price asked if in the situation where she was visiting her neighbor, and the neighbor asked her to bring the dog over to play, if she would have to have the dog on a leash on their property.

Mr. Kamptner said under the ordinance as it is written, this would be a violation. He said there are no carve-outs for being on other people's property under Subsection A.

Ms. Mallek pointed out that the landowner would be the one to make a complaint, and if they invited her to come over, this would not happen. She said this was a worst-case scenario.

Mr. Kamptner said if one was charged, they could make the argument that the owner of the property became a custodian of the dog at that moment, and therefore she was not in violation.

Ms. Palmer said one the issues she struggles with is the same issue that Ms. Price brought up, that it is all complaint-based, but they are still putting something forward that makes people feel like they're doing something wrong. She said this troubles her and asked if there was a way to have a carve-out for permission. She said she took her dog for a walk on someone else's large property and they know that she walks her dog there every day. She said she was there that morning and walked her dog a couple miles, and that if someone else was walking on that property and saw her without a leash, she didn't know how this would work.

Mr. Kamptner said to answer the question about if the ordinance could be revised to make the change to include the property owner's permission, yes it could be done. He recalled that from the December 18 public hearing, there was a discussion about that regarding some of the exceptions, and that it becomes an issue for Animal Protection Officers because they then have to determine if the dog owner had permission and talked to the owner of the property. He said it makes enforceability more complicated.

Ms. Palmer said there were many large pieces of property in the Rural Areas where the owners will say it is okay for one to walk their dog on the property, as long as it is not hunting season. She said it is good to have someone there picking up trash, keeping an eye on things, and reporting any misdeeds. She said perhaps there are 10 different people in the neighborhood who walk their dogs, and where she lives, there are about 8 people who regularly walk their dogs on the same property. She said this was relatively common, and that she understood what Ms. McKeel was talking about in her neighborhood. She said there is a reason why so few counties have county-wide leash laws.

Ms. Mallek said the permission of the landowner was discussed, and that it was actually stipulated by the hunt club people that when they are doing their puppy walks and training, they would be out of business if they mismanage or take advantage of a landowner. She said they are completely at the landowner's benevolence to be able to ride or walk over to the property with a pack. She said she felt very confident that all those people will take that into consideration.

Ms. Mallek said if people have been trespassing on her property and claim that they know the owner, she calls 911 immediately. She said the County has every ability within its enforcement, logic, and good citizenship to know that landowners can give permission as it is their property and their problem, and that they have taken responsibility for it in a way by allowing it. She said she didn't think they needed to worry staff about this, at that point, at least with what she knew that day. She said she felt very confident with what staff had laid out.

Ms. Mallek said that at a later time, after other questions are done, she wanted Mr. Kamptner to clarify the term, "dispose of," as this has raised alarm bells as if it is going straight to some dreadful end, when all it really means is to pick it up off the street. She said if her dog runs off her property, she would be very grateful to anyone who picks it up off the street, calls her, and gives it back to her. She said the last thing she wants to do is spend six weeks looking for a dead dog.

Mr. Kamptner said he would pull this up to discuss later.

Ms. McKeel said she had this question as well.

Ms. Mallek said it scares people.

Ms. Palmer said the good news is that there is a no-kill shelter in the County, but that this might be one of the reasons why many counties don't have a county-wide ordinance, because they don't have no-kill. She said if the dog goes to the SPCA, they have to keep the dog for a certain length of time. She said if no one comes in to retrieve the dog, they have the ability to euthanize the animal.

Ms. Price said if there was inclusion of language that it could be an affirmative defense, which puts the burden on the dog owner to demonstrate that they had the permission of another property owner, then that takes the burden off of police to track down the property owner.

Ms. McKeel said this was a great idea.

Ms. Price explained that this way, it puts the burden on the individual, so if she is at her neighbor's property with the dog out and someone calls the police, she could then have a defense by being able to show that the property owner allowed her to bring the dog over.

Ms. McKeel said this was as opposed to having law enforcement trying to track it down.

Ms. LaPisto-Kirtley said this also takes care of the problem when the dog owner doesn't know the property owner but claims they had the property owner's permission.

Ms. Palmer commented that she thinks what this all should show (and that the Parks department would agree) is that the County needs more dog parks. She said this is certainly something that should be considered with Biscuit Run. She said she often drives by Charlotte Humphries Park and wonders what a dog park would look like there. She said the only decent dog park in the entire County is at Chris Greene Lake.

Ms. Mallek added that there is one in Crozet.

Ms. Palmer acknowledged that there is indeed a good one in Crozet. She said when she looks at the City's dog parks (e.g. Darden Towe and Azalea), they are little cages and are terrible.

Ms. Palmer said dog ownership has gone up dramatically in the last couple decades, and that she recently read that it is at an all-time high since records began to be kept in 1982. She said statistics show that about 44% of people own dogs.

Ms. McKeel said this was likely why the Board was having this discussion.

Ms. Palmer agreed, stating that this is why more dog parks are needed.

Ms. McKeel said this could be a part of the Board's discussion, as she agreed this was a valid point, but that it didn't immediately solve the problem being experienced in many of the County's areas.

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

Mr. Bob Garland (Jack Jouett District) said he represented the Canterbury Hills Association and was speaking in favor to the ordinance regarding dogs running at large. He said dog owners in his neighborhood generally do a good job of controlling their pets, but that over the almost 50 years that he and his wife have lived in the neighborhood, however, they can easily recall being charged by large dogs at least six times. He said this included at least one incident when his wife was knocked down, and another when their dog (which was on a leash) was bitten.

Mr. Garland said he and his wife would appreciate the Board's vote in favor of requiring dogs to be on a leash when off the owner's property. He said they had no objections to the seven exceptions that have been put forward.

Mr. Garland said he believed there were others attending that would support the same view, asking them to raise their hands.

Ms. Diane Solatka (Jack Jouett District) said she supported everything Mr. Garland said. She said she would like to walk in the neighborhood, but that recently, she was charged by a dog and that it was very scary. She said she no longer walks in her neighborhood, and that she would like to say she supports the leash law, as the situation was scary. She said she has been walking in the neighborhood for 20 years and has been fine, but that one doesn't know when it won't be fine. She said it seems that for her area, which is concentrated opposed to a rural area, the ordinance would be a good thing for them.

Mr. Gallaway brought the matter back before the Board.

Ms. LaPisto-Kirtley said in the future, she would like to see the County asking the hunt clubs to make sure that all their hunting dogs are microchipped. She said she thinks this would be a good sign of being a responsible owner, and perhaps all of them already are. She said there are too many dogs let loose after hunting season and are left to starve or die.

Ms. McKeel said this was an interesting suggestion, and that she would be willing to at least discuss this. She said it does seem as though the SPCAs fill up at certain times of the year. She said she looked online recently, and that a 2008 statistic showed that in Louisa, 31% of the animals in the shelter were abandoned hunting dogs. She said it is a huge problem that is not fair.

Ms. McKeel said the ordinance change the Board was currently discussing was not only important for people but is also important for dogs. She said a constituent came up to her that morning and said she had a friend who was walking her dog on a leash in a County neighborhood and a neighbor who had their dog out off. She said that dog came over and killed the dog.

Ms. McKeel said this is about safety for the dogs as well. She said when she is walking her dog on a leash, a dog that is walking under command (which sometimes is not actually under command) causes a huge safety issue for her dog, which is why some people are picking up and holding their dogs.

Ms. Price said for the people who have an invisible fence, this may generally keep their dog out, absent a break in electricity, but it does not protect the dog inside the electric fence from another dog coming in.

Ms. McKeel said she has had this happen. She said a Jack Russell used to come into her yard where she had an electric fence to keep her beagle in, and that the Jack Russell would terrify her beagle.

Ms. Price said she supported the proposed ordinance, and that she was very appreciative of the seven exceptions provided. She said in her experience and observation with dogs, it is generally not the working farm dogs, and clearly not the service dogs, nor the hunting dogs that are generally the ones involved in a violence against an individual or another animal. She said it is much more likely to be a neighborhood residential dog that is either not trained and/or is not under control.

Ms. Price said as a criminal judge, with every case that came before her, the one thing she wanted to know was if the individual hurt themselves, or someone else. She said public safety and protecting the vulnerable was about protecting individuals to be able to walk safely in their neighborhoods. She said she had an experience where a Rottweiler in her neighborhood caused her to no longer walk down that section of the neighborhood, as it was not safe.

Ms. Price said she supports dog ownership and the hunting community, but that she also believes there is a degree of responsibility that goes with being a dog owner. She said there are too many incidents of either a vicious, violent dog (noting she knew someone whose daughter recently lost a finger in a dog attack), or even a rambunctious puppy that jumps up and knocks someone over. She said the older a person gets, the more this can become a lifetime sentence with a broken hip, or the like.

Ms. Price said responsible dog owners will not have a problem. She said she would like to see, however, the amendment she proposed in terms of an affirmative defense. She said she didn't want to feel like she was breaking the law when she takes her dog to her neighbor's property for the afternoon. She said beyond this, she appreciated the work that the County Attorney's Office has done to prepare the ordinance.

Ms. Palmer said she was very appreciative of everything that was added to the ordinance, and that she felt much more comfortable about it with those additions. She said she would like to include Ms. Price's suggestion about putting in something about being on someone else's property with their permission.

Ms. Palmer said as a veterinarian of several decades, she spent a lot of time talking to people about socializing their dogs early so they weren't dog aggressive. She said this is one of the reasons why she knows that dog parks are so important, as they give people an opportunity to socialize their animals early. She said she does believe this is a safety issue. She said even in the Rural Areas, she had to get rid of her dog door when her neighbor's dogs kept coming into her house, and some were not completely trained like hers were. She said there are many times when dogs are running loose and not necessarily doing anything bad or mean, but they can still be a nuisance.

Ms. Palmer said she was okay with voting for the ordinance, knowing also that the County has a no-kill shelter. She said they went through those regulations a couple years earlier, and that they know

"disposed of" means euthanized in some situations, depending on other laws and where the shelter is. She said the County is incredibly lucky to have the no-kill shelter, but that she would very much like to make sure she isn't doing something illegal when she goes out with her dog, adding that it is very well trained.

Ms. Mallek said Ms. Palmer should have permission from the landowner, or at least their phone number.

Ms. McKeel said Ms. Palmer made a good point about the no-kill shelter. She said her dog came from the Culpepper shelter and was not far from being put down, which is why she seeks out the shelters to adopt from.

Ms. Mallek said they had come a long way and that she was grateful for all the improvements that had been made to meet the concerns and bring everyone together. She said she was especially glad that there was not an urban versus rural argument going on, as it only divides the County.

Ms. McKeel asked Mr. Kamptner if he needed some additional language (as far as what Ms. Price recommended).

Mr. Kamptner said he would read what he had just crafted. He said this would be added to the end of Paragraph A. He read:

"The owner or custodian of a dog may assert, as an affirmative defense, that the owner or the occupant of other property gave prior written permission to the owner or custodian of the dog to be on the property, and the dog is under the owner's or custodian's immediate control while it is on the property for which the permission has been given."

Ms. Palmer said this would mean that if Ms. Price went to her next-door neighbor, she would have to have written permission before she went. She asked if it could be written so that the owners of the dog could present written permission to the Police Department after the fact. She said the police would then not have to do anything, but that it would be up to the dog owner to do that.

Mr. Kamptner said he could delete the word, "prior."

Ms. McKeel said this was good, as "prior" was not realistic.

Ms. LaPisto-Kirtley asked if someone was cited because they were on their neighbor's property, then presents a piece of paper to the court saying they had permission to be there, the dog owner was signing it, or the property owner.

Ms. Price said the property owner would sign it.

Ms. LaPisto-Kirtley said the property owner, depending on whether or not the dog may have bitten someone else, may or may not sign that.

Ms. Palmer said if the dog bit someone, that is a totally different situation, and that the County has ordinances that cover dog bites, aggression to other dogs and to people.

Ms. LaPisto-Kirtley said that she did not have a problem with that and her question had been answered.

Ms. McKeel asked if this was the only change.

Mr. Kamptner replied yes.

