

A regular meeting of the Board of Supervisors of Albemarle County, Virginia, was held on June 2, 2021 at 2:30 p.m.

BOARD MEMBERS PRESENT: Ms. Beatrice (Bea) LaPisto-Kirtley, Ms. Ann Mallek, Ms. Diantha McKeel, Ms. Liz Palmer, and Ms. Donna Price.

ABSENT: Mr. Ned Gallaway.

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

Agenda Item No. 1. Call to Order. The meeting was called to order at 2:30 p.m. by the Vice-Chair, Ms. Donna Price.

Ms. Price stated that the meeting was being held pursuant to and in compliance with Ordinance No. 20-A(16), "An Ordinance to Ensure the Continuity of Government During the COVID-19 Disaster." She said that the opportunities for the public to access and participate in the electronic meeting were posted on the Albemarle County website, on the Board of Supervisors' homepage, and on the Albemarle County calendar. She stated that participation included the opportunity to comment on those matters for which comments from the public would be received.

She stated that Mr. Gallaway was absent but may be joining the meeting in the evening.

Ms. Price noted at the present time, they were experiencing some intermittent difficulties with Granicus broadcast; however, this meeting could still be accessed through the Albemarle County zoom link.

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

Agenda Item No. 4. Adoption of Final Agenda.

Ms. Price mentioned the addition of National Gun Violence Awareness Day proclamation being added to item #6.

Ms. Palmer asked to add a short discussion somewhere around the first public hearing on amendments to the budget to get some feedback from the Board on the ACE program for the coming year. She said staff had been discussing this and were prepared to give the Board some information at that time, not for decision-making but just for some feedback.

Ms. Price clarified that ACE is the Acquisition of Conservation Easements program that they generally participate in each year and, because of COVID, funds were not put aside; she had talked to the County Executive, and staff was prepared to give information on what was in the budget at present from the prior year. She said she could give some information as the liaison from the ACE committee on what the ACE committee had been looking at.

Ms. Mallek **moved** to adopt the final agenda as amended.

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

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

NAYS: None.

ABSENT: Mr. Gallaway.

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

Ms. Mallek said that Monday (May 31), there was a very well attended and lovely event orchestrated by the American Legion Post 74 to add the recognition plaques for the local members of the armed services who had been awarded the Medal of Honor, and it was grand. She said July 3rd would be the bringing back of the Crozet Fireman's Parade, which had been going on for about 50 years except for the prior year and the year of the derecho which wiped everything out about 8 years ago. She noted that was July 3rd, or the Saturday before the 4th, and then on the morning of the 4th at 10:00 a.m. would be the Earlsyville community parade. She said they were bringing that back after a year's loss the prior year due to the pandemic, and everybody should think about getting their children and bicycles and dogs to come out and walk in the parade.

Ms. Palmer said she had no announcements assuming that Ms. Price would talk about the Batteau Festival in Scottsville (because it also stops in Howardsville).

Ms. McKeel reminded everyone that May 30th marked the centennial anniversary of the public library system in the Charlottesville area and said she was learning a lot more about the history of their public library. She said there was not a truly integrated library until Gordon Avenue branch was opened

in 1966. She reminded people they might want to go in July to the central branch of JMRL because they would be doing an exhibition and would have a lot of information about the history of their library system, and it would be interesting for everyone to hear. She said she did not have a date; it just said to look for it in July.

Ms. Price said the Batteau Festival would be returning to Scottsville on June 23rd; it is one big stop the boats make on their trip from Lynchburg down to Richmond so she hoped everyone would join them down in Scottsville. She said on July 3rd, they would be having the Fourth of July parade down in Scottsville as well, and she was excited to see people back out in town and enjoying what they have to offer in the County.

Ms. Price said she had a number of other announcements to make. She said most close in time was that the Republican Party had already elected their statewide slate of offices by convention, but the democrats would be having the primary the following Tuesday. She said for anyone interested in voting in that primary who had not already early voted to remember Tuesday would be primary day.

Ms. Price said they had a lot of activity that has happened down in Scottsville, and it was an exciting place to be currently with a lot of new openings of businesses and some relocations of others. She said The Bend BBQ had opened a storefront shop, so those who have enjoyed their fare at the farmer's market could now go down into their establishment and pick up some of their delicious barbecue.

Ms. Price said We Grow florist had opened at a former storefront church space, and Kathy Marrs Pet Grooming had moved next door to a larger space and were able to add boarding now, which they did not previously have. She said Riverbend Boutique had opened in a long vacant space.

Ms. Price said James River Outdoors had opened this spring, and she bought her new fishing pole and gear down there and was looking forward to taking it out on the James and Rivanna Rivers. She said Scottsville is a happening place and the place to be. She said they are all excited now that the pandemic is largely behind them but also know they still have to be careful. She encouraged those who have not been vaccinated to get their vaccinations and said those who have were still welcome to wear masks if that made them feel more comfortable. She said there is a lot going on, and they also know there will be a Select DMV opening in Scottsville as well in Victory Hall.

Ms. LaPisto-Kirtley said speaking of new businesses, the Merrie Mill Farm (off of 22 in Keswick) is a winery, and children are welcome. She said it is eclectic in its décor, very nice, with good food; they have a charcuterie plate along with hummus and chicken salad and good wine. She said it is very pleasant to be there; there are three different areas to sit in, inside and outside, and it is very pleasant, a beautiful, beautiful little historic farm. She encouraged everyone to go out there.

Ms. Price said Albemarle County is the place to be.

Agenda Item No. 6. Proclamations and Recognitions.

Item No. 6.a. Proclamation Celebrating LGBTQ Pride Month.

Ms. LaPisto-Kirtley **moved** to adopt the proclamation recognizing June as LGBTQ Pride Month as she read it aloud. Ms. McKeel **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

ABSENT: Mr. Gallaway.

Proclamation Recognizing LGBTQ Pride Month

- WHEREAS,** Albemarle County's stated mission is to enhance the well-being and quality of life for all citizens through the provision of the highest level of public service consistent with the prudent use of public funds; and
- WHEREAS,** the Board of Supervisors is committed to supporting through its actions and its partnerships the promotion of an equitable and inclusive Albemarle County that allows all members of our community to grow and thrive; and
- WHEREAS,** Lesbian, Gay, Bisexual and Transgender Pride Month (LGBT Pride Month) is celebrated annually in June to honor the 1969 Stonewall riots, and works to achieve equal justice and equal opportunity for lesbian, gay, bisexual, transgender, queer, and questioning (LGBTQ) Americans; and
- WHEREAS,** on April 11, 2020, the Virginia Values Act was signed into law, making Virginia the first state in the South to protect LGBTQ people from discrimination in their daily lives, including discrimination in housing, public and private employment, public accommodations, and access to credit; and
- WHEREAS,** LGBTQ individuals have shaped, advanced, and enriched the fabric of Albemarle County and our nation by making immense contributions to all areas of life including government,

business, arts and sciences, medicine, law enforcement, technology, and the military;
and

NOW, THEREFORE, BE IT PROCLAIMED, that we, the Albemarle County Board of Supervisors continue to affirm our commitment to our stated mission to enhance the well-being and quality of life of all the members of our community, and recognize with pride the rich cultural diversity and contributions of lesbian, gay, bisexual, transgender, queer and questioning (LGBTQ) residents to the vibrancy of Albemarle County.

Ms. Binte-Farid thanked the Supervisors for taking the time to recognize and celebrate such an important month for so many in the community. She noted as an organization, they have been trying to be more intentional about centering equity and inclusion not just in the programs and services offered to the public but also in the support offered to colleagues and employees. She said she was happy to introduce Erin Buchanan, an adult benefits specialist at the Department of Social Services in Albemarle and the co-chair of the LGBTQIA Affinity Group.

Ms. Buchanan said she was honored to accept this proclamation on behalf of the LGBTQ people that live and work in Albemarle County. She said while Pride Month is derived from a painful part of history, and it is important to remember that history, for her, it is also a time to celebrate how far they have come and to have pride in who they are. She said there definitely is a long way to go, but she wanted to recognize that having acceptance and support coming from the Albemarle County Board of Supervisors is a big step in doing just that.

Ms. Buchanan said while preparing for this, she had read the proclamation to her wife, who was moved to tears. She said they have never lived in a place where local government declared support and protections for the LGBTQ community. She said their dream is that their son grows up feeling that acceptance is the norm and that the world is made up of all kinds of people and families and that love is love. She said she hoped that more places begin to recognize and show that support to their community members; it is so important to build the momentum of change and fight against the mistreatment of so many people.

Ms. Buchanan said many in the community have faced outright discrimination and hate in their lives, but it is not just the extremes that she wanted to talk about; it is also about all the little things. She said too many people have had to move through everyday situations feeling shame in something as simple as partaking in a workplace conversation about their spouse or their children, introducing their partner where they may not be sure how they will be received, kids participating in school and feeling uncomfortable sharing about themselves or their same-sex parents or transgender siblings or even being transgender themselves. She said hearing that recognition from their own local government helps build the confidence and create the support that many people need to be proud of who they are and who their family members are. She said it normalizes being comfortable talking about one's own life; it is such a simple thing that is often taken for granted by those who do not have to live with that discomfort.

Ms. Buchanan said the community that Celebrating Pride has built is incredible and has allowed people to find acceptance amongst a melting pot of others that like them have had to hide who they are in some way, shape, or form. She said it has created a place where people can build new families even when their own have turned their backs on them. She said to hear this proclamation from the Board will build on this community and can effect change not only on LGBTQ people but maybe even the people who have lived in ignorance. She said it can inspire people to educate themselves to be more open, accepting, and understanding of people that may not be the same as they are. She said it might even inspire them to see how their words and actions or lack thereof can affect people that are often their coworkers, their neighbors, and even their family members.

Ms. Buchanan said finally, she wanted to say thank you, thank you for normalizing equity and inclusion and thank you so much for recognizing Pride Month and wished everyone Happy Pride.

Ms. Price thanked Ms. Buchanan and told her those were very moving words.

Ms. LaPisto-Kirtley said she had many friends that she was honored to say are LGBTQ, and she loves them dearly. She said Ms. Buchanan was right when she said love is love, and to her, that says it all. She said love is love, and good people are here all over and contribute in such important ways, and it means so much to her and to the County as a whole. She reiterated that love is love period.

Ms. McKeel thanked Ms. Buchanan for being there and said she was pleased that reading a proclamation like this was just part of their standard business practice. She said she had been around long enough that she remembered years ago, the school board voted to allow teachers to put a rainbow sticker on the window in their classroom door to show that that room was a safe place for children, and it has taken a long time, but they have finally gotten there.

Ms. Price echoed what the other Supervisors had said. She said Ms. Buchanan's words were very powerful; they were very moving and actually affected her deeply, and she appreciated her having the courage herself to openly speak of her situation. Ms. Price said as the only LGBTQ member elected to Albemarle County as a transgender woman on the Board of Supervisors, she not only thanked the County, but she also thanked the voters and community members who have demonstrated a degree of acceptance and that love is love that other communities really should emulate.

Ms. Price said traveling back from vacation the past weekend, she had watched a movie called

Pride, and she encouraged anyone who had not seen it to look it up. She said it was about gay and lesbian who support miners in 1985 in Wales when there was a coalminer strike, and not every battle results in victory, but there are victories that come out of every battle, and she encouraged watching the movie to see how two different groups that had been targeted and abused came together to support each other. She encouraged watching it to the end; the very ending of it would amaze. Ms. Price thanked them both for being there and participating in this very important proclamation.

Ms. LaPisto-Kirtley said she is in the position she is in right now as a Supervisor because she had three gay friends that forced her into the position; they were the ones that made her run, supported her, and she is here today because of them, so she thanked them.

Item No. 6.b. National Gun Violence Awareness Day.

Ms. Mallek thanked the Moms Demand Action for Gun Sense in America, local Crozet chapter, for bringing this to the Board's attention.

Ms. McKeel **moved** to adopt the proclamation recognizing National Gun Violence Awareness Day. Ms. McKeel **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

ABSENT: Mr. Gallaway.

PROCLAMATION – NATIONAL GUN VIOLENCE AWARENESS DAY

WHEREAS, every day, more than 100 Americans are killed by gun violence and on average there are more than 13,000 gun homicides every year and Americans are 25 times more likely to die by gun homicide than people in other high-income countries.

WHEREAS, Virginia has 992 gun deaths every year, with a rate of 11.4 deaths per 100,000 people and has the 34th highest rate of gun deaths in the US and communities across the nation, including Albemarle County, are working to end the senseless violence with evidence-based solutions; and

WHEREAS, protecting public safety in the communities they serve is local government's highest responsibility and support for the Second Amendment rights of law-abiding citizens goes hand-in-hand with keeping guns away from people with dangerous histories. Local officials and law enforcement officers know their communities best, are the most familiar with local criminal activity and how to address it, and are best positioned to understand how to keep their citizens safe; and

WHEREAS, the pandemic facing America has drastically impacted communities and individuals sheltering in place which may result in situations where access to firearms results in increased risk in intimate partner violence gun deaths, suicide by gun and unintentional shootings; and

WHEREAS, anyone can join this campaign by pledging to Wear Orange on June 4th, the first Friday in June in 2021, to help raise awareness about gun violence. By wearing orange Americans will raise awareness about gun violence, honor the lives of gun violence victims and survivors, renew our commitment to reduce gun violence, pledge to do all we can to keep firearms out of the wrong hands, and encourage responsible gun ownership to help keep our children safe.

NOW, THEREFORE, BE IT PROCLAIMED, that we, the Albemarle County Board of Supervisors declare Friday, June 4, 2021, to be National Gun Violence Awareness Day and encourage all citizens to support their local communities' efforts to prevent the tragic effects of gun violence and to honor and value human lives.

Ms. Mallek related that even in Texas, a place where there seemed to be many more people supporting guns, there were gunowners that day described on the radio as saying, "I don't want to look at every person as a potential threat," and, even as gunowners, they were very against the permit-less open carry that Texas was just passing. Ms. Mallek said she was looking forward to the discussion locally to create the safety needed at their meetings and public buildings as well.

Ms. McKeel said she always resisted just reading a statistic because at some point everyone has gotten numb with the statistics about gun deaths and gun violence in this country, but it jumped out at her over the last couple of weeks that 400 people were shot and killed over the Mother's Day weekend; there were 12 mass shootings over the Memorial Day weekend. She said that Gavin Newsom said it right when he asked "what in the world are they thinking?" She agreed that she looked forward to further

discussion about what could be done locally.

Ms. Price said she was a gun owner and believes that there should be reasonable regulations for safety purposes. She said she owns a vehicle; there are reasonable regulations for the operation of a vehicle. She said she both supports the second amendment and fully supports actions that make the world safer for everyone.

Agenda Item No. 7. From the Public: Matters Not Listed for Public Hearing on the Agenda or on Matters Previously Considered by the Board or Matters that are Pending Before the Board.

Mr. Peter Krebs (Piedmont Environmental Council) said he would like to speak briefly about an item on the consent agenda; it is a report from Mr. Tim Padalino which describes the five-mile extension of the Old Mills Trail from I-64 to Milton. He said for those not familiar with the Old Mills Trail, it is truly one of the hidden gems of the area; it is the County's analog to Riverview Park and currently follows the east bank of the Rivanna River from Darden Towe to I-64.

Mr. Krebs said the extension that Mr. Padalino is going to be talking about will add an additional five miles resulting in an eventual 10-mile greenway connecting Darden Towe to Glenmore. He said along the way, it will pass Pantops, Riverview Park, Woolen Mills, Martha Jefferson Hospital, Thomas Jefferson's birthplace of Shadwell, Stone-Robinson Elementary School, Clifton Inn, and the list goes on and on. He said it would be on a par with anything in the Commonwealth, only this one will be located right here where many people live and work. He said it is in the background of why he speaks so passionately about the Rivanna River pedestrian bridge connecting Pantops to either the WillowTree site or to Riverview Park. He said these two projects add up to much more than the sum of their parts.

Mr. Krebs said the pieces are falling into place, particularly the right-of-way; however, the conveyance does come with a deadline, and the trail will need to be built this decade. He said there are grants and private actors ready to help, and because of the flat topography, it is actually going to be pretty affordable and something that can be done that will not be a heavy financial lift, and it can open at a low level and be upgraded over time like the rest of the Old Mills Trail. He said that is one of the things that he loves about that trail; the County has just plugged away over time, opened it as resources have been available, and now it is really shaping up into something wonderful, and it also can be something that is world class.

Mr. Krebs said the best thing the Board can do to help this move along would be to make sure that the greenway's coordinator position gets filled because that individual will be able to assist with permitting and grants that will bring resources back to the County. He said the City has had the experience with Mr. Chris Gensic being a real net positive; he brings in far more than his own weight in resources, and the County can use a similar approach to get the Old Mills Trail extended.

Mr. Krebs invited everybody to stop by the Old Mills Trail the coming weekend, Father's Day, from 8:00 to 10:00 for a cleanup day that will be at Darden Towe Park; there will be information about recycling and opportunities to clean as well as Mr. Padalino will be there to talk about this trail extension. He said this is so exciting and thanked the Board for their good vote.

Mr. Vipul Patel said he continues his 40-year residency in Charlottesville-Albemarle County, and for this specific hearing, his property is in the Scottsville district. He told the members of the Board and planner Ms. Rebecca Ragsdale that he was thankful of the opportunity towards a homestay use at Beauchamps located at 943 Jefferson Lake Drive. He said homesharing is here for good, and he is seeking a special exception approval to permit five guest bedrooms on the basis of the County's 2019 homestay regulations.

Mr. Patel noted the Board's duties to serve the County allowed this process, and he is certain they have concerns related to his property. He said to begin, the entrance at Route 53 directly across Michie Tavern onto Jefferson Lake Drive leads to two separate drives, 941 and 943 Jefferson Lake Drive. He said 941 was not part of this homestay application; the unit is fully renovated and is served by its own well, septic, and utilities and will remain as a long-term residential unit, which is currently occupied.

Mr. Patel said 943 Jefferson Lake Drive was intended for homestay use and was unoccupied and undergoing full renovations. He said Jefferson Lake Drive is a shared driveway amongst three of them, Incaam (being himself), Monticello, and Memory Gardens Cemetery; the driveway has served this capacity since Beauchamps was built was his assumption. He said the entrance is a bit challenging, to which in 2019 he contacted VDOT, and they simply indicated that it is an approved entrance. He said to this date, he is not aware of any incidents in or out of the property.

Mr. Patel said homestay use at 941 Jefferson Lake Drive would be for five guest bedrooms, each with its dedicated entry/exit with no interconnecting accesses. He said life safety matters are absolute, and each unit will have smoke detectors, fire extinguishers, and approved egress. He said since each of the units is dedicated, there is no large central indoor gathering space, which will deter large party gatherings which can be an issue; however, outdoor space is provided for quiet gathering for their guests at the gazebo and newer swing and bench areas on the property. He said parking is also ample, safely allowing eight to 10 vehicles to maneuver within the property.

Mr. Patel said in terms of a resident manager, his long-term residents of 15+ years at 943 recently shifted to the fully renovated unit at 941 until renovations at 943 are complete, at which time they will move back in and take full responsibility for the homestay facility. He said since his ownership in 2015, he has entrusted them to his property and sees them as owners of the property; they take great pride, and he is grateful to have them.

Agenda Item No. 8. Consent Agenda.

Ms. Price said there were a couple of errors that needed to be corrected in item 8.7, the Rivanna Greenway Project update (Old Mills Trail Extension); Attachment D referenced incorrect dates for deadlines by which Albemarle County needs to begin development and to complete development of the Old Mills Trail section of the Rivanna Greenway. She said to clarify, the following dates or deadlines are the correct dates: The County's development on the Greenway Trail on Lego Farm must begin by August 16, 2027, and the County's development of the Greenway Trail on Lego Farm must be completed by August 16, 2029. She said these dates were corrected in the online agenda packet on Thursday, May 27th.

Ms. McKeel **moved** to approve the Consent Agenda as amended. Ms. Palmer **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

ABSENT: Mr. Gallaway.

Item No. 8.1. Approval of Minutes: December 4, 2019.

Ms. McKeel had read the minutes of December 4, 2019, and found them to be in order.

By the above-recorded vote, the Board approved the minutes as read.

Item No. 8.2. Amendments to Personnel Policies P-81 and P-86.

The Executive Summary forwarded to the Board states that on Wednesday, July 1, 2020, the Board of Supervisors approved the proposed 2020–2021 Holiday Schedule, which modified the local government holidays by observing Juneteenth in place of President's Day. The Holiday Policy § P-81 and Leave Program Policy § P-86 are being revised to incorporate these changes.

Personnel Policies §P-81 and P-86 establish the annual holiday calendar for 12-month, benefits eligible, local government employees. Staff is proposing updates to Personnel Policies §P-81, Holidays, and §P-86, Leave Programs, as described in the resolution in Attachment A. The attached proposed draft policies modify the local government holidays observed consistent with the FY20-21 holiday calendar for future fiscal year calendars. Attachments B and C show the marked up proposed changes and Attachments D and E provide the final draft proposed policies to §P-81 and §P-86, respectively.

There is no budget impact associated with adoption of these amended personnel policies.

Staff recommends that the Board adopt the Resolution (Attachment A) to amend Personnel Policies §P-81 and §P-86 as set forth in Attachments D and E.