Ms. McKeel **moved** to adopt the Ordinance to Amend County Code Chapter 4, Animals (Leash Laws) (Attachment A), with the amendment Mr. Kamptner read aloud, minus the word "prior."

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

Ms. McKeel observed that there were not many people there who opposed to the ordinance.

Ms. Mallek said she believed their concerns were met very well.

Ms. Price said there had been concerns on both sides, both that the ordinance was overly broad or that it was not strict enough. She said she appreciated the efforts of the County Attorney's Office to take those comments and concerns to draft a very reasonable regulation.

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

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

**By Amending and Renaming:**

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

**Chapter 4. Animals**

**Article 2. Dogs**

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

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

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

- A. *When a dog is deemed to run at large.* For the purposes of this section, a dog is deemed to "run at large" while roaming, running, or self-hunting off the property of its owner or custodian and the dog is not firmly secured by a physical leash or lead attached to a collar or harness and under the control of a responsible person capable of physically restraining the dog; an electronic collar or other similar electronic device does not qualify as a leash or lead. A "dog that is off the property of its owner or custodian" includes, but is not limited to, any dog that is on a public right-of-way, public road, public sidewalk, or public trail that is under the control of the County, the State, or another public entity, pursuant to an easement on the property of the dog's owner or custodian. The owner or custodian of a dog may assert as an affirmative defense that the owner or the occupant of other property gave written permission to the owner or custodian of the dog to be on the property, and the dog is under the owner's or custodian's immediate control while it is on the property for which the permission has been given.
- B. *When a dog is not considered to be running at large.* A dog is not considered to "run at large" in the following circumstances:
  1. *Hunting.* If, during the applicable hunting season, it is on a bona fide hunt in the company of a licensed hunter or the dog is participating in an organized fox or other game hunt.
  2. *Field trials or training.* During field trials or formal obedience, agility, or similar training periods when the dog is accompanied by its owner or custodian.
  3. *Fenced dog park or exercise area.* When the dog is in a securely fenced, specifically designated dog park or dog exercise area established by the County or another governmental entity, a homeowner's association, or a community organization, where the fencing is designed to prevent a dog from escaping.
  4. *Service dog; when leashing is not required.* When the dog is a service animal whose handler, because of a disability, is unable to use a harness, leash, or other tether, or the use of such a device would interfere with the service dog's safe and effective performance of work or tasks, provided that the service dog is otherwise under the handler's control through voice control, signals, or other effective means.
  5. *Off-season hunting dogs.* When the dog is a hunting dog and is being exercised during the non-hunting season and is under the immediate control of one or more dog handlers capable of maintaining control of the dogs, provided the handler has the express permission of the owner or occupant of the property on which the dogs are being exercised.
  6. *Public service training.* During search and rescue and similar public service training when the dog is accompanied by its owner or custodian, or by a qualified handler, provided the owner, custodian, or handler has the express permission of the owner or occupant of the property on which the dogs are being trained.
  7. *Farm dogs.* When the dog is a working farm dog that is either guarding or herding cows, fowl, goats, sheep, swine, or other domestic animals normally raised on a farm.
- C. *Seizure, impoundment, and disposition.* Any dog observed or captured while unlawfully running at large and not in the presence of its owner or custodian shall be seized, impounded, and disposed pursuant to Virginia Code § 3.2-6546(B), (C), and (D).

(§ 4-225: (§ 4-200: 7-19-73; 8-22-73; 9-26-73; 11-15-73; 12-19-73; 1-3-74; 1-23-74; 3-24-77; 5-22-74; 10-9-74, 1-22-75; 3-10-76; 4-21-76; 12-7-77; 5-22-78; 6-21-78; 10-7-81; 5-21-86; 5-13-87; 9-16-87; 11-4-87; 12-16-87; 9-8-88; Ord of 1-17-90; Ord. of 8-8-90; Ord. No. 94-4(2), 8-17-94; Ord. No. 94-4(3), 12-7-94; Ord. No. 95-4(1), 1-4-95; Ord. No. 95-4(2), 9-6-95; Code 1988, § 4-19; Ord. 98-A(1), 8-5-98; Ord. 98-4(1), 12-2-98; Ord. 00-4(1), 5-3-00; Ord. 03-4(2), 3-5-03; Ord. 04-4(1), 5-12-04; Ord. 05-4(1), 12-7-

05; Ord. 06-4(1), 12-6-06, § 4-213; Ord. 09-4(1), 7-8-09; Ord. 09-4(2), 10-7-09; Ord. 12-4(1), 4-11-12)(§ 4-213: Code 1967, § 4-26; 4-13-88; Code 1988, § 4-29; Ord. 98-A(1), 8-5-98, § 4-309; Code 1967, § 4-31; 4-13-88; Code 1988, § 4-34; Ord. 98-A(1), 8-5-98, § 4-314; Code 1967, § 4-32; 4-13-88; Code 1988, § 4-35; Ord. 98-A(1), 8-5-98; Ord. 05-4(1), 12-7-05, § 4-315; Ord. 08-4(2), 9-3-08, § 4-308; Ord. 09-4(1), 7-8-09); § 4-225, Ord. 18-4(1), 10-3-18; Ord. 20-4(2), 2-19-20

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

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Agenda Item No. 15. **Public Hearing: ZMA201900007 Hyland Park.**

PROJECT: ZMA201900007 Hyland Park

MAGISTERIAL DISTRICT: Rivanna

TAX MAP/PARCELS: 078E00000000A2, 078E00000000A4, 078E0000100100, 078E0000100200, 078E0000100300, 078E0000100400, 078E0000100500, 078E0000100600, 078E0000100700, 078E0000100800, 078E0000100900, 078E0000101000, 078E0000101100, 078E0000101200, 078E0000101300, 078E0000101400, 078E0000101500, 078E0000101600, 078E0000101700, 078E0000101800, 078E0000101900

LOCATION: Developed and undeveloped parcels located within Fontana. Parcels are located in three areas; one parcel is along Fontana Dr at the intersection of Fontana Dr and Glenleigh Rd, one parcel is located on Via Florence Rd about 1500 feet from the intersection of Fontana Dr and Via Florence Rd, and the remaining nineteen parcels are located on Glenleigh Rd.

PROPOSAL: Request to amend proffers associated with the development of Fontana Phase 4C on property zoned R-4 residential. No new dwellings proposed.

PETITION: Amend the previously approved proffers for ZMA200400018 and ZMA201100001 associated with Phase 4C of the Fontana subdivision. Amend Proffer #1, Proffer #2, and Proffer #3 to make clerical edits. Proffer #1 would be revised to specify the original drawing date of the approved rezoning plan document and Proffer #2 and Proffer #3 would be revised to refer to units as "dwelling units", to provide consistent language throughout the proffer statement. Amend Proffer #5 to change the design of pedestrian paths from Class A Type 1 (asphalt) to Class B Type 1 (earth, mulch, or stone dust) and to revise the timing of installation. Amend Proffer #6 to require cash proffers only for units built in excess of the number of units that were allowed by right under the zoning in existence prior to the approval of ZMA200400018. Amend Proffer #7 to reset the annual adjustment of cash proffers to begin January 1, 2019, instead of January 1, 2008. Amend Proffer #9 to update the development's Architectural Standards to permit all earth-tone colors, including cream, instead of only medium shaded earth-tones. Omit Proffers #8 and #10 because they have been satisfied. The property contains 10.88 acres. No change to the zoning district or application plan is proposed.

ZONING: R-4 Residential - 4 units/acre

OVERLAY DISTRICT(S): Steep Slopes (Managed and Preserved)

PROFFERS: Yes

COMPREHENSIVE PLAN: Neighborhood Density Residential – residential (3-6 du/acre). Secondary religious assembly uses, schools and child care, institutional, commercial/retail AND Parks & Green Systems – stream buffers, floodplain, and steep slopes, privately owned open space, and natural areas in Neighborhood 3 of the Pantops Comprehensive Plan Area.

POTENTIALLY IN MONTICELLO VIEWSHED: Yes.

The Executive Summary forwarded to the Board states that, at its meeting on December 17, 2019, the Planning Commission recommended denial of the proposed amendment to Proffer #7, and approval of the remainder of ZMA201900007 – Hyland Park, both as recommended by staff, for the reasons stated in the staff report. This motion was approved with a vote of 6:0, Ms. Firehock being absent.

The Planning Commission's staff report, action memo, and minutes are attached (Attachments A, B, and C).

During the Planning Commission public hearing, discussion between the applicant, Planning Commission, and staff primarily focused on proposed changes to Proffer 5 (pedestrian paths), Proffer 6 (cash proffers) and Proffer 7 (annual adjustment of cash proffers). A full discussion on these topics is available in the Planning Commission, PC, Meeting Minutes. The Planning Commission voted 6:0 to recommend all requested proffer amendments, except for the applicant's request to amend Proffer 7.

Since the Planning Commission public hearing, the applicant has submitted a signed proffer statement that reflects the recommendations of the Planning Commission and staff (Att. D).

Staff recommends that the Board adopt the attached Ordinance to approve Zoning Map Amendment ZMA201900007 (Attachment E).

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Ms. Mariah Gleason, Senior Planner, presented the staff report. She said the subject parcels are located in the Fontana subdivision in the Pantops Development Area. She said the subject property consists of 21 parcels, or 10.88 acres that lie west of the upper Cascadia development and north of the existing developed portions of Fontana. She said these parcels constitute the final phase of development for the Fontana neighborhood.

Ms. Gleason said the Zoning Map Amendment request is not requesting any change to the zoning. She said the request instead proposes to amend 8 of the 10 previously approved proffers for those lots. She said the applicant has previously requested to revise 9 of the proffers, but that one proffer change has been removed based on the recommendation of the Planning Commission and staff.

Ms. Gleason said today, these parcels exist as a mix of developed, developing, and undeveloped parcels. She indicated on a map to a parcel on the far left that has been developed as part of the neighborhood trail network and will not be developed further. She said the parcels in the cul-de-sac area are platted, graded, and that development is underway for the 19 residential units approved in that area. She said the final 15 lots approved with the rezoning will be placed within the corner lot on the far right of the map.

Ms. Gleason said of the 8 proffer amendments requested by the applicant, three constitute substantive changes, three are clerical changes, and 2 proffers are being omitted as they have been satisfied at this point.

Ms. Gleason said her presentation would focus on the proffers that are being substantively changed, but that other proffer changes could be reviewed if members of the Board so desired.

Ms. Gleason explained that she laid out the next couple slides in her presentation in a way that the Board could see the existing proffer language above, with the revised or proposed proffer language provided underneath. She said changes to the proffer language are identified in red, with a summary of the changes provided on the right.

Ms. Gleason said the first proffer being substantively changed is Proffer #5, regarding the pedestrian paths. She said revisions to this amendment more generalizing language to allow some flexibility in the final location of the paths, changing the construction type of the paths, and changing the timing of the trail installation.

Ms. Gleason said the change in the construction type would be from a Class A Type I (an asphalt construction) to a Class B Type I, which is constructed of earth, mulch, or stone dust. She presented an image depicting the trails that would be affected by this revision. She said the trail areas that would be affected are minimal in length, and that they are about 610 feet in length (or 0.12 miles).

Ms. Gleason said the Parks and Recreation department staff also evaluated this particular proffered change and indicated that this would be an acceptable surface material here, and consistent with the existing trails in the area.

Ms. Gleason said the second proffer being substantively changed is Proffer #6, which addresses cash proffers. She said the applicant is seeking a by-right use credit, which functions to relieve the applicant of paying cash proffers for development that would have been allowed on this property prior to the original rezoning. She said revisions to this proffer also remove the earmarking of contributions towards specific uses. She said this change actually improves the proffer language because 1) cash proffers are now codified under State legislation, so the statement is no longer needed, and 2) under State Code, the County is actually no longer able to use cash proffers to fund libraries.

Ms. Gleason said the third and final substantive change to the proffer statement is Proffer #9, which addresses architectural standards. She said this is the only area of the Fontana subdivision which can be seen from the Monticello Viewshed. She said when evaluating this, staff reached out to the representative from Monticello, and that they confirmed that the proposed revision is acceptable and would continue to protect the historic Monticello Viewshed. She said County staff also had no further issue with the revision.