By the above-recorded vote, the Board adopted the Resolution (Attachment A) to amend Personnel Policies §P-81 and §P-86 as set forth in Attachments D and E:

RESOLUTION

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

WHEREAS, the Board desires to amend Section P-81, Holidays, and Section P-86, Leave Program, to update the list of County holidays.

NOW, THEREFORE, BE IT RESOLVED THAT the Board of Supervisors of Albemarle County, Virginia, hereby approves the changes to the County of Albemarle Personnel Policies, as described hereinabove, and as set forth on the attached documents, attached hereto and incorporated herein, which shall be effective as described hereinabove.

* * * * *

§P-81

COUNTY OF ALBEMARLE
PERSONNEL POLICY

§P-81

HOLIDAYS

A. Holidays Observed

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

1. New Year's Day – January 1
2. Martin Luther King, Jr. Day - Third Monday in January
3. Memorial Day – Last Monday in May
4. Juneteenth Day – June 19
5. Independence Day – July 4
6. Labor Day – First Monday in September
7. Veteran's Day – November 11
8. Thanksgiving Day – Fourth Thursday in November
9. Friday after Thanksgiving
10. Christmas Eve – December 24
11. Christmas Day – December 25
12. Floating Holiday – 1 day per fiscal year

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

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

Under certain situations, due to coverage requirements or non-County building closures,

the holiday schedule for some departments or groups of employees within departments may fall on alternate dates within the fiscal year. Departments in these situations must receive Director of Human Resources/designee approval for designating alternate holiday schedules. These alternate holiday schedules must equal the number of approved County holidays.

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

B. Qualifying for Holiday Leave

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

C. Working on Holidays

1. Due to coverage requirements, some employees may be required to work on a scheduled holiday. Any qualified non-exempt, employee who is required by the department head/designee to work on a scheduled holiday shall:
 - a. Be paid the hourly rate for the hours worked on the holiday plus the hours normally granted for the holiday; or
 - b. Substitute another day in the workweek / work cycle (for 28-day public safety employees) as holiday leave, including days in the workweek / work cycle (for 28-day public safety employees) before the established holiday.
2. Qualified exempt employees who work on a holiday may take the holiday on another day approved by the supervisor within the fiscal year. Employees may not take the holiday prior to the County designated holiday date, except within the workweek / work cycle (for 28-day public safety employees) in which the holiday falls. Unused holiday leave is never paid out and does not carry over fiscal years. Holiday leave does not transfer if an employee changes departments. It must be taken prior to transfer or it is forfeited.
3. Qualified employees who are scheduled to work, but fail to do so for any reason, are considered to have observed the holiday. Unworked scheduled work hours in excess of holiday hours must be covered by use of some other appropriate leave.

4. Alternative Work Schedules: A “day of holiday leave” is equivalent to a “day of leave” as defined in section I(B), above. Employees must discuss the impact of holiday leave on their alternative work schedules with supervisors. Employees are responsible for making up any hourly difference between the hours granted for the holiday and the employees’ work schedule by either using other applicable leave or working at another time during the workweek or work period. Fire Rescue employees on 12- or 24-hour shifts will receive 12 hours of a “day of holiday leave” regardless of their “day of leave” status.

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

D. Floating Holiday

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

holiday leave as of July 1, 2019 will be granted one (1) day of floating holiday leave on January 1, 2020 for the remainder of the FY2019-2020 fiscal year.

E. Half-day Holidays

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

F. Religious Holidays

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

Amended: August 4, 1993; August 2, 2000; February 10, 2016; December 18, 2019; June 2, 2021

LEAVE PROGRAM

Consistent employee presence on the job promotes and maintains excellence in Albemarle County by providing continuity of service and reduced temporary staffing costs. The County recognizes that some absences are necessary. In such cases, the employee's return to work at the earliest time commensurate with good health, safety, and reasonable personal consideration is an expectation. The County expects that all employees shall strive to maintain an acceptable attendance record and that the occasional absences of employees shall not have an adverse effect on services.

Adopted: February 6, 2019 (Effective upon time and attendance system implementation (Kronos))
Amended: December 18, 2019; June 2, 2021

Table of Contents

<u>General Information</u>
<u>Administrative Leave</u>
<u>Annual Leave</u>
<u>Bereavement Leave</u>
<u>Building Closure Leave</u>
<u>Compensatory Time Leave</u>
<u>Court Duty Leave</u>
<u>Election Officer Leave</u>
<u>Emergency Leave</u>
<u>Employee Recognition Leave</u>
<u>Employee's Debilitating or Life-Threatening Illness or Injury</u>
<u>Family Medical Leave Act – Protected Leave Status</u>
<u>Holiday Leave</u>
<u>Income Replacement Program – VRS Hybrid Plan members only</u>
<u>Jury Duty Leave</u>
<u>Leave as a Reasonable Accommodation</u>
<u>Maternity Leave</u>
<u>Military Leave</u>
<u>Personal Leave</u>
<u>Professional Learning Leave</u>
<u>Sick Leave</u>
<u>Sick Leave Bank</u>
<u>Total Leave Exhaustion</u>
<u>Unpaid Leave – Leave of Absence (Long-Term)</u>
<u>Unpaid Leave – Leave Without Pay (Short-Term)</u>
<u>Workers' Compensation</u>

I. General Information

A. Eligibility

All Albemarle County regular, benefits-eligible employees are eligible for the benefits and programs outlined in this policy. While non-benefits-eligible employees may not accrue paid leave as a benefit, they may be granted certain types of paid and unpaid leave under programs outlined in this policy. (See also § P-02, Definition of Employee Status.)

B. Definitions

Unless otherwise stated in policy or defined by law, the following definitions apply only to this policy.

<u>Day of Leave or Day:</u>	<p>A “day of leave”, a “day”, or “daily” shall equal the total hours scheduled per year divided by the number of days established for an employee’s position and number of months worked in a year (i.e., 12-, 11-, 10-month employee). This will not necessarily be the same amount an employee works on a given day. Unless otherwise noted, this definition applies to all leave policies.</p> <p><i>For example, a 12-month employee (260 days) scheduled for 2080 hours per year has an eight (8)-hour day of leave; an 11-month employee (220 days) scheduled for 1760 hours per year has an eight (8)-hour day of leave; a 10-month employee (200 days) scheduled for 1450 hours per year has a seven and one quarter (7.25)-hour day of leave.</i></p>
<u>Employee:</u>	“Employee,” unless otherwise noted in this policy, means regular, benefits-eligible employees.
<u>Fiscal Year:</u>	“Fiscal Year” means the fiscal year adopted by the Board (July 1 to June 30).
<u>Flex:</u>	“Flex” means the ability of a supervisor to allow an employee to work an alternative schedule.
<u>FTE:</u>	“Full-Time Equivalency” or “FTE” describes the full- or part-time status of an employee.
<u>Household Member:</u>	“Household Member” means 1) any individual who cohabits or who, within the previous 12 months, cohabited with the employee, and any children of either of them then residing in the same home with the employee, 2) the employee’s former spouse, whether or not he/she resides in the same home with the employee, or 3) any individual who has a child in common with the employee regardless if the employee and individual have been married or have resided together at any time.
<u>Immediate Family:</u>	“Immediate family”, unless otherwise defined in policy or defined by law, means the employee’s spouse, children, parents, siblings, grandparents, or the employee’s spouse’s children, parents, siblings, grandparents (includes all direct lineage such as

great-grandparents, grandchildren, etc. and step-immediate family members).

Parents include persons standing *in loco parentis* and children include biological, adopted, or foster children, stepchildren, legal wards, or children of a person standing *in loco parentis*.

In loco parentis includes those who have or had day-to-day responsibilities to care for or financially support a child who is under 18 years of age, or 18 years of age or older and incapable of self-care because of a physical or mental disability. A biological or legal relationship to the child is not necessary.

In Writing:

“In writing” mean generally any dated written statement including a leave slip, formal memo, or e-mail, unless otherwise noted or defined by law. Refer to specific policy sections or department requirements for specific forms that may be required.

Rolling Year:

“Rolling Year” means a rolling 12-month period measured backward from the date an employee uses leave.

Workday:

“Workday” specifically means a calendar day worked, as opposed to a “day of leave” or “day”.

C. General Leave Guidelines and Responsibilities

1. Leave under the Family Medical Leave Act (FMLA), Workers’ Compensation, Sick Leave Bank, Debilitating or Life-threatening Illness or Injury, and Income Replacement Program is managed by the Department of Human Resources for privacy reasons, with administrative support from the employee’s department. All other leave is managed and administered by the employee’s department with support from the Department of Human Resources.
2. Employees and supervisors should familiarize themselves with the types of leave available and the proper procedures for using each. Unless specifically stated, leave is used when an employee is absent from work, not as a means of additional compensation. Pay and leave for non-exempt employees are determined on a total workweek or work period basis, not a daily basis.
3. Leave is taken based on an employee’s schedule. Due to fluctuations in the day of leave and the varying base hours of different positions throughout the County, leave may be taken at a different rate from the rate at which it was accrued.
4. An employee with two or more regular positions (dual jobs) will have the FTEs for each position combined to determine eligibility for leave benefits. Leave will be held in a single account for all regular positions.
5. Employees are expected to only take leave for which they have sufficient leave balances. “Leave without pay” (LWOP) is not a leave type, but instead is a consequence of having insufficient applicable leave. Applicable types of accrued leave will be used before an employee may take LWOP. The Department of Human Resources will establish County-wide rules for the order in which different types of leave are used for different types of absences.

6. Employees may not borrow against future leave accruals. Paid leave may only be taken when the employee has earned enough leave to cover the absence or when provided by established County programs/practices.
7. When an employee performs no work or is not in a paid leave status in a calendar month, no accrued leave will be earned for that month.
8. Employees are responsible for notifying their departments as far in advance as possible whenever they will be absent. Employees are responsible for following their department's applicable guidelines when making leave requests. Employees are responsible for notifying their supervisors at least 30 minutes prior to their scheduled start time of unforeseeable delays and absences, unless the department has established other guidelines for notification. Employees should be aware of the notification requirements and procedures of their departments.
9. Employees are responsible for discussing workload/scheduling/coverage with their supervisors/designees when they need to be absent from work for any period either as a block of time or intermittently.
10. Both the department and the employee are responsible for tracking leave approvals and absences.
11. Employees should contact the Department of Human Resources for extended use or use of special leave types which require additional approval/administration as outlined in this policy such as leave under the FMLA, leave without pay (or LWOP), leaves of absence (LOA), Workers' Compensation, or military leave. Also, supervisors should notify the Department of Human Resources if an employee is out of work and may require extended use or use of special leave types which require additional approval/administration.
12. The department head/designee may approve leave that an employee has available as provided in this leave policy. The department head/designee, to the best of his/her ability, should ensure that processes/procedures are in place to prevent employees from taking unapproved or not yet accrued leave. Employees are responsible for being aware of their leave balances and usage and requesting leave use appropriately.
13. Any missed work that is not approved or foreseeable absences that are not requested in a timely manner may result in required leave use, denial of leave use, loss of pay, and/or disciplinary action. Failure to give proper notice or abuse of any of these policies may lead to disciplinary action up to and including termination.
14. Signs of leave abuse or excessive absenteeism will be examined, including looking at patterns such as Friday/Monday absences and/or frequency of occurrences. The Department of Human Resources staff shall provide guidance on initiating an investigation and any disciplinary action to be taken.
15. Employees must receive prior authorization to work with an outside entity while on paid or unpaid leave pursuant to § P-33, Outside Employment.
16. It will remain the right of the department head/designee to:
 - a. Authorize or refuse to authorize the advance request of an employee for permission to be absent.
 - b. Investigate absences.
 - c. Deny leave for absences in violation of any County policy.

- d. Impose reasonable disciplinary action upon employees who have been found by the department head/designee to have abused their leave privileges and/or violated the provisions of this policy.
 - e. Require written verification/proof of medical appointments or other types of absences, unless prohibited by policy or law.
17. The County Executive/designee may issue emergency regulations regarding employee work hours, absences, and leave usage in the event of a declared state of emergency, pandemic, or other crisis affecting the County's ability to operate under normal policies and procedures.
18. Employees who are placed on administrative leave without pay for disciplinary reasons or other administrative reasons may not use other types of leave concurrently without permission from the Director of Human Resources/designee.
19. Employees changing County positions and/or departments without breaks in service shall maintain accrued leave and accrual rates in accordance with policy.
20. Employees changing employment between the County and Albemarle County Public Schools shall maintain accrued leave in accordance with this policy and accrual rates shall be reciprocal. Employees of a Partner Agency changing employment to the County, Albemarle County Public Schools, or another Partner Agency shall maintain accrued leave in accordance with this policy and accrual rates shall be reciprocal as agreed through a signed memorandum of understanding (MOU) or similar agreement.
21. Although non-benefits-eligible employees are not eligible for some of the leave programs in this policy, they are required to follow procedures for requesting time off, recording time worked, and acceptable attendance. When flex time is not approved, these employees will be docked pay in accordance with § P-61 Staff Schedules, Time Tracking, and Compensation Policy, when applicable due to a lack of accrued paid leave.

D. Excused and Unexcused Absences

Acceptable attendance is a minimum expectation of all County employees. Absences will be classified as either excused or unexcused. Some types of leave may be either, depending on whether it was approved by the supervisor or not, regardless of whether it was paid. All unexcused absences are included into the acceptable attendance calculations. Sick leave is unexcused, except sick leave used concurrently with FMLA, Workers' Compensation, or Bereavement, which is excused. Any other paid or unpaid leave used in lieu of sick leave is also unexcused. Unapproved annual, personal, and compensatory time leave is unexcused even if the employee uses paid leave. Regardless of the leave type, an employee may be counseled or disciplined for failure to give proper notice or failure to receive prior approval.

E. Acceptable Attendance Standards

Generally, an employee's attendance is unacceptable when more than one (1) day of unexcused absences occurs per month, on average (10 days for 10-month, 11 days for 11-month, 12 days for 12-month per year). However, attendance should be examined, counseled, and disciplined by the supervisor on a case-by-case basis when appropriate. An employee may be disciplined for unacceptable attendance even if he/she has sick leave or other paid leave available.

F. Leave Usage

- 1. Exempt Employees

- a. Increments - Employees who are exempt from overtime provisions under the Fair Labor Standards Act (FLSA) (exempt employees) shall take leave in full-day increments.
 - b. Work Expectations - An exempt employee is expected to work his/her full schedule. When an exempt employee takes a leave day, the supervisor should respect the employee's time off. However, there may be occasions when the employee may need to respond to an emergency. An exempt employee who performs a minimal amount of work shall still use a day of leave. If more than a minimal amount of work is performed, the employee should work with his/her supervisor to flex the time on a later date or not take the day as leave.
 - c. Flex Time – Supervisors may approve exempt employees to work alternative schedules in lieu of using leave or in recognition of work above and beyond the employee's regular schedule. Time may be flexed outside of the workweek or work period for exempt employees.
2. Non-Exempt Employees
- a. Increments - Employees who are eligible for overtime under FLSA shall record leave in 15-minute increments.
 - b. Work Expectations – A non-exempt employee must not perform any work while on leave. Permission to work while out must be granted by the supervisor in advance and should be recorded as compensable time instead of leave.
 - c. Flex Time – Supervisors may approve non-exempt employees to work alternative schedules in lieu of using leave within the same workweek or work period. Pay and leave are determined on a total workweek or work period basis. Leave will only be used to supplement an employee's total weekly hours when the hours worked are less than his/her base hours. For example, if an employee misses two (2) hours of work for a doctor's appointment but works two (2) additional hours in the workweek with the supervisor's permission, no sick leave would be taken that week.
 - d. Special Flex Time Rules For Certain Public Safety Employees – Non-exempt employees who qualify for the public safety exemption may request flex time in lieu of leave use prior to the use of such leave. When these employees are in a paid status, all such time is considered time worked as required under the Gap Pay Act (Virginia Code § 9.1-700, et seq.).

II. Administrative Leave

Administrative leave may be granted or required on a case-by-case basis, such as for investigations, suspensions, releases from work for safety, or recognition of service. Administrative leave may be paid or unpaid as appropriate. Administrative leave with pay is not an adverse personnel or employment action.

III. Annual Leave

A. Purpose

Annual leave is provided to regular, benefits-eligible 12-month employees to recognize service provided to the County, foster wellness, and encourage work-life balance.

B. Accrual Rates

12-month benefits-eligible employees shall begin to accrue annual leave based on the employee's hire date of regular, continuous employment. Employees accrue annual leave monthly in an amount based on the employee's day of leave at the time of distribution as follows.

1. One (1) day per month for each month employed during the first five (5) years of continuous employment.
2. One and one-quarter (1.25) days for each month employed during the sixth through the tenth (6-10) years of continuous employment.
3. One and one-half (1.5) days for each month employed during the eleventh through the fifteenth (11-15) years of continuous employment.
4. One and three-quarter (1.75) days for each month employed during the sixteenth through the twentieth (16-20) years of continuous employment.
5. Two (2) days for each month employed during the twenty-first through twenty-fifth (21-25) years of continuous employment.
6. Two and one-quarter (2.25) days for each month employed during the twenty-sixth (26+) and succeeding years of continuous employment.

An employee who changes from a 10-month or an 11-month to a 12-month schedule shall begin to accrue annual leave based on the date he/she commenced continuous employment as a regular employee to include benefits-eligible and non-benefits-eligible employment as a 10, 11, or 12-month regular employee.

With the approval of the Director of Human Resources/designee and the County Executive/designee, an employee's annual accrual rate may be negotiated at a rate other than the rate determined by years of service and/or an employee may be granted a negotiated amount of additional leave.

C. Accumulation Maximum Cap

Annual leave balances are subject to a maximum cap.

1. The annual leave maximum cap is 320 hours for employees, except as provided in subsection 2.
2. Partner Agency employees working for Constitutional Officers have a maximum cap of 6 weeks (240 hours or a fraction thereof for part-time employees) pursuant to state law, unless an agreement between the Constitutional Officer and the County includes such employees under this policy. If such an agreement exists, then employees of Constitutional Officers shall have an annual leave maximum cap of 320 hours.

D. Use of Annual Leave

1. An employee is required to obtain his/her department head's/designee's approval prior to taking annual leave.
2. Requests to use annual leave and approvals should be in writing. All requests should be made as far in advance as possible. Employees should also refer to department-specific requirements and procedures.
3. Annual leave use is granted at the discretion of the department head/designee.
4. The department head/designee must consider the workload and impact of leave on the County's service delivery when approving or denying annual leave requests.
5. The department head/designee must reasonably accommodate annual leave requests as staffing permits.

6. An employee has the right to ask for and receive an explanation for the denial of an annual leave request.
7. Once annual leave has been approved by the department head/designee, changes shall not be made to the approved annual leave use without notification in writing to the employee by the department head/designee.

In the interest of fostering wellness for employees, non-probationary employees are strongly encouraged to take at least five (5) days of annual leave per year. Department heads/designees shall work with their employees to ensure that time is made available for annual leave use. Employees are responsible for knowing their leave balances and usage and scheduling leave in a timely fashion.

8. Department heads/designees shall not approve more than three (3) consecutive weeks of paid annual leave if the employee is not planning to return to work (i.e., going to retire/resign). Any annual leave requested by a terminating employee beyond three (3) weeks must be approved by the County Executive/designee prior to use.

E. Conversion of Unused Annual Leave

1. At the end of the employee's birth month each year, any annual leave balance that is above the maximum accumulation cap will be converted as follows: 50% to the employee's own sick leave balance and 50% donated to the County Sick Leave Bank. The employee need not be a member of the Sick Leave Bank.
2. Employees are responsible for keeping track of their leave balances to avoid conversion of annual leave. Employees are also responsible for requesting time off as appropriate with as much advance notice as possible.
3. Employees and the department head/designee are encouraged to work together to facilitate leave use to avoid annual leave conversion.

F. Payout of Annual Leave

Payout of annual leave only occurs in the following situations:

1. Upon termination of regular employment, the employee will be paid at the employee's hourly rate for any remaining annual leave up to the maximum cap.
2. Upon transfer/hire from a 12-month position to a 10-month or 11-month position, the employee will be paid at the employee's hourly rate for any remaining annual leave up to the maximum cap. The employee may request to convert up to five (5) days of accrued annual leave to personal leave to be available for his/her use in the new 10- or 11-month position. If an employee requests leave conversion, it will be taken from the balance subject to the maximum cap. Employees transferring to benefits-ineligible positions will be paid at the employee's hourly rate for any remaining annual leave up to the maximum cap prior to the transfer.
3. Upon transfer/hire from a 12-month position eligible for annual leave under this policy to a Partner Agency position who does not have a signed memorandum of understanding (MOU) to accept leave, the employee will be paid at the employee's hourly rate for any remaining annual leave up to the maximum cap.
4. When an employee has two (2) regular 12-month positions (dual jobs), annual leave payout will be representative of the FTEs for each position. For example, a 0.60/0.40 employee would be paid 60% of the annual leave at the hourly rate of job A and 40% at the hourly rate of job B.

IV. Bereavement Leave

A. Purpose

The loss of an immediate family member or household member may deeply affect an employee. To allow an employee to grieve, tend to that person's estate, or other related matters, bereavement leave is available.

B. Bereavement Leave Days and Use

In the event of the death of a member of an employee's immediate family or a household member, any regular employee may use up to five (5) days of unpaid bereavement leave per occurrence. Accrued sick leave may be used concurrently for up to the first five (5) days of absence. Any additional time required by the employee shall be covered by other applicable leave in accordance with this policy. In the event of the death of a non-immediate family member or non-household member, employees may not use bereavement leave, but may use other applicable leave in accordance with this policy.