Ms. Gleason said there had been another proffer amendment, but that proffer change has since been removed from the request on the recommendation of the Planning Commission and staff. She said the remaining revisions were either clerical or omitted proffers that have now been satisfied.

Ms. Mallek said in looking at the maps of the trails, it looked as if the left and center trails were on a similar topography, which was fairly flat. She said if in this case, the other trail composition would likely suffice. She pointed out that the trail in the other area, however, looked like it had a big slope on it, and so bark would wash away downhill when it rains, and that this is a maintenance disaster. She asked what the situation was with this trail.

Ms. Gleason replied that when staff presented this to the Planning Commission, they were fine with the less intensive construction material there because it is seen as less intensive with less grading. She said this design class allows the trail to be steeper. She said for context, what this connection leads into is trails in the Hyland Ridge area, between two platted cul-de-sac areas. She said that trail is already constructed of dirt, and so this would be a harmonious connection between those two private paths.

Ms. Price said she didn't think that dirt was the issue but rather, whether it was bark or mulch as opposed to something else.

Ms. Mallek added that it was as opposed to having something harder that would stay put. She said it is a maintenance problem, asking what would happen in the future when the bark washes away. She asked if there was something in the code of development that establishes this, so it doesn't put a burden on the neighbors.

Mr. David Benish (Director of Planning) said it is a requirement of the application plan. He said they are private facilities and therefore, it is under the HOA's responsibility to maintain the trails. He said practically speaking, the HOA is the one who will determine how they will manage it and gives them the

flexibility to go to crusher run. He said they could also choose to pave it if it does become a maintenance issue. He said this was simply staff's requirement for the minimum standard that is established.

Mr. Benish said for background, the roads are required to have sidewalks and that these are considered secondary trails to the sidewalks that are now required.

Ms. McKeel said Ms. Mallek made a good point, citing that at Charlotte Humphries Park, Parks and Recreation had trouble with the trail there and actually ended up paving it because it was so rutted and dangerous for people to walk on.

Mr. Benish agreed that it was a good discussion. He said in some circumstances, asphalt actually gets undermined, or the tree growth in the wooded area will cause disrepair. He said sometimes, it is best to make a judgment call to see what is there and how stable the area is. He said with these being such small areas, staff was comfortable with the lesser standard because it was not putting an onerous expectation on the homeowners for that length of trail.

Mr. Gallaway asked if the applicant has gone with the changes that the Planning Commission has recommended.

Ms. Gleason replied yes.

Mr. Gallaway said he didn't clear about the adjustments to cash proffers and asked if this was all off the table.

Ms. Gleason replied yes.

Mr. Gallaway asked if the applicant was just going for the by-right credit and no other conversation about the cash proffers.

Ms. Gleason replied this was correct.

Mr. Gallaway invited the applicant forward.

Ms. Ashley Davies (Riverbend Development) said she did not have a presentation but wanted to be present if there were additional questions or topics to discuss. She said she and Ms. Gleason spent several months working together through all the issues, and that after the Planning Commission, the updates were made to ensure that the applicant was addressing any issues that staff or the Planning Commission might have with the request.

Mr. Gallaway opened the public hearing. Hearing no comments from the public, he closed the public hearing and brought the matter back before the Board.

Ms. LaPisto-Kirtley **moved** that the Board adopt the attached Ordinance (Attachment E) to approve ZMA201900007 Hyland Park.

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

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**ORDINANCE NO. 20-A(3)**  
**ZMA 2019-00007**

**AN ORDINANCE TO AMEND THE ZONING MAP FOR**  
**TAX PARCELS 078E00000000A2, 078E00000000A4, 078E0000100100,**  
**078E0000100200, 078E0000100300, 078E0000100400, 078E0000100500,**  
**078E0000100600, 078E0000100700, 078E0000100800, 078E0000100900,**  
**078E0000101000, 078E0000101100, 078E0000101200, 078E0000101300,**  
**078E0000101400, 078E0000101500, 078E0000101600, 078E0000101700,**  
**078E0000101800, AND 078E0000101900**

**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 ZMA 2019-00007 and their attachments, including the proffers dated January 9, 2020, the information presented at the public hearing, any written comments received, the material and relevant factors in Virginia Code § 15.2-2284 and County Code § 18-33.12, and for the purposes of public necessity, convenience, general welfare and good zoning practices, the Board hereby approves ZMA 2019-00007 with proffers dated January 9, 2020.

Original Proffer \_\_\_\_\_  
Amended Proffer   
(Amendment to ZMA 2004-18 and ZMA 2011-01)

**PROFFER FORM FOR FONTANA PHASE 4C**

Date: January 9, 2020  
ZMA # 2019-00007

Tax Map and Parcel Numbers: 078E00000000A2, 078E00000000A4, 078E0000100100, 078E0000100200, 078E0000100300, 078E0000100400, 078E0000100500, 078E0000100600, 078E0000100700, 078E0000100800, 078E0000100900, 078E0000101000, 078E0000101100, 078E0000101200, 078E0000101300, 078E0000101400, 078E0000101500, 078E0000101600, 078E0000101700, 078E0000101800, and 078E0000101900

Owner of Record: **HIGHLAND PARK INVESTMENTS, LLC**

10.88 Acres zoned R4 (Amendment to proffer statement)

Pursuant to Section 33.3 of the Albemarle County Zoning Ordinance, the Owner hereby voluntarily proffers the conditions listed below which shall be applied to the property, if rezoned. These conditions are proffered as a part of the requested rezoning and it is acknowledged that such conditions are reasonable. This proffer statement shall amend and supersede all previous proffer statements (ZMA2004-18 and ZMA 2011-01) for Fontana Phase 4C for the parcels listed.

1. **Conformity with Plans:** Fontana Phase 4C shall be developed in general accord with the plans entitled, "Fontana- Phase 4C Rezoning Plan," prepared by Terra Engineering and Land Solutions, dated August 29, 2005, and last revised July 30, 2007, a copy of which is attached hereto as Exhibit A, (the "Plan"). No more than thirty-four (34) dwelling units shall be developed in Fontana Phase 4C.
2. **Final Grading Plan:** The Owner shall submit a final grading plan meeting the requirements of this section (hereinafter, the "Final Grading Plan") with the application for each subdivision of the dwelling units shown on the Plan identified in Proffer 1 above. The Final Grading Plan shall show existing and proposed topographic features to be considered in the development of the proposed subdivision. The Final Grading Plan shall be approved by the County Engineer prior to the approval of the first preliminary subdivision plat. The subdivision shall be graded as shown on the approved Final Grading Plan. No certificate of occupancy shall be issued for any dwelling on a lot where the County Engineer has determined the lot is not graded consistent with the approved Final Grading Plan. The Final Grading Plan shall satisfy the following:
  - A. The Final Grading Plan shall show all proposed streets, building sites, surface drainage, driveways, trails, and other features the County Engineer determines are needed to verify that the Plan satisfies the requirements of this proffer.
  - B. The Final Grading Plan shall be drawn to scale not greater than one (1) inch equals fifty (50) feet.
  - C. All proposed grading shall be shown at contour intervals not greater than two (2) feet.
  - D. All concentrated surface drainages over lots shall be clearly shown with the proposed

grading. All proposed grading shall be shown to assure that surface drainage can provide adequate relief from flooding of dwellings in the event a storm sewer fails. Graded slopes on lots proposed to be planted with turf grasses (lawns) shall not exceed a gradient of three (3) feet horizontal distance for each one (1) foot of vertical rise or fall (3: 1). Steeper slopes shall be vegetated with low maintenance vegetation as determined to be appropriate by the County's program authority in its approval of an erosion and sediment control plan for the land disturbing activity. These steeper slopes shall not exceed a gradient of two (2) feet of horizontal distance for each one (1) foot of vertical rise or fall (2:1), unless the County Engineer finds that the grading recommendations for steeper slopes have adequately addressed the impacts.

- E. Surface drainage from one-half (1/2) acre of land or from three (3) or more lots, whichever is greater in area, shall be collected in a storm sewer or directed to a drainage way outside of the lots.
- F. All drainage from streets shall be carried across lots in a storm sewer to a point beyond the rear of the building site.
- G. The Final Grading Plan shall demonstrate that an area at least ten (10) feet in width, or to the lot line if the distance is less than ten (10) feet, from the portion of the structure facing the street has grades no steeper than ten (10) percent adjacent to possible entrances that shall not be served by a stairway. This graded area also shall extend from the entrances to the driveways or walkways connecting the dwelling to the street.
- H. Any requirement of this condition may be waived by the County Engineer by submitting a waiver request with the preliminary plat. If such a request is made, it shall include: (i) a justification for the request contained in a certified engineer's report; (ii) a vicinity map showing a larger street network at a scale no smaller than one (1) inch equals six hundred (600) feet; (iii) a conceptual plan at a scale no smaller than one (1) inch equals two hundred (200) feet showing surveyed boundaries of the property; (iv) topography of the property at five (5) foot intervals for the property being subdivided and on abutting lands to a distance of five hundred (500) feet from the boundary line or a lesser distance determined to be sufficient by the agent; (v) the locations of streams, stream buffers, steep slopes, floodplains, known wetlands; and (vi) the proposed layout of streets and lots, unit types, uses, and location of parking, as applicable. In reviewing a waiver request, the County Engineer shall consider whether the alternative proposed by the Owner satisfies the purpose of the requirement to be waived to at least an equivalent degree. In approving a waiver, the County Engineer shall find that requiring compliance with the requirement of this condition would not forward the purposes of the County's Subdivision and Water Protection Ordinances or otherwise serve the public interest; and granting the waiver would not be detrimental to the public health, safety or welfare, to the orderly development of the Project, and to the land adjacent thereto.
- I. The Owner may request that the Plan be amended at any time. All amendments shall be subject to the review and approval by the County Engineer.

3. **Affordable Housing:** The Owner shall contribute \$2,809.00 cash per dwelling unit, up to an aggregate maximum contribution of \$95,500.00 (equivalent to \$19,100 cash per dwelling unit as cash in lieu of five (5) affordable dwelling units) to the County for the purpose of affordable housing. Each cash contribution shall be due and payable with each application for a building permit. Each cash contribution shall be used for the purpose of funding affordable housing

programs in Albemarle County. If this cash contribution has not been exhausted by the County for the stated purpose within ten (10) years after the last payment of the contribution, all unexpended funds shall be applied to any public use serving Neighborhood 3 Pantops.

4. **Trees:** At least one hundred-seventy (170) trees shall be planted or retained on the subdivided lots. Trees shall be distributed among all lots with a minimum of 5 trees per lot. The five trees to be counted on each lot shall be marked in the field for inspection purposes. The owner shall not request a certificate of occupancy until a final zoning inspection is performed and all required trees are in place.

**Standard for trees to be retained:** Deciduous trees to be retained shall be at least a 1 ½ inch caliper d.b.h. and non-deciduous trees shall be at least four (4) feet in height. All trees to be retained shall be identified on erosion and sediment control plans, final grading plans, and road plans. A tree conservation plan in accordance with Section 32.7.9.4. of the Zoning Ordinance shall be submitted and approved prior to approval of any erosion and sediment control permit for grading.

**Standards for trees to be planted:** All trees shall be planted in accordance with either the standardized landscape specifications jointly adopted by the Virginia Nurserymen's Association, the Virginia Society of Landscape Designers and the Virginia Chapter of the American Society of Landscape Architects, or the road and bridge specifications of the Virginia Department of Transportation. At planting, deciduous trees shall be at least a 1½ inches in caliper d.b.h.; non-deciduous trees shall be at least four (4) feet in height.