C. Extraordinary Circumstances

In the event of extraordinary circumstances, such as the death of a current colleague, the department head/designee may allow employees to attend services with approval from the County Executive/designee, so long as it does not cause an undue hardship on the department. Administrative leave with pay would be used in this situation for any regular employee.

V. Building Closure Leave

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

VI. Compensatory Time Leave

A. Purpose

Because employees are paid with taxpayer dollars, to be good stewards of public money, public sector employers are able to offer employees compensatory time leave in lieu of money as compensation for overtime. Additionally, some non-exempt employees may value additional time off more than additional pay.

B. Accrual, Maximum Balance, and Payout

Please refer to § P-61, Staff Schedules, Time Tracking, and Compensation Policy, for information on compensatory time leave as it is earned for overtime work performed.

C. Use of Compensatory Time Leave

Accrued compensatory time leave may be used for any leave purpose. However, classified, non-exempt employees are required to arrange use of compensatory time leave in advance with their supervisors. Department heads/designees shall be responsible for allowing employees to use compensatory time leave within a reasonable period of time after the employee requests it, so long as such use does not unduly disrupt the operations of the department. A "reasonable period" under the FLSA is determined by considering the customary work practices within the department, such as: (a) the normal schedule of work; (b) anticipated peak workloads based on past experience; (c) emergency requirements for staff and services; and (d) the availability of qualified substitute staff. Leave is considered to "unduly disrupt the operations of the department" if the supervisor reasonably and in good faith anticipates that granting the request would impose

an unreasonable burden on the department's ability to provide services of acceptable quality and quantity for the public during the time requested without the use of the employee's services.

VII. Court Duty

A. Purpose

The County recognizes the duty of employees to appear before a court of law when summoned or subpoenaed. These procedures outline leave usage. Refer to § P-61, Staff Schedules, Time Tracking, and Compensation Policy, for information on when an employee's appearance in court is considered compensable work time.

B. Eligibility

The County provides unpaid court duty leave for employees consistent with Virginia Code § 18.2-465.1. Employees are expected to notify their supervisors in as far in advance as possible prior to using court duty leave. Supervisors may require verification that an employee has been called for court duty. Court duty leave does not apply to any employee who is the defendant in a criminal case for which the employee is summoned or subpoenaed.

C. Regulation

Employees who are summoned or subpoenaed to appear, except as defendants in criminal cases, in court proceedings which take place during their scheduled hours, are allowed unpaid court duty leave for such appearances. Such employees may use accrued leave as applicable, subject to supervisor approval.

VIII. Election Officer Leave (Polling Leave)

A. Purpose

The County recognizes that serving as an election official can provide a unique learning and community service experience.

B. Eligibility

Albemarle County offers paid polling leave for benefits-eligible employees and unpaid polling leave for benefits-ineligible employees consistent with Virginia Code § 24.2-100, et. seq.

C. Guidelines

1. Any employee who serves as an officer of election (defined under Virginia Code § 24.2-101) shall not have any adverse personnel action taken against him/her for such service provided. An employee is not required to use accrued paid leave to serve as an officer of election.
2. An employee must give reasonable notice to his/her supervisor and comply with established procedures when he/she needs to take time off to serve as an officer of election.
3. Hours worked as an officer of election shall not be counted as "hours worked" for purposes of overtime compensation. Employees are not required to volunteer as an officer of election.
4. Employees who serve as officers of election for any locality are eligible for polling leave.

5. Employees are also eligible for any standard poll worker stipend that may be provided by an Electoral Board.
6. Employees employed by an elected official, the Electoral Board, or General Registrar are not eligible for polling leave.
7. Employees who work four (4) or more hours as an officer of election, including travel time, are not required to report for any shift which begins between 5 p.m. and 3 a.m. and will be granted polling leave.

IX. Emergency Leave

A. Purpose

Emergency leave is for employees who need to address emergency or urgent circumstances beyond their control that affect their residences.

1. For example, emergency leave may be granted for situations similar to the following:

A disaster affecting the home or residence of the employee or his/her immediate family, including damage occurring during a declared a state of emergency or an employee's house burning down.

2. Examples of circumstances for which emergency leave should not be granted are the following:

- a. Animal/vehicle strikes and other car repair-related issues;
- b. Employee's water pump breaks during the normal course of wear and tear and other household repairs due to normal wear and tear; and
- c. Employee loses power due to a non-state of emergency

B. Eligibility and Days of Use

1. The department head/designee may grant up to two (2) days of emergency leave without loss of pay to any benefits-eligible employee per year.
2. These days do not accrue from year to year and are not paid out upon termination of employment.

C. Requesting and Using Emergency Leave

1. To the extent possible, employees should request emergency leave in writing from the department head/designee.
2. If the circumstances in a given case are unclear, the department head/designee shall confer with the Director of Human Resources/designee before granting approval.
3. Emergency leave is not intended and may not be used for absences covered by other types of leave, including sick, personal, or annual leave. In addition, emergency leave is not intended and may not be used as a substitute when other types of leave have been exhausted.

X. Employee Recognition Leave

Paid leave may be awarded to regular employees as recognition for extraordinary achievements and contributions to the County, including through the Employee Recognition Program.

XI. Employee’s Debilitating or Life-Threatening Illness or Injury

An employee who has a debilitating or life-threatening illness or injury may be granted a reasonable period of unpaid leave for this purpose. The leave will be approved by the Department of Human Resources provided it does not cause an undue hardship to the County. This type of leave may be taken only in full-day increments and runs concurrently with paid leave, unpaid leave, any other leave program, and any reasonable accommodation if applicable.

An employee must submit medical documentation of his/her need for leave to the Department of Human Resources. Whenever possible, documentation must be provided prior to leave being taken. Approval from the Department of Human Resources must be obtained prior to leave being taken when foreseeable or as soon as possible.

XII. Family Medical Leave Act – Protected Leave Status

A. Purpose

This Family and Medical Leave (“FMLA”) section is written to assist Albemarle County in complying with the provisions of the federal Family and Medical Leave Act of 1993, and its amendments. This section seeks to balance the needs of the County (the “employer”) with the needs of its employees and their families. Any variation between this policy and the FMLA will be determined in favor of the Act.

B. Definitions

Definitions set forth below are applicable to FMLA only and may be different from general definitions listed elsewhere in this policy. If definitions in this FMLA section require clarification or conflict with, federal and/or state laws, those laws will prevail over this policy.

<u>Child:</u>	Means a biological, adopted, or foster son or daughter, a stepchild, a legal ward, or a child of a person standing <i>in loco parentis</i> who is either i) under 18 years of age or ii) 18 years of age or older and “incapable of self-care because of a mental or physical disability” at the time FMLA leave is to commence. For a covered service member or for covered active duty, a child may be any age.
<u>Covered Active Duty:</u>	In the case of a member of a regular component of the Regular Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and In the case of a member of a Reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in 10 U.S. Code § 101(a)(13)(B).
<u>Covered Service Member:</u>	A member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or

A veteran who was undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces, including a member of the National Guard or Reserves, at any time during the period of five (5) years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

Eligible Employee:

An eligible employee: 1) Has been employed at least 12 months or 52 weeks within the last seven years; 2) Has worked at least 1250 hours during the 12 months immediately preceding the proposed leave; 3) Has not used all available FMLA Leave in the current rolling year; and 4) Meets the conditions of the FMLA.

Employer:

For purposes of this section, "Employer" means the County and the Albemarle County Public Schools, as they are considered a single, integrated employer. See 29 C.F.R. §§ 825.104(2) and 825.108.

Family:

Family is defined as the employee's spouse, employee's children, and employee's parents.

Health Care Provider:

A licensed doctor of medicine or osteopathy or any other person determined by the U.S. Secretary of Labor to be capable of providing health care service.

In Loco Parentis:

Persons who stand *in loco parentis* include those who have or had day-to-day responsibilities to care for or financially support a child who is under 18 years of age or is 18 years of age or older and incapable of self-care because of a physical or mental disability. In the case of an employee, those who had such responsibility when the employee was a child also stand *in loco parentis*. A biological or legal relationship to the child or employee is not necessary.

Job-Protected:

The employee is guaranteed the right to return to his/her former position or to an equivalent position.

Next of Kin:

"Next of Kin" generally means the nearest blood relative of an individual when used in respect to that individual.

The "next of kin" of a current service member is the nearest blood relative other than the covered service member's spouse, parent, son, or daughter, in the following order of priority:

1. A blood relative who has been designated *in writing* by the service member as the next of kin for FMLA purposes,
2. Blood relatives who have been granted legal custody of the covered service member by court decree or statutory provisions,
3. Brothers and sisters,
4. Grandparents,

- 5. Aunts and uncles,
- 6. First cousins

When a service member designates in writing a blood relative as next of kin for FMLA purposes that individual is deemed to be the covered service member's *only* FMLA next of kin. When no such designation is made, and there are multiple family members with the same level of relationship to the covered service member, all such family members shall be considered the covered service member's next of kin and may take FMLA leave to provide care to the covered service member, either consecutively or simultaneously.

Parent: Includes biological, adoptive, step, foster, or any individual who stood *in loco parentis* when the employee was a child. This does not include parents-in-law.

Serious Health Condition: An illness, injury, impairment, or physical or mental condition that involves the following:

- 1. any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility; or
- 2. a period of incapacity requiring absence of more than three (3) calendar days from work, school, or other regular daily activities that also involves continuing treatment by (or under the supervision of) a health care provider; or
- 3. any period of incapacity due to pregnancy, or for prenatal care; or
- 4. any period of incapacity (or treatment therefore) due to a chronic serious health condition (e.g., asthma, diabetes, epilepsy, etc.); or
- 5. a period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, stroke, terminal diseases, etc.); or,
- 6. any absences to receive multiple treatments (including any period of recovery) by, or on referral by, a health care provider for a condition that likely would result in incapacity of more than three (3) consecutive days if left untreated (e.g., chemotherapy, physical therapy, dialysis, etc.).

Serious Injury or Illness: In the case of a member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness incurred by the member in the line of duty while on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty while on active duty in the Armed Forces) and that may

render the member medically unfit to perform the duties of the member's office, grade, rank, or rating; and

A veteran who was a member of the Armed Forces, including a member of the National Guard or Reserves, at any time during a period described in 29 U.S. Code § 2611(15)(B), means a qualifying (as defined by the Secretary of Labor) injury or illness that was incurred by the member in the line of duty while on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty while on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

Week:

A week is defined as the weekly authorized regular hours of the employee's position.

Year:

A rolling 12-month period measured backward from the date an employee uses FMLA leave.