5. **Pedestrian Paths:** Pedestrian paths in the general location shown on the Plan, or as approved on any final site plan or plat, shall be constructed according to the standards for a Class B- Type 1 primitive nature trail in the Albemarle County Design Standards Manual. Pedestrian paths shall be constructed concurrently with other public improvements for each phase of development and shall be completed when 50% of the dwelling units within each phase have received certificates of occupancy.
6. **Cash proffer:** Cash proffer: The Owner shall contribute Seventeen Thousand Five Hundred and 0/100 Dollars (\$17,500.00), as adjusted by Proffer 7 below, for each dwelling unit in excess of the nine (9) dwelling units previously allowed by right. This cash contribution shall begin after the issuance of the building permit for the ninth dwelling unit and prior to (or at the time of) the issuance of the building permit for the tenth dwelling unit. Credit will be applied for any cash proffer payments made under this proffer in advance of this proffer's approval.

The cash contribution shall be paid for each dwelling unit prior to or at the time of issuance of a building permit for each dwelling unit. If this cash contribution has not been exhausted by the County for the stated purpose within five (5) years after the date, all unexpended funds shall be applied to any public use serving Neighborhood 3 Pantops.

7. **Annual Adjustment of Cash Proffers:** Beginning January 1, 2008, the amount of each cash contribution required herein shall be adjusted annually until paid, to reflect any increase or decrease for the preceding calendar year in the Marshall and Swift Building Cost Index (the "MSI"). In no event shall any cash contribution amount be adjusted to a sum less than the amount initially established by these proffers. The annual adjustment shall be made by multiplying the proffered cash contribution amount for the preceding year by a fraction, the numerator of which shall be the Index as of December 1 in the preceding calendar year, and the denominator of which shall be the Index as of December 1 in the year preceding the calendar year most recently ended. For each cash contribution that is being paid in increments, the unpaid

incremental payments shall be correspondingly adjusted each year.

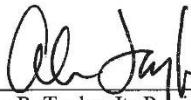
8. **Omitted. This proffer has been satisfied.**
9. **Architectural Standards:** The Owner shall require that all structures be constructed using a range of earth-tone colors, including cream, for facade treatment of the buildings and dark, non-reflective materials for roofs. The colors for the facade treatments and the colors and materials for the roofs shall be subject to prior approval by the Director of Planning.
10. **Omitted. This proffer has been satisfied.**

(Signature Pages to Follow)

WITNESS the following signature:

OWNER of Tax Map and Parcels 078E00000000A2, 078E00000000A4, 078E0000100100, 078E0000100200, 078E0000100300, 078E0000100400, 078E0000100500, 078E0000100600, 078E0000100700, 078E0000100800, 078E0000100900, 078E0000101000, 078E0000101100, 078E0000101200, 078E0000101300, 078E0000101400, 078E0000101500, 078E0000101600, 078E0000101700, 078E0000101800, and 078E0000101900:

HIGHLAND PARK INVESTMENTS, LLC, a Virginia limited liability company

By:   
Alan R. Taylor, Its President  
Date: 1/9/2020

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Agenda Item No. 16. **Public Hearing: SP201900008 – The Miller School of Albemarle.**

PROJECT: SP201900008 – The Miller School of Albemarle

MAGISTERIAL DISTRICT: Samuel Miller

TAX MAP/PARCEL(S): 07200000003200, 072000000032D0, 072000000032E0

LOCATION: 1000 Samuel Miller Loop, Charlottesville, VA 22903

PROPOSAL: Special Use Permit application to authorize the continuation and extension of the historic private school use, which is currently a non-conforming use. Proposal includes the renovation and expansion of an existing dormitory structure, as well as an increased maximum student enrollment of 225 students and future construction of additional structures and improvements.

PETITION: "Private school" per Section 10.2.2.5 of the Zoning Ordinance.

ZONING: RA Rural Areas – agricultural, forestal, and fishery uses; residential uses at a density of 0.5 dwelling units/acre in development lots.

ENTRANCE CORRIDOR (EC): No.

OVERLAY DISTRICT(S): Critical Slopes; Flood Hazard.

COMPREHENSIVE PLAN: Rural Areas – preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources; residential uses (0.5 unit/acre in development lots).

The Executive Summary forwarded to the Board states that, at its meeting on December 3, 2019 the Planning Commission (PC) conducted a public hearing for the application noted above, and voted to recommend approval, by a vote of 5:1, of Special Use Permit SP201900008 with the conditions specified in the PC action letter.

Attachments A, B, and C are the staff report, action letter, and meeting minutes from the December 3 PC meeting.

The PC voted to recommend approval of SP201900008 with conditions of approval that differ from the conditions recommended by staff. Specifically, the PC recommended approval with conditions of approval #1-4, but did not recommend conditions of approval #5 and #6 as recommended by staff. In summary, the Commission did not support staff's recommended conditions that would require the Miller School to conduct historic preservation activities (including updating the nomination form for the Miller School's listing on the National Register of Historic Places, and implementing future improvements in ways that meet the Secretary of the Interior's Standards as determined by the Virginia Department of Historic Resources or the Director of Planning or his/her designee).

Additionally, as noted in the action letter, the PC also voted to recommend (additional to and separate from their formal action on SP20190008), by a vote of 6:0, that "all additions, alterations, or renovations to existing structures or grounds [should] be performed in general accordance with the Secretary of Interior's Standards as determined by the Virginia Department of Historic Resources."

If the Board is inclined to follow the PC's recommendations, then Staff recommends that the Board adopt the attached Resolution (Attachment D) to approve Special Use Permit SP201900008 with conditions of approval as contained therein.

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Mr. Tim Padalino, Chief of Parks Planning for the Parks and Recreation department, presented the staff report, explaining that he has served as the lead reviewer of the Special Use Permit application since 2019. He said he would summarize the proposal and share the Planning Commission's recommendations, as well as some other information.

Mr. Padalino said he was joined by Ms. Margaret Maliszewski, Chief of Planning for Resource Management.

Mr. Padalino said he would provide an overview of the applicant's proposal for the Special Use Permit application. He said the applicant is The Miller School of Albemarle, represented by Mr. Mike Drude (Head of School) as well as Line + Grade civil engineers, Design Develop LLC, and Williams Mullen. He said the request is a Special Use Permit application for a private school use in the Rural Areas Zoning District. He said this permit would authorize the continuation and extension (or expansion) of the historic private school use, which is currently a nonconforming use.

Mr. Padalino said this permit would also allow the following: the renovation and expansion of an existing dormitory; the increased maximum student enrollment (up to 225 students), which is an increase beyond the student body size of about 195; and also permit the future construction of additional structures and improvements, as proposed and shown in the application materials.

Mr. Padalino said he would provide information about the subject property's location and characteristics. He said the subject property is in the Rural Area, within the Samuel Miller Magisterial District, south of Crozet in the Batesville area. He said it is very large, at more than 1,000 acres in total size, and has frontage on Miller School Road, Dick Woods Road, and other public roads.

Mr. Padalino explained that the presented zoning map showed that it is also zoned as Rural Areas, and not only falling in the Rural Areas for the Comprehensive Plan. He said it consists of three parcels of record, all on Tax Map 72, including Parcels 32, 32D, and 32E.

Mr. Padalino presented a map explaining that it was intended to show how a large portion of the subject property is in an existing conservation easement with the Land Trust of Virginia. He said it is a partial conservation easement and that the deed specifies the easement is 637 acres in size. He said accordingly, the subject property itself, in total, contains an additional approximately 400 acres, which are outside of (and not subject to) this easement.

Mr. Padalino said some of the existing terms of the conservation easement (which is a private arrangement) include that limited development may occur on the property within four designated development envelopes, of which the four have a total aggregate area of about 155 acres. He said the remaining 482 acres on the property, under easement, may be used by the school, but are not to be developed and are to serve conservation, agricultural, forestal, and scenic purposes.

Mr. Padalino presented a map for reference, to provide a closer look at the entire property. He presented an image showing the historic core of The Miller School's property.

Mr. Padalino said the subject property contains three historic structures that are listed on the National Register of Historic Places, including Caton Hall. He said staff believes that among the other 40 existing structures on the property, there are likely additional historic structures eligible for listing on the National Register. He noted that the original nomination form for the listing, however, only focused on those three structures that have since been listed, which are Old Main, Caton Hall, and the Headmaster's House.

Mr. Padalino presented the proposal's concept plan, explaining he would highlight some of the main features. He said the first is the Hayden Hart addition, and that this was the proposed project that initiated the application and resulted in the application being prepared and submitted. He said as

indicated before, the Special Use Permit would also authorize other development within the main axis of the historic school campus, including up to four proposed new buildings (identified on the plan with the letter "U" and shaded gray), new and reconfigured parking lots, new courtyard spaces and other outdoor amenities, and some reconfigurations to the transportation network on site.

Mr. Padalino said that because of the size of the subject property, the application materials contain concept plans at multiple scales. He presented a sheet that showed the four development areas derived from the existing conservation easement in relation to the entire subject property. He explained that the orange box references the area shown in that preceding rendered concept plan. He said for easier visual reference, he highlighted the development envelopes in yellow.

Mr. Padalino said looking at the concept plan more closely, there is an exhibit showing the four development envelopes in relation to the boundaries of the conservation easement, which is 637 of the 1,000 or so acres. He said this exhibit also identifies the locations and the square footage of all 43 existing structures on The Miller School site.

Mr. Padalino said he would provide a summary of staff analysis and share the Planning Commission's recommendations.

Mr. Padalino said that a summary of favorable factors includes that this Special Use Permit would bring an existing, nonconforming use into permitted compliance with the Zoning Ordinance; that the concept plan and application would limit future development associated with the private school use to the four envelope areas, which are situated within an existing conservation easement; and that the continuation and limited expansion of the historic private school use is consistent with numerous recommendations in the Rural Area chapter of the Comprehensive Plan, as described on page 7 of the staff report.

Mr. Padalino said a summary of unfavorable factors identified by staff includes that the new private school uses in the Rural Area are generally not compatible with the intent of the Rural Area's Zoning District or the Rural Area chapter of the Comprehensive Plan. He said that in this proposal, however, this is a situation that is for the continuation and limited expansion of an existing use that's been in continuous operation for over 14 decades.

Mr. Padalino said the proposal would generate additional vehicle trips on public roads in the Rural Area surrounding The Miller School. He explained that the additional vehicle trips associated with the proposed increase in student enrollment, however, are not expected to create any significant negative impacts or to even be discernible whatsoever.

Mr. Padalino said the Planning Commission conducted a public hearing on December 3, 2019, and ultimately voted 5-1 to recommend approval of the Special Use Permit, with four conditions of approval, as specified in the Planning Commission's action letter. He said the first condition is the general accord condition that development and use of the property for the private school use shall be in general accord with the conceptual plan.

Mr. Padalino said the second condition is that additional permanent accessory structures that are not shown on the concept plan would be permissible subject to review and approval by CDD staff, provided that those additional permanent accessory structures are determined to not be in conflict with condition one, which is general accord with the concept plan; and also provided that each such accessory structure and associated land disturbance would be contained within the four development envelopes shown on the concept plan.

Mr. Padalino clarified that condition two would not prohibit, nor limit, development or land disturbance anywhere on the property for uses that are permissible by right, such as agriculture and other Rural Area Zoning District uses.

Mr. Padalino said the third recommended condition of approval is a maximum total student enrollment of 225 students, which comes from the application.

Mr. Padalino said the fourth condition is about having a balance of students, requiring a minimum of 60% of the total student body being accommodated on site, with a maximum of 40% of the total student enrollment in any given year commuting onto the property.

Mr. Padalino said the Planning Commission did not recommend two conditions of approval that had been recommended by staff, and that those related to an updated historic resource inventory and historic preservation standards for future improvements and development.

Mr. Padalino pointed out that the Commission made an additional and separate recommendation relating to those two conditions. He said that instead of endorsing them as requirements, they recommended separately, and in addition to the Special Use Permit recommendations, that all additions, alterations, or renovations to existing structures or grounds should be performed in general accordance with the Secretary of Interior's standards, as determined by the Virginia Department of Historic Resources (DHR).

Mr. Padalino brought forward some additional information for the Board's consideration. He said at the January 27 meeting of the Historic Preservation Committee, a member of the committee brought up this Special Use Permit application for discussion, and that the committee ultimately voted unanimously to

write to the Board in support of staff's original historic preservation recommendations (which would be Conditions #5 and #6) for the application. He said this information was forwarded from staff to the Board via email on February 13.

Ms. Price said she was concerned about the change in the language from "shall" to "should." She asked if Mr. Padalino could expand on that discussion.

Mr. Padalino replied that the Planning Commission did not feel comfortable recommending that as a required condition of the Special Use Permit for the private school use, but as they evaluated the existing conditions and proposed future improvements and development, they felt that this was a good general recommendation to provide to the Board for its consideration. He said it was not meant to be a binding requirement as a legal condition of approval and compliance.

Ms. Price said there were two conditions at the end, and that her specific concern was not so much with whether they have to conduct the inventory, but the second one in terms of any development "should" rather than "shall," because with this language not being as strong, it means that the character of the development could easily be changed.

Mr. Padalino said the Commission wrestled with this in detail, and in an open conversation with staff and the applicant. He said they voiced support for historic preservation values, but did not want to make the inventory, nor the consistency with standards, be requirements. He said this was the Commission's attempt to say that they still feel like this is important, but as a Commission, they do not want to recommend that the Board require it.

Ms. Mallek said she thought that the Planning Commission was concerned that they would be going too far, as they do not yet have an ordinance, and so it was up to the Board to decide how to do that. She asked to see the map again that shows where the new driveway is that was under construction for so long, comes down to Miller School Road in the middle of several curves, and wraps around the baseball field.

Mr. Padalino presented a map, indicating to Miller School Road. He indicated to where the new entrance was constructed.

Ms. Mallek said it was basically 100 yards off Miller School Road which is where the civilians got to see what was going on, and that they did not get to see the rest of it.

Ms. Mallek asked Mr. Padalino to help her understand more about the other future projects that are very vague. She said she hadn't been in a situation where she was expected to approve things of which the Board knows nothing about. She said the school is wonderful and does a great job, but that it was a whole different state of operations than the Board is usually in.

Mr. Padalino replied that his understanding was that the proposal that initiated the Special Use Permit application was related to the addition to the Hayden Hart Dorm.

Ms. Mallek asked if this was the house that was on the sharp curve of the old driveway.

Mr. Padalino replied yes. He said at the same time, the school had undertaken a long-range Master Plan and submitted that document as part of their Special Use Permit application. He said it was fairly detailed in terms of where they would like to site future buildings, and that in some ways, it was actually more detailed than some concept plans that staff receives and the Board acts on.

Mr. Padalino presented an illustrative rendering showing how the school would like to see the campus evolve over time. He said this was the main reason why staff felt that recommended Conditions 5 and 6 could be useful. He said it seemed like a good compromise to enable permission to do this in the future, provided that certain standards were met in the absence of being able to evaluate it fully at this time. He said it was seen as a flexible accommodation, to some degree, without the applicant having to come back for any more Special Use Permits.

Ms. Mallek said this would mean they wouldn't have to pay another \$2,500 and use another year of getting ready because at least they got their foot in the door on the original layout, if they meet other performance standards along the way.

Ms. Palmer said in the minutes of the Planning Commission, it says that the original National Register of Historic Places determination was in the 1970s, and that this process is different today. She asked if staff could speak to what those differences are.

Ms. Maliszewski replied that she could do that, but first, she wanted to point out that when staff emailed the Board the information from the Historic Preservation Committee meeting, staff failed to include the applicant in that message. She said this was the staff's fault and apologized for that. She said when the item was added to the Historic Preservation Committee's agenda, it was done as a last-minute item, and that staff failed to notify the applicant.

Ms. Maliszewski said to answer Ms. Palmer's question, back in the 1970s, the National Register nominations were done on a much smaller scale, with shorter forms and less documentation. She said they focused primarily on the major buildings on a site, but they did not always take into consideration the full context of the property, or all of the buildings on the property. She said they are no longer done that

way and now are much more complete. She said currently, they have a much broader understanding of how buildings and landscapes can fit together, and that today's nominations try to document and explain that.

Ms. Palmer said in the Planning Commission minutes, one of the Planning Commissioners mentioned taking into consideration the whole campus. She asked if Ms. Maliszewski felt that the methodology that is used today would take that into consideration this, without adding additional language to what staff proposed in Condition 5.

Ms. Mallek asked if Ms. Palmer was referring to more of a landscape approach.

Ms. Palmer said she was talking about a landscape approach. She said she has spent a great deal of time on the matter and spoke to her Planning Commissioner, but that what really struck her was the campus as a whole. She said it is a spectacular place, and that she has great respect for the Headmaster and the people who are taking care of it and trying to do this properly. She said she is very concerned about the campus as a whole and disagrees with the final Planning Commission decision. She said she also had a lot of questions about it in order to fully understand what this was all about.

Ms. Palmer said her concern came up with the new driveway that went along a creek and went through a beautiful stand of native magnolia. She said she had no idea if taking into consideration the landscape would have informed that discussion, or that perhaps that was the only place to put the driveway. She said this is what made her think about the needs of the campus and the landscape.

Ms. Maliszewski said she believed an updated nomination would take into consideration things like this, and that major landscape features would be addressed. She said it is a very large property, but she thinks much of the work has been done with the easement documentation as well.

Ms. Maliszewski said the update process is somewhat different than starting a new nomination. She said she spoke with representatives of DHR, who indicated that an update is really a staff-level review and doesn't go through their two boards. She said it is done as an addendum to the existing nomination.

Ms. Palmer said it could be something for the students to get involved in.

Ms. Maliszewski agreed. She said staff has mentioned this to the applicants, and that it was possible that students from UVA who are in the Historic Preservation program might be interested and able to do that work, and even work in partnership with Miller School students.

Ms. Palmer asked about Condition 6. She said she understood that the discussion in the Planning Commission minutes was about the burden of Condition 6, to some extent. She said she has been in some of the buildings and recognizes that renovation can be extensive and extremely expensive. She asked when the applicant would have to follow the Secretary of Interior's standards, if it would be just with the building permit, and under what circumstances. She asked how detailed and onerous this is.

Ms. Maliszewski replied that the answer depends on the Board, since the Board would be establishing the condition. She said the Board could have some say in what level of detail would be required. She said the way it is currently written is very broad, and that she would read this as anything that would require a building permit would be subject to those criteria.

Ms. Palmer asked what kind of interior work would require a building permit. She asked if it would just be a matter of exterior (adding to the footprint), or if there would be things in the interior of the building that would require that.

Ms. Maliszewski replied that interior renovations would be included. She said she could not list everything that the building official would be able to, but that these would be things that are real structural changes. She said some things impact both interior and exterior, such as changing windows out.

Ms. Mallek asked if one phrase that might be useful would be, "preserving the integrity of the nomination and qualifications for the register," as this gives guidance about how to renovate.

Ms. Maliszewski replied yes, explaining that the goal is to preserve the architectural and historic character that is outlined in the nomination.

Ms. Mallek said everyone has talked about the burden of doing this, but that there were tremendous benefits to the landowner when they do this. She said when they do something exceptional to be proud of, it also generates all sorts of good feelings in donors, alumni, and others, as well as historic tax credits that can be sold and generate lots of extra revenue that may help to offset some of the possible increased costs to do it right, or to preserve the nomination. She said this was a different point of view that she didn't want anyone to forget.

Ms. Maliszewski replied that there are comments about burdens under both Conditions 5 and 6. She pointed out that updating the nomination is important so that everyone understands exactly which structures and resources are significant and contributing, and which ones need to have that special attention paid to them. She said it can be used as a planning tool.

Ms. Palmer said Ms. Maliszewski had mentioned windows, for instance. She recalled that for the

County Office Building, they had to replace the windows all at once because they cannot change the façade. She said if they wanted to make it more energy efficient, that stipulation can sometimes get in the way. She asked if this was correct.

Ms. Maliszewski replied that with every day that goes by, better options become available for renovating historic resources. She said she is not a window replacement expert, so she could not give much detail on that.

Ms. Palmer said she was trying to get an idea of what this would require the applicants to do, under these circumstances.

Ms. Maliszewski pointed out that though she would recommend both Conditions 5 and 6, Condition 5 could stand alone.

Mr. Gallaway invited the applicant to come forward.

Mr. Mike Drude said he had the privilege of being the Miller School's Head of School. He said he also had the great distinction of being a parent of a Miller School graduate, and that his son is now a sophomore at JMU studying Computer Science. He said his youngest daughter is a senior at Miller.

Mr. Drude said the Miller School's founder, Samuel Miller, had a vision for a school that would provide students with an education that was ahead of its time. He said that Miller believed schools could be used to improve people's lives, and that Miller's original curriculum included intentional programming that focused not only on academics, but also on health, career choices, and life skills. He said Miller introduced a cross-curricular approach to education, weaving together traditional curricular subjects with real-life topics such as sewing, gardening, and even electrical engineering. He said that students long ago, in fact, spent half their day in the classroom, and half their day in the fields, metal shop, or powerhouse.

Mr. Drude said that while the curriculum has changed over 142 years, and the Miller School now considers itself a premier college preparatory school, they continue to honor Mr. Miller's vision by providing a student-centered approach to education, with plenty of hands-on and real-life experiences and opportunities.

Mr. Drude said since the school predates the important zoning ordinances and things such as Special Use Permits, it is time for the school to conform to the County's well-thought-out zoning laws. He said this process to obtain a Special Use Permit is a good one and has been helpful to the school. He said the school operates under a strategic plan, and that the Board could see before it the campus Master Plan. He said it is a very modest, but well-thought-out plan that has been created by many school constituencies, including the school's Board of Trustees.

Mr. Drude said the plan takes into consideration things like modest enrollment growth. He said they are currently at 194 students, and that they want to grow to 225, which they believe is their ideal number. He said the plan also includes carefully planned new facilities for students, upgrades to current facilities, campus traffic flow and parking, and perhaps most importantly, protection of the school's mission and of the aesthetic beauty and historic relevance of the campus.

Mr. Drude said the process of working with Mr. Padalino and his planning team has forced them to revisit their plan, test their assumptions, and ask important questions. He said this was a good thing to do and has validated the school's vision. He said as part of the plan, there are three of the most important buildings already listed as part of the National Historic Registry, Old Main, Caton Hall, and the Headmaster's House. He said they have also preserved and protected, in perpetuity, over 600 acres of the most relevant and beautiful part of the campus through a conservation easement.

Mr. Drude said the school has become experts in historical tax credits in their usage and plans to use them for future upgrades (in particular, Old Main).

Mr. Drude said they take the school and its history very seriously. He said it is a part of them that they are very protective of, and that they have a track record that proves this.

Mr. Drude said Samuel Miller was very intentional about selecting this particular piece of property on which he wanted to build his school, and that he was very specific about the architecture for its buildings. He said the architecture combines both Gothic and Elizabethan architecture.

Mr. Drude said the historical nature of the buildings and campus, in addition to the phenomenal educational program, is exactly what attracts families to the school. He said it would not be in the school's best interest to change any of that. He said they feel, however, that to make the historic preservation recommendations (Conditions 5 and 6) for all 1,600 acres and every structure on campus, as a requirement or condition of the Special Use Permit, is a bit of an overreach. He said the Planning Commission agreed, 5-1, and that the proposal in front of the Board did not mandate those conditions.

Mr. Drude said that holding the applicant to the other conditions (225 students, with a 60/40 ratio of boarding to day students, and ensuring minimal impact on local traffic) are reasonable and the applicant agrees with them. He said they accept and will honor those conditions.

Mr. Drude said the applicant asks that the Board simply accept the recommendation made by the

Planning Commission on December 3, 2019 and grant the Special Use Permit so that they can continue with their modest strategic plan and future success.

Mr. Drude said he was joined by Bob Pinneo of Design Develop to go into the detail of the Hayden Hart expansion and what it entails.

Mr. Pinneo said he has been working with the Miller School to help envision some modest changes to the Hayden Hart building, which is not a designated building, but is on site.

Mr. Pinneo said that in the process of trying to understand and make sure they were meeting the requirements of the County, there was a pre-application meeting with Ms. Maliszewski and other staff members to identify that as they are adding more use, they should look at the overall plan (which was preexisting and nonconforming) as they were adding more people and beds. He said they therefore needed to get to the Special Use Permit.