C. Posting and General Notice

The employer shall post and keep posted, in a conspicuous place, on the premises where notices to employees and applicants for employment are customarily posted, a notice prepared or approved by the U.S. Secretary of Labor explaining the FMLA's provisions and providing information about the procedure for filing complaints with the Department of Labor. This posting requirement may be satisfied by electronic posting if every employee has access to a computer at work.

Employees Rights and Responsibilities notification will be posted on the Department of Human Resources website.

D. Conditions of Leave

1. General Information

The Family and Medical Leave Act (FMLA) provides up to a combined total of 12 workweeks of unpaid job-protected leave per year to eligible employees for the birth of a child and to care for the newborn child, for the placement with the employee of a child for adoption or foster care, to care for the employee's spouse, child, or parent with a serious health condition, or because of the employee's own serious health condition that makes the employee unable to perform the functions of the employee's position.

The FMLA also provides up to a combined total of 26 workweeks of unpaid job-protected leave per year to eligible employees because of any qualifying exigency arising out of the fact that the employee's spouse, child, or parent is a military member on covered active duty (or has been notified of an impending call or order to covered active duty status), or to care for a covered servicemember with a serious injury or illness if the employee is the spouse, child, parent, or next of kin of the covered servicemember. Military caregiver leave is available to an eligible employee once per veteran, per serious injury or illness. However, an eligible employee may take an additional 26 weeks of leave in a different 12-month period to care for the same veteran if the veteran has another serious injury or illness.

2. Notification Requirements

a. Foreseeable

When the need for leave under FMLA is foreseeable, the employee is required to provide at least 30 days' advance notice to the Department of Human Resources either verbally or in writing. The employee shall make a reasonable effort to schedule the treatment, placement, or other foreseeable need for leave so as not to disrupt unduly the operations of the employer. In the event that it is not practicable to give such advance notice, the employee should give as much advance notice as is practicable, ordinarily within two (2) business days of when he/she learns of the need for the leave.

b. Unforeseeable

When the approximate timing of the need for leave is not foreseeable, an employee must provide notice to his/her supervisor or the Department of Human Resources as soon as practicable based on the facts and circumstances of the particular case.

If an employee is absent for more than three (3) consecutive workdays or if the employee's supervisor has reason to believe that an employee's leave may be for an FMLA-qualifying reason, the supervisor must contact the Department of Human Resources and will remind the employee to contact Department of Human Resources to determine eligibility.

c. Employee Request and Eligibility Notice

The employee's notice or request should be sufficient to make the employer aware that the employee needs FMLA-qualifying leave and of the anticipated timing and duration of the leave. When the employee requests FMLA leave or the Department of Human Resources has knowledge that an employee's leave may be for an FMLA-qualifying reason, the Department of Human Resources must notify the employee in writing of the employee's eligibility to take FMLA leave within five (5) business days, absent extenuating circumstances. The Eligibility Notice should state whether the employee is eligible for FMLA leave. If the employee is not eligible for FMLA leave, the Notice must state at least one (1) reason why the employee is not eligible.

d. Employee Rights and Responsibilities Notice

The Department of Human Resources will provide the employee written notice detailing the specific expectations and obligations of the employee and explaining consequences of a failure to meet these obligations. If leave has already begun, the Department of Human Resources will mail the Notice to the employee's address of record.

e. Certification of Health Condition, Designation Notice, Second Opinion(s), Recertification, and Status Updates

The Department of Human Resources will provide the employee a Certification of Health Care Provider form that must be completed by the employee's physician and returned to the Department of Human Resources within 15 calendar days after the Eligibility Notice. If the employee fails to return a Certification of Health Care Provider form or does not provide sufficient or complete information to determine whether the leave is FMLA-qualifying, FMLA leave may be denied or delayed. It is the employee's responsibility to maintain up-to-date medical status while on FMLA leave.

The Department of Human Resources will give the employee written notice (Designation Notice) whether the leave will be designated and counted as FMLA leave within five (5) business days of when the Department of Human Resources has enough information to determine whether the leave is being taken for a FMLA-qualifying reason.

The employer may require a second opinion by a health care provider of its choice and at its expense if it has reason to doubt the validity of the medical certification. The designated health care provider shall not be employed by the employer or regularly utilized by the employer. If the two opinions differ, a third opinion may be requested from a provider selected jointly by the employee and the employer. This third opinion, to be paid for by the employer, is final and binding. The employer shall provide the employee copies of the medical opinions within 5 days of the employee's request.

The employer may request recertification if it later has reason to question the appropriateness of the leave or its duration. The frequency for which the employer may request recertification is governed by federal regulation. The employee must provide a complete and sufficient certification within 15 calendar days after the Department of Human Resources' request. When the Department of Human Resources requests certification, it will advise the employee of the anticipated consequences of the employee's failure to provide adequate certification.

The employer may also require periodic reports from the employee as to the employee's status and intent to return to work. If an employee gives unequivocal notice of intent not to return to work, the employer's obligations under FMLA to maintain health benefits (subject to the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) requirements) and to restore the employee cease. However, these obligations continue if an employee indicates he or she may be unable to return to work but expresses a continuing desire to do so.

3. Spouses Both Working for the Employer

In cases where both spouses are employees, they may take a combined total of 12 weeks of FMLA leave for the birth, bonding, adoption, or foster care placement of a child, and the care of a parent with a serious health condition. They may each take 12 weeks for their own injury/illness or that of their spouse or child. An employee can at most take 12 weeks for FMLA purposes in a year (26 weeks for a service member covered by the FMLA).

4. Intermittent or Reduced Leave

While most FMLA occurrences will necessitate leave to be taken in a single block of several weeks, the employee may request "intermittent" leave or a "reduced leave schedule" to care for the serious health condition of a family member or for the employee's own serious health condition where the need for leave is foreseeable and based on planned medical treatment. In the case of the need for a reduced schedule or intermittent use of leave, a certification of medical necessity is required from the health care provider and an appropriate work schedule should be planned in advance with the supervisor, when possible. An employee may take intermittent or reduced leave for the birth, adoption or foster care placement of a child only if the employee and department head/designee agree to such an arrangement.

If the employee requests intermittent leave or reduced leave schedule, the employer may temporarily transfer the employee to an available alternative position with equivalent pay and benefits, if the employee is qualified for the position and it better accommodates recurring periods of leave than the employee's regular job. When a transferred employee no longer needs to continue on leave and is able to return to the prior position, the employee will be subject to restoration. See Section H(2) below.

E. Leave Related to a Qualifying Exigency arising from Covered Active Duty or a Call to Covered Active Duty

If the need for FMLA leave is because of a qualifying exigency arising because a family member is on covered active duty or has been notified of an impending call to covered active duty is foreseeable, the employee shall give notice to the employer as is reasonable and practicable. The employee's notice should be

sufficient to make the employer aware that the employee needs FMLA-qualifying leave and the anticipated timing and duration of the leave.

The first time an employee requests leave because of a qualifying exigency arising out of the covered active duty or call to covered active duty status (or notification of an impending call or order to covered active duty) of a military member, the employer may require the employee to provide a copy of the military member's active duty orders or other documentation issued by the military which indicates that the military member is on covered active duty or call to covered active duty status and the dates of the military member's covered active duty service. A copy of new active duty orders or other documentation issued by the military shall be provided to the employer if the need for leave because of a qualifying exigency arises out of a different covered active duty or call to covered active duty status (or notification of an impending call or order to covered active duty) of the same or a different military member.

F. Substitution of Paid Leave

Paid leave shall run concurrently with FMLA leave, as available. Employees should check with the Department of Human Resources to determine what types of leave will run concurrently with their FMLA leave. The type of leave taken must be in compliance with the provisions of the applicable leave addressed in this policy. Otherwise, FMLA leave is unpaid. Time will be charged concurrently against paid leave and FMLA leave for a period of up to 12 weeks or up to 26 weeks for certain covered service member conditions.

Time missed during Workers' Compensation related injuries, which otherwise meet the requirements of the FMLA, will run concurrently with FMLA leave as applicable.

G. Benefits

1. Insurance Continuation Privileges

Employees on FMLA leave will continue to receive the employer portion of the medical and dental insurance benefits up to the maximum 12 workweeks allowed or 26 workweeks for certain covered service member conditions. These benefits will continue on the same basis as an active employee during the FMLA period. Employees are responsible for paying the necessary premium for the employee portion to cover themselves and eligible dependents by continuing to take paid leave or by making other payment arrangements.

2. Other Employee Benefits

In all cases where an employee is using some type of paid leave, all employee benefits continue as long as the employee remains on the payroll through the use of such paid leave time. If leave without pay is taken for one (1) continuous calendar month, employee benefits will be discontinued for the duration of the unpaid leave status as follows:

- a. Employer and employee contributions will not be made on behalf of the employee to the Virginia Retirement System (VRS). Upon returning to work, the employee may be eligible to purchase this service through VRS, if the leave is necessitated by birth or adoption as defined by VRS policies.
- b. Employees will not be eligible for any employer-paid life insurance during this period.
- c. Medical, dental, and optional life insurance premium payment arrangements may be made through the Department of Finance's Payroll Division and/or the appropriate vendor when applicable.

H. Returning from FMLA Leave

1. Return to Work

- a. An employee returning from FMLA leave due to his/her own serious health condition must submit a medical release on the required return to work form to the Department of Human Resources. The medical release must be from the employee's health care provider certifying the employee's fitness-for-duty based upon the serious health condition that caused the employee's need to take FMLA leave.
- b. If an employee would like and is medically certified to return to work in a restricted capacity or through alternative schedule arrangements, supervisors and the Department of Human Resources will discuss possible options with the employee.

2. Restoration to Position

When an eligible employee is released to return to work following FMLA leave, he/she will be restored to the position held at the time the leave began or, with approval of the Department of Human Resources, to an equivalent position with equivalent benefits, compensation, and other terms and conditions of employment. However, in the event that the employer needs to make reductions in staff, employees on FMLA leave are subject to the procedures in § P-30, Employee Reduction in Force Procedures. If an employee was subject to a reduction-in-force during FMLA leave and is subsequently reinstated, any rights would be the same as if the employee had not been on FMLA leave.

"Key" employees may be denied job restoration. A "key" employee is defined as a salaried FMLA-eligible employee who is among the highest paid 10% of all employees. A key employee will be notified as soon as practicable after receipt of a request for FMLA leave that he/she qualifies as a key employee. The employer will also fully inform the employee of the potential consequences with respect to reinstatement and maintenance of health benefits if the employer should determine that substantial and grievous economic injury to the employer's operations will result if the employee is reinstated from FMLA leave.

I. Unable to Return to Work

If an employee is medically unable to return to work at the end of the 12 weeks of FMLA leave, the employee must request additional time off from his/her department head/designee or resign. Otherwise, employment may be terminated. Additional time is subject to approval.