Mr. Pinneo said the applicant hired Daniel Hyer from Line + Grade, noting that Mr. Hyer could not attend that evening, but that one of his representatives was there to answer questions.

Mr. Pinneo presented the documents that were prepared, noting that Mr. Drude had already walked through some of them. He said it is a comprehensive review and that the applicant feels positive about the limited impact. He said most of the impact is away from the periphery of the property lines, and that it is a very minimalistic approach for such a large parcel, on a concentrated area.

Mr. Pinneo said it seems like one of the major sticking points is the relevance with the Historic Registry. He presented a conceptual plan of the Hayden Hart addition, noting that they were only plans. He said like with any good architectural program, they are mindful of the site and the existing architecture. He said they feel in accordance with the standards in that they are trying to make a distinction. He said the applicant loves the Hayden Hart building, as it is an incredible structure with its geometries, and that how it was composed was amazing. He said they have tried to create a complimentary structure that works well with it while adding to the capacity that the Miller School seeks to provide.

Mr. Pinneo said the general idea is that this is a building where students and staff can live together. He said there is a common area (in the middle) that is a glass vestibule to serve for many social functions and includes a kitchen and dining room. He said the two dwelling units where members of the teaching staff live, and Hayden Hart (the existing dorm where students live) will both be rehabbed. He said they are trying to be mindful of the situation they have and the resources in front of them. He presented an image of the second floor.

Mr. Pinneo said from his point of view, there were some misconceptions about what the historic tax credit system really is. He read:

"The Federal Historic Preservation Tax Incentive Program was started in 1966. It is managed by the Department of Historic Resources in partnership with the National Park Service for properties in the Virginia. These incentive programs encourage private sector investment in the rehabilitation and use of historic buildings. This program was conceived of, and administered, at both the federal and state levels as a completely voluntary program. The basic underlying premise of the program is to put resources in the hands of property owners to help offset costs regarding additions and alterations to designated properties."

Mr. Pinneo said it was obvious that the intent of the program is to help incentivize the preservation of historic resources.

Ms. Valerie Long with the law firm of Williams Mullen said she was also representing the Miller School and applicant. She said because there was so much discussion about the two conditions (Conditions 5 and 6), she wanted to comment on those, from the applicant's perspective.

Ms. Long said the school continues to have strong concerns about those conditions, and what that would require and mandate on them and their project. She said the applicant absolutely have a long track record of having been excellent stewards of the incredible resources that are part of the property. She said it is astounding how beautiful it is.

Ms. Long said the commitment made back in the 1970s was not nearly as popular, nor financially beneficial, to pursue historic designations for properties, and so the school was obviously ahead of its time then. She said four years ago, they implemented the extensive conservation easement on a large area of the property, further demonstrating their commitment to the preservation of those important environmental and scenic resources, in addition to the historic preservation they put in place.

Ms. Long said the applicant was not saying that they might not pursue all of the recommendations that were in those two conditions, and that they very well may. She said their concern (and her concern) is that it would be a requirement of a Special Use Permit, especially given the scope and scale of what their proposal is. She said this was obviously not a new use, as it has been there for 142 years. She said the applicant's request is really only to make a very small addition to the dormitory and to have four other buildings in the same immediate vicinity of other buildings.

Ms. Long said the request is also consistent with their conservation easement, and that there is a

very limited impact. She said the 30 additional students (as indicated in the staff report) has nominal impact on trips. She said there are a large number of boarders and are spread out over an area.

Ms. Long said there were no impacts identified by the proposal that Conditions 5 and 6 would mitigate. She said they are not creating any impacts on the historic resources, and thus the applicant feels it is inappropriate to require Conditions 5 and 6. She said conditions are intended to mitigate impacts of a Special Use Permit, and that those impacts haven't been identified with regard to historic resources.

Ms. Long said everyone acknowledges those resources are very important and should be protected, and that these measures are all supposed be voluntary in nature, as the Comprehensive Plan speak to the protection of historic resources, providing resources and information, and educating owners and the community at large about the importance and benefits of historic preservation. She said the plan does not speak to regulating and requiring this as part of a Special Use Permit. She asked for the Board to consider this in their discussions.

Mr. Gallaway opened the public hearing. Hearing no comments from the public, he closed the public hearing and brought the matter back to the Board.

Ms. Palmer said this is a Special Use Permit, which makes for a different situation. She said she was absolutely sure that she couldn't vote for this without at least having Condition 5.

Ms. Palmer said the County has an incredible resource with Ms. Maliszewski, noting that she knows very much about these matters and is very professional. She said when the Board receives a recommendation from someone with that knowledge base, she starts to question the Planning Commission's decision if it differs. She said from reading their minutes, the Commission seemed to pay more attention to the physical space, conservation easement, and land rather than the campus as a whole and the buildings. She mentioned the fact that the property has not gone through the historic registry process since the 1970s.

Ms. Palmer said she would like to hear from other Board members, as she was still struggling with Condition 6. She said if the applicant went through the process of the National Register of Historic Places nomination, it must be updated in order to address the entire subject property. She said the Virginia Board of Historic Resources and State Review Board approval of the updated nomination must be received prior to the next building permit following the Hayden Hart addition. She asked if they just did this (Condition 5) without the second one (Condition 6), the applicant would not necessarily have to follow the standards.

Ms. Maliszewski said this was correct.

Ms. Palmer said the applicant would know what they have.

Ms. Maliszewski said this was correct.

Ms. Palmer said the big picture is not there. She said at this point, they do not know what buildings would be suggested as historic buildings until the applicant goes through the process.

Ms. Maliszewski agreed.

Ms. Palmer said there may be just five more buildings that are considered historic, but she did not know and was only giving an example. She said she was trying to understand that at least this process would let the applicant know what they have. She said if the Board added Condition 6, then any of the buildings that were identified would need to go through and following the Secretary of Interior's standards, as determined by the Virginia Department of Historic Resources, or Director of Planning, or his or her designee, which would end up being Ms. Maliszewski. She asked how this works, and why the statements about staff were included.

Ms. Maliszewski replied that the "or" statements were included because if the school pursues tax credits, it requires DHR's review and approval. She said it would be taken care of in that process and would not need additional County approval.

Ms. Palmer said that if the applicants go for the tax credits, they must do the process in Condition 6 anyway.

Ms. Maliszewski said this was correct, as DHR would be looking for that.

Ms. Palmer said if the applicant went for tax credits, they would first have to go through Condition 5.

Ms. Mallek pointed out that this was the case, unless they are doing it on existing buildings only.

Ms. Maliszewski agreed that this was the case, unless the applicant was doing this on the buildings that are already identified in the nomination.

Ms. Palmer asked if the Board required Condition 5 and the applicant went for tax credits for any of the other buildings, they would have to follow Condition 6.

Ms. Maliszewski replied yes and said that DHR would be reviewing for that.

Ms. McKeel said to put it in a simpler way, Condition 5 provides more information, expressing that from her viewpoint, this was a good thing.

Ms. Price said while she was relatively new to the area and didn't have the direct, intimate knowledge of the Miller School as her peers do, she has heard about the school and the great programs it offers. She said she was very supportive of the school.

Ms. Price said with regards to Condition 6, she didn't think it necessarily applied to every building on the property but would simply be applicable to those that are listed or eligible to be listed.

Ms. Maliszewski said this was correct.

Ms. Price said she agreed with some of the concerns by the other Supervisors about how not having Condition 5 included leaves them with incomplete information.

Ms. Maliszewski said it occurred to her that after they had the discussion with DHR, in Condition 5, the words "Virginia Board of Historic Resources and State Review Board" should likely be changed to "Virginia Department of Historic Resources," since it is a staff-level review. She said that since the recommendation was originally written, staff had further discussion with DHR and found that the update to the nomination doesn't go through those two boards but rather, a staff-level review.

Ms. McKeel said that perhaps the process, then, was not as onerous as it sounds.

Ms. Maliszewski said when Ms. Palmer was asking earlier about interior renovations, she didn't realize that the building official was present in the audience. She said he was present if the Board had questions about it.

Ms. Palmer said she would like to further understand this.

Ms. Maliszewski agreed that it was important to understand, as it could entail additional work and costs.

Mr. Michael Dellinger, Building Official for Albemarle County, introduced himself.

Ms. Palmer said she was trying to understand what kind of interior work requires a building permit.

Mr. Dellinger required that everything except for painting, cabinetry, and carpentry requires a building permit. He said commercial buildings do not receive as many exemptions from obtaining a permit that a single-family or two-family dwelling does.

Ms. Palmer said this is a historic structure and although she didn't know what the wiring was like in the buildings, she knew it has some very old lighting in some of the areas. She asked if electrical work would require a building permit.

Mr. Dellinger replied yes.

Ms. Palmer asked Ms. Maliszewski if, under those circumstances, it would bring she or DHR into the process.

Ms. Maliszewski replied that this was correct.

Ms. Palmer said the application was in her district, and that her thought was that if the Board adopts Condition 5 and the applicant is applying for tax credits, this is likely taking care of a lot.

Mr. Gallaway said the way he understood this was that it was a matter of adopting both Conditions 5 and 6, and not one or the other. He said in reading through the Planning Commission minutes, the conversation was about both, not one or the other. He said that he would like to hear from the applicant about if Condition 5 is included without Condition 6, what their reaction is to that. He noted that this was not responded to in the Planning Commission minutes, and that he also had other issues with the application he would like to get to. He said this answer would perhaps better inform him.

Ms. Long said the applicant is not comfortable with Conditions 5 or 6. She said they do not disagree that more information might be better for the applicant, the public, or the County. She said she was not familiar with the process as it has been described as being an improvement over the process since 1970. She said she would concede that point, assuming that it is correct, and that this information could be very helpful. She said the applicant may well go through this process on their own, adding that it is a voluntary process. She said the fact that the process is now more comprehensive, and would provide helpful information, does not make it anymore reasonably related to the scope and scale of the application.

Ms. Long said it does not pass the legal test for a condition of approval. She said conditions are to mitigate the impacts that the use has identified it will create. She said to her knowledge thus far, there

have not been any stated impacts from the proposed use. She said this use includes the increase of 30 students, the small addition to an existing building, and the potential future for four new buildings in a very precisely prescribed location, which is subject to an overlay of a conservation easement on top of it.

Ms. Long said nothing about this application has identified impacts that it will create that warrant conditions of approval to mitigate those impacts, which is the entire premise of a Special Use Permit condition. She said if there were traffic impacts that had been identified, and a traffic study deemed that in order to avoid the impacts, the applicant needs to construct a turn lane or build a signal to avoid the impacts, this would be related.

Ms. Long said conditions also have to be roughly proportional to the impact that is created. She said even if, hypothetically, there had been some impact that this use would have on a historic resource, she would contend that the impact of these conditions is far, far out of context and not at all proportional.

Mr. Gallaway said this answered his question. He said he was actually very pleased with the way the Planning Commission wrestled with the matter and was pleased with their outcome. He said he thought there were many Commissioners struggling with their philosophical beliefs, and that they knew their philosophical beliefs were not what they should be imposing upon the applicant in terms of policy.

Mr. Gallaway said with all due respect to Ms. Maliszewski and her years of experience, this is a policy question. He said it should come back to the Board, and then they should go through a process and decide what their policy is going to be.

Mr. Gallaway said Mr. Pinneo's statement at the Planning Commission stated that philosophically, the applicant and staff are on the same page. He said Mr. Pinneo had said that it is the part of taking a voluntary program and making it more mandated that is a different set of circumstances and puts a lot of pressure on the Miller School. He said Mr. Pinneo said it was not that they wanted to tear anything up, but that they need the latitude everyone else has to follow in their intuition, and also have the capacity to anticipate the benefits. He said he agreed with Mr. Pinneo's statement.

Mr. Gallaway said if the Board starts presuming what their policies are going to be down the road and what their interests are and start dictating decisions on landowners before they get there, to him, this is extremely problematic. He said he was proud that the Planning Commission got there. He said that Commissioner Keller, who was the dissenting vote in wanting to go there, explained that, "if Albemarle had a County-wide historic resource and district designation (like most comparable counties have), this would be a foregone conclusion and policy" which, at this point, it is not. He said they do not have a policy on this.