J. Record Keeping and Anti-Retaliation

The Department of Human Resources shall maintain records necessary to demonstrate compliance with FMLA. FMLA requires also that no employee be subject to any penalty for seeking to enforce rights under FMLA or for testifying for or otherwise helping other employees seek rights under FMLA.

XIII. Holiday Leave

A. Holidays Observed

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

1. New Year's Day – January 1
2. Martin Luther King, Jr. Day - Third Monday in January
3. Memorial Day – Last Monday in May

4. Juneteenth Day – June 19
5. Independence Day – July 4
6. Labor Day – First Monday in September
7. Veteran’s Day – November 11
8. Thanksgiving Day – Fourth Thursday in November
9. Friday after Thanksgiving
10. Christmas Eve – December 24
11. Christmas Day – December 25
12. Floating Holiday – 1 day per fiscal year

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

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

B. Qualifying for Holiday Leave

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

C. Working on Holidays

1. Due to coverage requirements, some employees may be required to work on a scheduled holiday. Any qualified non-exempt, employee who is required by the department head/designee to work on a scheduled holiday shall:
 - a. Be paid the hourly rate for the hours worked on the holiday plus the hours normally granted for the holiday; or
 - b. Substitute another day in the workweek / work cycle (for 28-day public safety employees) as holiday leave, including days in the workweek / work cycle (for 28-day public safety employees) before the established holiday.

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

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

D. Floating Holiday

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

b. Exempt employees will not receive additional pay for any unused floating holiday leave.

5. For the implementation year of floating holiday leave, employees who qualified for holiday leave as of July 1, 2019 will be granted one (1) day of floating holiday leave on January 1, 2020 for the remainder of the FY2019-2020 fiscal year.

E. Half-day Holidays

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

F. Religious Holidays

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

XIV. Income Replacement Program (IRP) – VRS Hybrid Plan members only

A. Purpose

Effective January 1, 2014, the Virginia Retirement System (VRS) created a new retirement plan called the Hybrid Plan. Part of the VRS Hybrid Plan includes the implementation of a Disability Program for Hybrid Retirement Program Participants. Albemarle County refers to this program as the Income Replacement Program (IRP). The IRP contains two components: Short-Term Disability (STD) and Long-Term Disability (LTD), which contain different eligibility requirements. IRP-STD occurs first. If an employee is not able to return to work after the IRP-STD period, he/she may move into the IRP-LTD portion of the benefit. These programs are outlined below.

This section is intended to fully implement the Disability Program for Hybrid Retirement Program Participants pursuant to Virginia Code § 51.1-1150, et seq.. Any variation between this policy and the Virginia Code will be determined in favor of the Virginia Code.

B. Definitions

Catastrophic Condition:

A catastrophic condition exists when an employee is unable to perform at least two (2) of the following six (6) activities of daily living:

1. Bathing
2. Transferring, such as getting in and out of bed
3. Dressing
4. Toileting (using the bathroom)
5. Continence
6. Eating (ability to feed oneself)

A condition may also be considered catastrophic if the employee has a severe cognitive impairment requiring substantial supervision to protect the employee from threats to health and safety.

Major Chronic Condition:

A major chronic condition is a life-threatening health condition that exists over a prolonged period of time and is not expected to improve. The employee must have been disabled with the condition within six (6) months of the date the claim is filed and be under the care of a licensed treating health care professional for the condition.

Disability:

A condition that prevents an employee from working or performing the full duties of the employee's job for a short or extended period. It may be non-work-related or work-related. A work-related disability is the result of an occupational illness or injury that occurs on the job and the cause is determined to be compensable under the Virginia Workers' Compensation Act.

Partial Disability:

An employee has a partial disability if the disability exists during the first 24 months following the occurrence or commencement of an illness or injury when an employee is earning less than 80% of his/her pre-disability earnings and, as a result of an injury or illness, is (i) able to perform one or more, but not all, of the essential job functions of his own job on an active employment or a part-time basis; or (ii) able to perform all of the essential job functions of his own job only on a part-time basis.

C. IRP Third-Party Administrator

The IRP program is administered through a Third-Party Administrator. The Third-Party Administrator handles all employee claims after detailed consultation with the Department of Human Resources designee for IRP. Any variation between this policy and the Third-Party Administrator's interpretation of the Virginia Code will be determined in favor of the Third-Party Administrator.

D. Qualifying for Income Replacement Program – Short-Term Disability (IRP-STD)

1. An employee must be an active full-time VRS Hybrid Plan member to be eligible.
2. **Waiting Period** – Employees must be employed for one (1) continuous year of service as an active Hybrid Plan member with a single employer before receiving nonwork-related disability benefits. The Albemarle County Public Schools and Partner Agencies, which have different VRS employer codes from the County, are considered separate employers for the purposes of this benefit. If, for example, a County employee transfers to the Albemarle County Public Schools, the one (1)-year waiting period will begin again. This waiting period is waived for a work-related disability. For work-related disabilities, the effective date of participation in the program for participating employees shall be their first day of employment or the effective date of their participation in the VRS Hybrid Plan, whichever is later.
3. **Elimination Period** – The elimination period is the period after any required waiting period and when an eligible employee is unable to work more than twenty (20) hours over seven (7) consecutive calendar days due to his/her total or partial disability. To begin an elimination period, an employee must have an approved claim of total or partial disability.

- a. The elimination period is waived for a catastrophic condition or as the result of a major chronic condition.
- b. The elimination period requirement may be met during non-contract/non-scheduled days (i.e. over holidays).
- 4. IRP-STD runs concurrently with any other relevant benefits, including FMLA leave and Workers' Compensation. Receipt of other relevant benefits may offset IRP-STD benefits.
- 5. Once the waiting period and elimination period requirements have been met, Hybrid Plan members are eligible for the IRP-STD benefit. However, the IRP-STD benefit is only available when an employee would be actively working (i.e., during contract/scheduled work days).
- 6. IRP-STD benefits shall be payable for periods of:
 - a. total disability,
 - b. partial disability,
 - c. eligible maternity leave, or
 - d. periodic absences due to a major chronic condition

E. IRP-STD Benefit Amount

1. IRP-STD – Days of Income Replacement

The following charts show the number of days at the percentage of income replacement provided by the IRP-STD.

a. Days of Income Replacement: Non-Work-Related Disability

Months of Continuous Service	Work days at 100%	Work days at 80%	Work days at 60%	Total Short-Term Paid Days
0 – 12	0	0	0	0
13 – 59	0	0	125	125
60 – 119	25	25	75	125
120 - 179	25	50	50	125
180 or more	25	75	25	125

b. Days of Income Replacement: Work-Related Disability

Months of Continuous Service	Work days at 100%	Work days at 80%	Work days at 60%	Total Short-Term Paid Days
Less than 60	0	0	125	125
60 – 119	85	25	15	125
120 or more	85	40	0	125

2. Successive Periods of Short-Term Disability

- a. *Within 45 consecutive calendar days.* If an employee receiving IRP-STD returns to work with a release and then cannot continue to work for the same or a similar condition within 45 consecutive calendar days, the employee will be on the same IRP-STD claim. The employee does not have to fulfill another seven (7)-calendar day elimination period. The employee's income replacement will resume at the level he/she was receiving during the previous disability period. The number of days remaining on the 125-workday period for IRP-STD will also resume.
- b. *On or After 45 consecutive calendar days.* If an employee returns to work with a release and then cannot continue to work for the same or a similar condition on or after the 45th consecutive calendar day, the subsequent period will be considered a new claim. The employee will need to satisfy a new elimination period. If approved, the employee will have up to 125 work days of IRP-STD.

3. Partial Disability

If an employee is able to work, earnings from the employee's job during a period of IRP-STD for an eligible partial disability will offset the IRP-STD benefits. The IRP-STD benefits will be applied to the non-worked time.

4. Catastrophic Condition

If an employee is eligible to receive/is receiving 60% of pre-disability creditable compensation and is determined to have a catastrophic condition, the IRP-STD benefit will increase to 80% until his/her condition improves and is no longer considered catastrophic.

5. IRP-STD and Workers' Compensation

If an employee is eligible for compensable Workers' Compensation and IRP-STD, the Workers' Compensation benefit will be paid first; if the employee is to receive any additional compensation under the IRP-STD days chart, the IRP-STD benefit will further supplement.

F. IRP-STD Supplementing Benefit Amount

1. Employees must use current balances of sick, annual, personal, and compensatory time leave to supplement IRP benefits up to 100% of the employee's pre-disability credible compensation.
2. The total leave hours (IRP plus supplement) shall not exceed the employee's normally scheduled work hours (full creditable compensation amount).
3. Participating employees enrolled in the Virginia Retirement System (VRS) Hybrid Plan may not withdraw days from the Sick Leave Bank when the employee receives benefits pursuant to this program or has received benefits pursuant to this program for the same condition.

G. IRP-STD Effect on Benefits

1. Employees on IRP-STD will continue to receive the same benefits provided to active employees. Medical and dental insurance will continue to be available while on IRP-STD.
2. Life insurance through VRS paid for by the County will continue to be paid by the County.

3. Employees will continue to contribute their mandatory 5% VRS contributions while on IRP-STD. Retirement contributions will not be withheld from the employee's paycheck if an employee is only receiving Workers' Compensation and no supplemental pay. An employee may be eligible to purchase VRS service credit for the period if he/she is receiving only Workers' Compensation and retirement contributions are not being withheld from his/her Workers' Compensation payment.

H. Qualifying for Income Replacement Program – Long-Term Disability (IRP-LTD)

1. If an employee is unable to return to work after the IRP-STD period, a final interactive discussion on the likelihood of return and any additional reasonable accommodations that may help the employee reach full duty will occur. The employee will continue into the IRP-LTD period. If the employee is unlikely to return to full duty following the IRP-STD period and no additional reasonable accommodations are available to bring the employee back to full duty, the employee's position will no longer be held and the employee will no longer be considered an active employee and will be separated from service. The IRP-LTD benefit will continue in accordance with the terms outlined below and Virginia Code.
2. The IRP-LTD benefit runs concurrently with any other relevant benefits, including FMLA leave and Workers' Compensation.
3. Employee eligibility for the IRP-LTD benefit is only available when an employee would be actively working (i.e., during contract/scheduled days).
4. IRP-LTD benefits shall be payable during periods of:
 - a. total disability, or
 - b. partial disability

I. IRP-LTD Benefit Amount

1. IRP-LTD Amount
 - a. After short-term disability income replacement, if the employee continues to be disabled he/she may be approved for IRP-LTD.
 - b. This is insurance coverage providing 60% of the employee's pre-disability creditable compensation.
 - c. Unless otherwise directed, to be eligible for IRP-LTD benefits, the employee must apply for Social Security Disability Insurance (SSDI) benefits or other relevant retirement benefits available to him/her.
 - d. If the employee reaches normal retirement age while on IRP-LTD, his/her benefit will stop. Normal retirement age is defined under the Hybrid Retirement Plan.
 - e. Employees continue to accrue VRS service credit while on long-term disability income replacement.
2. Successive Periods of Long-Term Disability
 - a. Within 125 consecutive work days. If an employee receives IRP-LTD, returns to work with a release, and then cannot continue to work for the same or a similar condition within 125 consecutive work days, the employee will be on the same IRP-LTD claim. Work days arranged pursuant to vocational, rehabilitation, or return-to-work programs shall not be counted in determining the duration of the employee's return to work period.