Mr. Gallaway said Mr. Keller had said that the Comprehensive Plan says this an interest, but that the County has not instituted that legislation. He asked if they were going to impose this on an applicant prior to going through the process to determine if this should be their legislation or not. He said Mr. Keller stated that the application is an opportunity, because of the fact that an entity is coming in for a Special Use Permit, for the Commission to direct them in a matter that would be comparable to the way historic resources are called for in the Comprehensive Plan that are not supported through legislation.

Mr. Gallaway expressed that he understood. He said if this is a philosophical interest of the County, then the Board needs to put this in the work plan that is coming forward with the Community Development Program, and then they should go through that process like they do to govern their land use procedures.

Mr. Gallaway said he was not in disagreement of what people are interested in here, philosophically, but that he would be remiss in trying to impose this upon the property owner at this point because it would be mandating something on them that is voluntary for everyone else, prior to the Board setting something up, adding that they don't even know what the policy is yet. He said if they have to add in the Condition of 5 or 6, he will have to vote against the Special Permit, which he would like not to do.

Mr. Gallaway said this was a property owner who is willing to do the right thing and has the same interests, and that they will figure out the incentives they need, from a monetary standpoint, to maximize those to their benefit. He expressed his trust in this, and that if the Board has concerns that go beyond this, they can be debated when the CDD work plan is presented and determine what its priority is against everything else.

Mr. Gallaway said that he took some exception and issue with the Chair of the Planning Commission trying to push the Commission into a place that he thought was somewhat preemptive. He said that while he gave kudos and respect to his boldness, and appreciated his willingness to go there, he was proud that the other Commissioners understood that the Planning Commission's role was not to assert their personal, philosophical beliefs and dictate a presumed policy, but to go with what they knew the current purview is for this program.

Ms. Palmer said when they do not have an ordinance of their own, it was not unusual for them to go by a State ordinance. She said it didn't mean that they don't have their own policy, but rather means that they haven't gotten to it yet.

Ms. Palmer said this is a Special Use Permit, which is a different situation where they can require things. She said she would like Mr. Kamptner to comment on the comment from the applicant's lawyer that said this doesn't pass a legal challenge.

Mr. Kamptner said it is a Special Use Permit, and that Ms. Long outlined the general principles applicable to a Special Use Permit and conditions. He said he assumed that the reason staff recommended Conditions 5 and 6 was to achieve consistency with the Comprehensive Plan. He said it was identified on page 8 of the staff report that those conditions would satisfy some of the objectives of Chapter 5 of the Comprehensive Plan.

Mr. Kamptner said they could either say that they are not going to impose conditions, but that the project is inconsistent with the Comprehensive Plan and therefore, the Board is going to deny the Special Use Permit; or, the Board could impose reasonable conditions that allow them to achieve that consistency with the Comprehensive Plan.

Mr. Kamptner said he wanted to ask staff questions about Conditions 1 and 2, and if they prevent any adverse impact to a historic resource on the property.

Mr. Padalino asked for clarification on the question.

Mr. Kamptner asked if the conditions prevent any adverse impact to a historic resource on the property, or the property as a historic resource.

Mr. Padalino replied that this was difficult to answer, for a couple of reasons. He said one reason was that the conditions were designed to address potential, reasonably anticipated impacts. He said much of the staff analysis in the staff report focuses more on a land use level in terms of how the 1,000 acres are being used, or not used, in terms of being under a conservation easement. He said a lot of the findings that the use was consistent with the Comprehensive Plan relied on the terms of that easement and the relatively small scale of the proposed use, relative to the entire subject property.

Mr. Padalino said that at some point, it was highlighted that the proposed new buildings (labeled as "U" on the concept plan) are in close proximity to the other existing structures, are not sprawled out, and would not change the character of the surrounding area. He said he thinks it is, in fact, that proximity that led to some of the staff concerns, which then generated the recommended conditions. He said the new structures, improvements and changes to circulation pattern, and reconfigured parking spaces could reasonably be anticipated to impact the historic resources because of the fine-grain nature of the proposed evolution of the campus, over time.

Ms. McKeel asked for Mr. Kamptner's opinion.

Mr. Kamptner said the way the Zoning Ordinance reads is that the Board can impose reasonable conditions to address any possible impacts. He said he realizes that this is very broad, but that the County has a Comprehensive Plan that specifically identifies the Miller School, and also talks about protecting historic resources in general.

Mr. Kamptner said the matter could be looked at in a couple of ways. He said one is that this condition is designed to allow the Board to conclude that this Special Use Permit is consistent with the Comprehensive Plan, and that it is being fulfilled that way. He said the other is that in terms of Conditions 5 and 6 (admitting he would have to defer to Ms. Maliszewski on their effect), the Board can conclude that they are true to the language of the code that allows a reasonable condition to address any possible impacts.

Mr. Kamptner said staff has done its analysis, and that he realizes the Planning Commission saw it a different way, which was perfectly fine.

Mr. Kamptner said another point was about the voluntary nature of the Historic Registry program versus this process. He said although it is voluntary, in this particular circumstance, it is a tool to ensure (if the Board so desires) consistency with the Rural Areas and the Cultural, Scenic, and Historic Resources chapter of the Comprehensive Plan.

Ms. Palmer said if the Board did put a historic preservation ordinance on their work plan, it would be a few years in the future because of all the other items on the work plan. She said in developing that, the Board would look to State and federal standards as a guideline, then fashion them to be specific for the community. She said she was asking about how, in many situations when the Board does not have ordinances to follow, they fall back on State language.

Ms. Maliszewski said that for many localities, when they establish their own historic preservation ordinances, they do adopt the Secretary of Interior's standards, while others do not. She said she would think that the County would be studying that and looking closely at its own particular context to make standards with what it needs and wants to protect.

Ms. Mallek said that in the past 12 years, two historic districts have come alive in the White Hall District, the Greenwood Afton District (which has a range from small vernacular sheds all the way to imposing edifices) and the Downtown Historic District in Crozet (which includes everything from small sheds to mid-sized vernacular houses). She said there are hundreds of things in each one, and that there is no better community builder than having people participate and learn about what they have, and to bring people together around the fact that these things are important in their understanding.

Ms. Mallek said there have been tremendous sorrows in the last 30 years, citing an example

about a historic structure being burned down. She said she thinks that Condition 5, at a minimum, was desperately needed, and that she would be happy with Condition 6 (with Ms. Maliszewski as a fallback, in case DHR gets busy). She said Ms. Maliszewski would be available to interpret and assist.

Ms. Mallek said the impacts are not small to the historic structures, which are surrounding all the new buildings proposed about which the Board knew nothing. She said if there were elevations and someone could look at anything other than a floor plan for the Hayden Hart house, this would tell her what the blending of the outside looks like. She said this is a real problem, and that she was thrilled to hear Mr. Kamptner providing the language about relying upon the Comprehensive Plan, which the Board and its predecessors have spent thousands of hours over 60 years updating with great community participation. She said these things are important.

Ms. Mallek acknowledged that much of the documentation had already been done for the conservation easement. She said she was absolutely convinced that the school will learn and benefit from making this effort, and especially since it would not interfere with the first construction. She said somewhere along the line, a decision was made that the school could get started on construction, adding that this made her somewhat nervous but she would have to live with that.

Ms. Mallek said she would advocate as strongly as she could for keeping Conditions 5 (definitely) as well as Condition 6, if they could get three other Board members to join.

Ms. Palmer said she would make a motion and that she felt more comfortable going with Condition 5 and letting the applicant work out Condition 6.

Ms. McKeel asked if it would be helpful to hear once more from Ms. Long.

Ms. Long said she wanted to respond to the comments that Mr. Kamptner made about the legal issues, as she believed they were important and relevant to the discussion and debate. She said with regards to his comment about how the conditions could be added to mitigate any possible impacts on the historic resources, there has not been any indication of what impacts there might be on historic resources that are related to this application. She said the existing historic resources are permitted. She said the uses are not conforming because they predate the ordinance, but that they are legal and can continue. She said those are not part of the application.

Ms. Long said the application is for the increase in enrollment, the modest addition to the dorm, and those potential four new buildings in very specific locations. She said the applicant is not proposing changes to the three structures that are listed on the historic listing.

Ms. Long said the applicant agrees that perhaps more information would be good, and that the applicant may well go through that process. She said there was nothing about those three conditions, however, that could have impacts on those historic resources, and none have been identified. She said the applicants have not given any reason to create fear that they aren't going to respect and protect the historic resources. She said they have 142 years of having demonstrated that.

Ms. Long said she shared Ms. Mallek's enthusiasm and support for the historic districts in Crozet. She said those are voluntary districts, and that as Mr. Pinneo explained, the entire federal program is designed as a voluntary program. She said the applicant wants to have the freedom and flexibility to decide, as an institution and with all the information they have, whether that's the right step for them. She said they may well gather that information and update their forms and nominations, and then they will decide whether certain changes make sense or not, given that.

Ms. Long said the resources are all internal to the property and are not visible to the public. She said they are protecting them, and that the resources have been privately owned for many years and well maintained.

Ms. Long said most importantly, with regards to Mr. Kamptner's reference to the Comprehensive Plan, there is nothing in the staff report that implies that this application is inconsistent with the Comprehensive Plan. She said in fact, there are several pages that talk about how it is consistent with the Comprehensive Plan. She said she would ask that at a minimum, the staff report and everything in it be read into the record.

Ms. Long said the staff report includes a discussion that is three pages long, starting on page 6 and continuing through page 7 and part of page 8. She said it references the Rural Areas section of the Comprehensive Plan and talks about certain strategies in the plan that support this. She said one is Objective 2, which is, "protect and preserve natural resources, including mountains, hills, valleys, rivers, streams, groundwater, and maintain continuously unfragmented land for agricultural, forestry, biodiversity, and natural resource protection." She said she thinks they could all agree that the Miller School has done that with their actions to protect their property.

Ms. Long said Strategy 2D is, "Continue to promote conservation easements to provide a financially attractive way for landowners to protect family farms in the County and their unique open space resources; to provide an opportunity for landowners to voluntarily sell a conservation easement to a public agency to be held in perpetuity; and to preserve important features of the Rural Areas for all."

Ms. Long said Objective 3 is, "Protect the County's historic archaeological and cultural resources." She said the staff says that this supports that goal.

Ms. Long said Objective 4 is, "Promote rural and historic landscapes that enhance visitors' experience and give historic sites as authentic a setting as possible. Ag, historic, and scenic preservation and the maintenance of the rural character help to create authentic rural places." She said these are all examples that the staff has said this application is consistent with. She reminded that the Comprehensive Plan is very detailed in Albemarle County.

Ms. Long mentioned the comment from Ms. Maliszewski and her concerns that led to the creation of Conditions 5 and 6. She said Objective 1 said, "Continue to identify and recognize the value of buildings, structures, landscape sites, and districts that have historical, architectural, archaeological, or cultural significance." She said it doesn't say to regulate them as part of a Special Use Permit.

Ms. Long said at the very end of, "Pursue additional protective measures and incentives to preserve the County's resources," it makes a reference to regulation that speaks to Mr. Gallaway's point that the Comprehensive Plan says there should be an ordinance to protect historic resources.

Ms. Long said the ordinance, however, was not adopted at the same time that this Comprehensive Plan was adopted in 2000. She said this was a very robust discussion at the time, and that she was involved in it. She said there was great discussion about the importance of having an ordinance at the same time they have a Comprehensive Plan, and that they were both on the table the same night. She said the Board of Supervisors, at the time, very deliberately voted to approve and adopt the Comprehensive Plan component of historic preservation, but not to adopt an ordinance.

Ms. Long said it may be that the Board decides, going forward, that they want to change that and adopt a regulating ordinance, but today, there is not such an ordinance. She said she appreciated Mr. Gallaway's comments, and they summed up the applicants concerns with the process and how it has gone forward.

Ms. Long said she continues to believe, even after Mr. Kamptner's comments, that the applicant is not trying to be difficult, but wants to be treated the same way that other applicants have been treated and wants to make sure that the rules are being followed.

Ms. Long recalled she was before the Board over the last year with the UVA Foundation, and although she recognizes that it predates Ms. Price's and Ms. LaPisto-Kirtley's tenure, she represented UVA Foundation on the rezoning of the historic Birdwood Mansion in front of the golf course on Route 250. She said that is also on the National Registry, and that in contrast to this application (which is not a new use), the Birdwood Mansion was a residence for many years and has not been used recently.

Ms. Long said the Board approved a rezoning of that property from R1 Residential to HC Highway Commercial so that it can be made a part of the Boars Head Inn and Resort, and could be used for hospitality purposes. She said the Foundation will now be able to have weddings, events, and private parties there.

Ms. Long said they had a great team of historic preservationists involved in that process, consulting with representatives from DHR, and lots of care and attention going forward to ensure that those resources would be protected. She said UVA values their resources just as much as the Miller School values theirs, but that the Board very deliberately did not include any conditions of approval as part of that.

Ms. Long reiterated that the applicant just wants to be treated the same. She said that was a very different application, and that this one is very different in the scope and scale of what is being proposed. She asked the Board's reconsideration against the conditions.

Ms. Long added that the applicant was at a disadvantage. She said she appreciated Ms. Maliszewski's comment and knows it was not intentional that the applicant didn't receive word about the Historic Preservation Committee's actions until late afternoon the day before. She said this occurred three weeks ago and that staff had that information for almost a week. She said had the applicant known that had been going on, they would have perhaps been doing some more work to anticipate and address some of the concerns and questions. She said they did not have that opportunity and were coming at this from a much disadvantaged perspective.

Ms. Long said they were very grateful for the way the Planning Commission handled this discussion, as Mr. Gallaway discussed. She said the Planning Commissioners are not laypersons on these issues but are, in many cases, renowned experts. She said Ms. Firehock and her practice is very involved in issues like this, and that she was happy with the way the Commission took some tough positions and struggled with their preferences. She said they ultimately recognized that while they might really love the idea of the two conditions, it is not the right thing to do with this application.

Ms. Palmer said she wanted to assure the applicant that the letter from the Historic Preservation Committee, though she appreciated it, did not influence her thoughts.

Ms. Mallek said she wanted to thank Ms. Long for bringing up a point that she found incredibly important, and that was that the Birdwood site had a complete study, complete historic renovation, and all the different features respected and identified. She said they went out of their way with this. She said this is a perfect example of what the Board is asking, at a very minimum level, to happen in this circumstance. She said authentic historic sites, as the Comprehensive Plan speaks to, are incredibly

important.

Ms. Mallek said that without Condition 5, her suggestion would be to only allow the Hayden Hart change and the Special Permit, and deny the new four buildings about which the Board is not given any information, nor willingness to understand (on the part of the applicant) that building whatever they want to include there will dramatically impact the value of the historic houses that are on the registry. She said this was her point of view, and that this is why Special Permits are wonderful, as they can allow great things to happen as reasonable conditions to protect the community.

Mr. Gallaway suggested they get a sense of where other Board members were at on Conditions 5 and 6.

Ms. LaPisto-Kirtley said her understanding was that there was at least one person who doesn't want Conditions 5 or 6. She said there are other people who are saying only Condition 5, and others wanting Condition 6.

Ms. Palmer asked if there were four Board members who would advocate for only Condition 5, at that point.

Mr. Gallaway suggested going across the Board to understand where everyone was at on the conditions.

Ms. LaPisto-Kirtley deferred until hearing from others.

Ms. Palmer said she listened to everything and went back to what Mr. Padalino said earlier on the buildings, and that the Board does not know how that will affect the character of the area. She said this is why Condition 5 is important. She said Condition 6 worries her, as she is afraid about the applicant having to go through a longer process for absolutely everything (e.g. electrical). She said if the applicant is going for the tax credits and knows what they have, they will have to go through it, so she is comfortable with only going with Condition 5.

Ms. Palmer said she wouldn't vote against it if it included both Conditions 5 and 6, but that she thought that having Conditions 1-5 is a more reasonable expectation. She said she thinks it is very important to find out what they have.

Ms. Palmer said she doesn't think the comparison with Birdwood is a very good one. She said she spent a lot of time on the Birdwood issue, as it is in her district, and that it was a very different application with very good knowledge of the historic resources on that property.

Ms. Palmer said she would be happy to make a motion with Conditions 1-5.

Ms. Price said there seem to be many different combinations and permutations of the discussion. She said she would have to break it up, somewhat.

Ms. Price said she wanted to say that she supports Conditions 5 and 6, but that she didn't know she could actually get there. She said she was very persuaded by the applicant and the applicant's attorney's discussion, as well as Mr. Gallaway's with regard to the idea that the Board requiring Conditions 5 and 6 is essentially stepping ahead of a process. She said this has her concerned.

Ms. Price said that at the same token, she is reluctant to say to grant approval without Conditions 5 and 6 for everything that's been discussed, and Ms. Mallek's comment about the four buildings that the Board didn't know anything about at this point.

Ms. Price said if they drop the four buildings they don't know anything about, then she would be willing to vote approval without Conditions 5 and 6 based upon the applicant, applicant's attorney, and Mr. Gallaway's discussion. She said if those other buildings stay in, she could not vote to approve it without at least Condition 5 and possibly 6 as well. She said she knew this was not a definitive answer, but that this was what she was struggling with.

Ms. Mallek said she was happy to support Conditions 5 and 6.

Ms. McKeel said she didn't want to belabor, as she agreed with much of what had been said. She said she would definitely support Condition 5, and that she could not quite get to Condition 6, at that point.

Ms. LaPisto-Kirtley said she would not support Condition 6. She said she was conflicted about Condition 5 because of the other four building, agreeing with Ms. Price that the Board doesn't know what those buildings look like or what is being proposed. She said she did not like putting additional burdens on the proposal, as she believed the applicant has good intentions. She said she didn't think she would vote for Conditions 5 or 6.

Mr. Gallaway said he was against adding Conditions 5 or 6, and supported voting for Conditions 1-4. He said that from what he was hearing, there could be a motion for what he was hearing Ms. Palmer suggesting, and that they could see how the vote goes.

Ms. Palmer **moved** that the Board approve SP201900008 The Miller School of Albemarle with

Conditions 1 through 5. Ms. Mallek **seconded** the motion.

In further discussion, Mr. Kamptner said he assumed Condition 5 is revised in the second sentence to refer to the Virginia Department of Historic Resources.

Ms. Palmer replied yes, thanking Mr. Kamptner for reminding the Board of this.

Ms. LaPisto-Kirtley asked whether or not this excluded the four buildings.

Ms. Price replied no. She said what this motion does is allow the applicant to go ahead with their project but that they would have further conditions.

Ms. Maliszewski said this would also have the applicant update the nomination for the National Registry of Historic Places.

Ms. Palmer added that the applicant would not be getting a new nomination, but simply updating the 1970s version.

Ms. LaPisto-Kirtley asked if, for purposes of discussion, since the motion was seconded, she could ask the applicant about their concern with Condition 5. She asked if it wasn't that the applicant didn't want to update the nomination, but that they are concerned that it is not pertinent to the particular issue that they are applying for.

Mr. Gallaway asked if there were other discussion points, noting he had some comments to make before they vote.

Mr. Gallaway said he thought it was a shame that, from a process standpoint, this was playing out the way that it was. He said it was a shame that they are taking someone who they think has been a good steward of their historic resources, whose whole success as an institution relies on their history and the continued protection of it, and imposing this mandate on them, singularly, without knowing that the bigger policy objective is to go after other people who are tearing things down with no regard to what the historical impacts or saving those resources are. He said this is where the policy and ordinances could go in and address. He said he was disappointed knowing how the vote would go.

Ms. Price asked if the vote was no, if it was possible to do another motion.

Ms. Mallek replied yes.

Ms. Palmer said as Ms. Maliszewski pointed out, if the County did have a historic preservation ordinance, many municipalities simply adopt the Secretary of Interior's standards. She said this is not unusual. She said when the County doesn't have ordinances, the Board does often rely on State or other information. She said the fact that they do not have a historic preservation ordinance doesn't negate the Board taking a look at this. She said she objected to the assertion that this was bad process.

Mr. Gallaway said he understood. He said he would have liked to know that this was the direction the conversation was going to go that evening. He said they could call the vote.

Ms. LaPisto-Kirtley said she had another question.

Mr. Gallaway said they were going to call the vote.

Ms. Long asked if the applicant could request a deferral as opposed to a vote. She said they could not accept that condition as it was. She said they would be happy to work with staff, individual members of the Board, and others, but that the applicant has not had enough time to address this, having just learned about the committee concerns the day before. She said she would have been happy to answer Ms. LaPisto-Kirtley's question.

Mr. Gallaway said this could be addressed, or they could continue with the vote that was on the table. He said the applicant is requesting a deferral. He said the Board would either have to withdraw the motion, take a vote, or deal with the deferral differently.

Ms. Mallek asked if, since they had a motion and a second, they could discuss, or if they needed to withdraw the motion first.

Mr. Gallaway replied that they could continue to discuss.

Ms. Mallek asked what would change with a deferral. She said the applicant has stated very plainly what they are willing to do on their own as opposed to what the Board would like to require them to do. She said she didn't know what good they would get out of two more weeks.

Ms. McKeel said she had to say that since the applicant did not have the full time to get information, and they are asking for a deferral, she would feel very uncomfortable not granting them the deferral.

Ms. Price agreed.

Ms. Palmer withdrew her motion.

Ms. Price **moved** to grant the applicant a deferral. Ms. McKeel **seconded** the motion.

Ms. Mallek said they first had to get parameters for the deferral.

Mr. Kamptner asked if the applicant was looking for a date on the deferral.

Ms. Long replied that the applicant could come back the next month. She said they need to do some research and figure out what the extra Conditions entail.

Ms. McKeel asked if a date was truly needed, or if it could be worked out to as soon as possible.

Mr. Kamptner replied that if it is deferred to a specific date, it doesn't have to be re-advertised as a public hearing.

Ms. Mallek said that in the past, there have been applicant who defer continuously. She said she knew this was not what the applicant was doing, but that this is why the process has become much more specific over the years.

Mr. Gallaway said the applicant designated that they are hoping to come back in month. He said if the Board could make room for them, they will, and if they cannot, they will work on the details.

Mr. Kamptner said it was then an indefinite deferral, and that they would bring it back as soon as everyone was ready to do so.

Mr. Gallaway specified that they would bring it back as soon as possible.

Mr. Drude said the deferral was to understand what the cost implications are for this, and what his responsibilities are. He said he didn't know what this cost meant to the school. He said the Board of Trustees need to know this.

Mr. Gallaway said they would not put a definite date on the deferral and that the applicant would have time. He said they would work it in as soon as they could, and if it was possible to hear it in March, they would. He said if it is not, it may bump to April. He said it was not that the Board was going to defer it indefinitely. He said the Board would bring it back as soon as possible so that the applicant is not getting delayed in its timeline.

Ms. Long asked about a separate advertisement.

Mr. Kamptner replied that it would require re-advertising, so they will need to know 3.5 weeks ahead of the date when the applicant is ready to come back.

Ms. LaPisto-Kirtley asked if they could defer it to March 18.

Mr. Gallaway said they needed time to look at the agenda and figure it out. He said he could not agree to a definite date in March yet.

Mr. Padalino said the factors included notification, Board availability, and Community Development staff's ability to prepare an updated report after getting additional information and coordination with the applicant.

Ms. Mallek said the Board would hear feedback from staff that they have received information from the school and what staff's timetable is.

Mr. Gallaway said the motion to defer was on the table and had been seconded. He said the deferral was indefinite.

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

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Agenda Item No. 19. Adjourn.

At 8:33 p.m. Mr. Gallaway adjourned the Board meeting to February 25, 2020, 5:00 p.m., Room 241, 2<sup>nd</sup> Floor, County Office Building, McIntire Road, Charlottesville, Virginia.

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Approved by Board
Date 11/04/2020
Initials TOM

Chair