- b. On or After 125 consecutive work days. If an employee returns to work with a release and then cannot continue to work for the same or a similar condition on or after 125 consecutive work days, the subsequent period will be considered a new claim for IRP-STD if still actively employed by the County. The employee will need to satisfy a new elimination period and if approved, will have up to 125 work days of IRP-STD before becoming eligible for IRP-LTD again.

3. Partial Disability

If an employee is able to work, earnings from an employee's job during a period of IRP-LTD for an eligible partial disability will offset the amount of his/her IRP-LTD benefit.

4. Catastrophic Condition

If an employee is receiving 60% of pre-disability creditable compensation and is determined to have a catastrophic condition, the IRP-LTD benefit will increase to 80% until his/her condition improves and is no longer considered catastrophic.

J. IRP-LTD Effect on Benefits

1. Life insurance through VRS paid for by the County will continue to be paid by the County.
2. Employees on IRP-LTD will receive medical and dental insurance coverage as provided to retirees.
3. Employees on IRP-LTD are not eligible to contribute to their VRS defined benefit component (4%) or their VRS defined contribution component (1%).
4. Employees on IRP-LTD will be considered inactive for benefit purposes and will not continue to accrue leave. Employees will be responsible for any applicable employee contributions to their benefits during this period.

K. Returning to Work After Illness

1. An employee must submit a medical release prior to or upon the employee's return to work. The release must be from and signed by the employee's health care provider certifying that he/she is able to return to work with or without restrictions.
2. Other return to work guidelines apply to leave taken concurrently under FMLA or Workers' Compensation. Supervisors should consult with the Department of Human Resources when an employee is on concurrent leave under FMLA or Workers' Compensation prior to requesting a medical release or other information.
3. If a supervisor offers restricted duty or other alternative schedule arrangements which the employee is medically able to perform, the employee must return to work in that capacity.

L. End of IRP Benefit Coverage

1. Disability benefits shall cease to be paid to a participating employee upon the first of the following to occur:
 - a. The end of the period of disability coverage (e.g., return to work or no longer totally or partially disabled);
 - b. Voluntary separation or just cause termination from covered employment;

- c. The date of death of the participating employee;
 - d. The date that the participating employee attains normal retirement age;
 - e. The effective date of the participating full-time employee’s service retirement under the Hybrid Retirement Program;
 - f. Employee is determined to be no longer medically eligible;
 - g. Employee takes a refund of his/her member contributions and interest in the defined benefit component of his/her plan; or
 - h. Employee does not cooperate or comply with the requirements of the IRP-LTD.
2. Maximum Length of the IRP Benefit at Age 60 or Older

If an employee is age 60 or older, he/she will be eligible for an IRP benefit according to the following schedule:

Age 60 – 64	Five (5) years from the date disability benefit begins
Age 65 – 68	Until age 70
Age 69 or older	One (1) year from the date disability benefit begins

XV. Jury Duty Leave

A. Purpose

The County recognizes the duty of citizens to serve on a jury when summoned. These procedures outline leave usage.

B. Eligibility

The County provides paid jury duty leave for benefits-eligible employees and unpaid jury duty leave for benefits-ineligible employees consistent with Virginia Code § 18.2-465.1. Employees are expected to notify their supervisors as far in advance as possible prior to using jury duty leave. Supervisors may require verification that an employee has been called for jury duty.

C. Regulation

- 1. Employees may retain payment from the court for the daily rate of pay for each day of jury service in addition to jury duty leave provided by the County.
- 2. Employees are expected to report to work when jury is not in session, except:

If an employee has already been summoned for four (4) or more hours of jury duty, including travel time, on that day and starts his/her shift between 5 p.m. and 3 a.m., the employee is not required to report to work and will be granted jury duty leave.

XVI. Leave as a Reasonable Accommodation

Leave may be provided or used as a reasonable accommodation pursuant to the Americans with Disabilities Act, Title VII of the Civil Rights Act, or any other relevant statute. Leave granted as a reasonable accommodation will

be considered on a case-by-case basis, may run in concert with other reasonable accommodations, and/or may run concurrently with other available leave.

XVII. Maternity Leave

From the date of a child’s birth, the County provides unpaid maternity leave to regular employee for up to six (6) weeks for natural birth and up to eight (8) weeks for Caesarian-section, regardless if an employee qualifies for FMLA leave. If an employee qualifies for FMLA leave, IRP, or any other benefit program, these leaves will run concurrently. If an employee has paid leave available, it will run concurrently with maternity leave. All paid leave shall be exhausted before taking leave without pay, excluding any rights permitted under the FMLA. Medical documentation regarding the length of recovery time shall be provided to the Department of Human Resources by the employee within 15 calendar days after the start of maternity leave.

XVIII. Military Leave

A. Purpose

Military leave is available to employees and candidates who have accepted offers of employment from the County and perform service in the uniformed services while employed by the County. This section is intended to fully implement the United States Employment and Reemployment Rights Act (USERRA, 38 U.S. Code § 43, et. seq.) and Virginia Code § 44-93, et. seq.. Any variation between this policy and law will be determined in favor of the law.

B. Definitions

<u>Federal Fiscal Year:</u>	The “Federal Fiscal Year” is October 1 through September 30 of every calendar year.
<u>Service in the Uniformed Services:</u>	“Service in the uniformed services” means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes: active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard, and a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the employment for the purpose of performing funeral honors duty as authorized by 10 U.S. Code § 12503 or 32 U.S. Code § 115.
<u>Uniformed Services:</u>	“Uniformed services” means any of the Armed Forces, the Army National Guard, and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or national emergency. “Uniformed services” shall also refer to former members of the armed services or members of the organized reserve forces of any of the armed services of the United States or National Guard.
<u>Workday of Military Leave:</u>	“Workday of military leave” means the period of time normally worked on approximately equal workdays on five or more days of each calendar week. If an employee does not normally work approximately equal workdays five or more days each calendar week, then “workday of military leave” means 1/260 of the total

working hours such employee would be scheduled to work during an entire federal fiscal year, not including holidays, annual leave, or other absences.

C. Advance Notice

An employee who is leaving to perform military service shall provide advance written notice of the need for military leave to his/her immediate supervisor (including the best approximation of the expected dates of the leave), unless it would be unreasonable to provide notice at that time or the employee is precluded by military necessity from providing notice. When available, employees must provide a copy of their military orders to their supervisors. Supervisors shall forward any notice of military service or military orders to the Department of Human Resources.

D. Paid Military Leave

Upon presentation of a copy of final orders or other equivalent notice, any employee who is a member of the uniformed services shall be entitled to up to 15 workdays of paid military leave for service in the uniformed services per federal fiscal year. If service in the uniformed services spans more than one (1) federal fiscal year, employees are not entitled to an additional 15 workdays of paid military leave in the second year for the same tour. Employees on paid military leave shall be paid their full gross salaries for regularly scheduled work hours during this period. Employees are requested to attempt to make arrangements for service in the uniformed services at times other than during scheduled work hours when possible.

E. Unpaid Military Leave and Supplemental Pay

1. An employee shall be placed on unpaid military leave for up to five (5) years while serving in the uniformed services after paid military leave is exhausted.
2. If a regular employee's uniformed services gross base salary is less than the employee's County gross base salary, the employee may request supplemental pay. Supplemental pay provides the amount necessary to bring the employee's monthly gross base salary to the gross base salary earned as a County employee at the time of recall to service in the uniformed services.
3. An employee must provide the Leave Earning Statement (or equivalent) in order to receive supplemental pay. An employee is entitled to receive a maximum total of two (2) years of supplemental pay. Employees who are receiving supplemental pay are on unpaid military leave for purposes of benefits under this policy.

F. Reinstatement

1. An employee who is entitled to military leave by reason of service in the uniformed services shall be restored to the same position, if it has not been abolished; to a position with like seniority, status, and pay; or to a comparable position if no like position exists, unless to do so would be unreasonable. Restoration is contingent on whether the employee:
 - a. Has given advance notice of the need for military leave (unless notice is precluded by military necessity or is otherwise impossible or unreasonable);
 - b. Has not been absent from his/her job for more than five (5) years;
 - c. Provides documentation to the County from his/her respective military commands that indicates a release from this period of active duty and that the service was performed under honorable conditions; and

- d. Returns to work in the timeframes outlined below.
- 2. If the employee was absent from work for service in the federal military for:
 - a. Thirty (30) calendar days or less, he/she must report back to work by the beginning of the next regularly scheduled work period after a reasonable amount of time to arrive home, rest, and report to work;
 - b. Thirty-one (31) calendar days to 180 calendar days, the employee must submit a notice of intent to return to work in writing within 14 calendar days after the completion of service; or
 - c. One hundred eighty-one (181) calendar days or more, the employee must submit a notice of intent to return to work in writing within 90 days after the completion of service.
- 3. If the employee was absent from work for service in the Virginia military:
 - a. One hundred eighty (180) calendar days or less, the employee must submit a notice of intent to return to work in writing within 14 days of release from duty or from hospitalization, or
 - b. One hundred eighty-one (181) calendar days or more, the employee must submit a notice of intent to return to work in writing within 90 days of his release from duty.
- 4. Upon returning from duty, a returning service member will be reinstated in the job that he/she would have attained had he/she not been absent for military service, (the “escalator principle”), with the same seniority, status and pay, as well as other rights and benefits determined by seniority, if the position exists, or to a comparable vacant position for which he/she is qualified, unless to do so would be unreasonable. The County is not obligated to reinstate persons returning from military leave in certain situations specified by state and federal law.

G. Benefits

During paid military leave, the employee will continue to accrue seniority and any other benefits available to him/her as if regularly employed by the County.

During unpaid military leave, the employee will continue to accrue seniority. Employees on unpaid military leave for more than one calendar month will be placed on a leave of absence (LOA) and will be eligible for benefits pursuant to the LOA policy.

H. Discrimination Against Members of the Uniformed Services Prohibited

Members of the uniformed services will not be denied initial employment, reinstatement, retention in employment, promotion, or any benefit of employment on the basis of that membership.

XIX. Personal Leave

A. Purpose

It is vital that staff are present at work to provide the quality services expected for the public. Personal leave is provided to allow 10- and 11-month employees time off from work to attend to personal matters that are not due to illness or injury. Personal leave accrues separately from sick leave, and sick leave is not to be used for personal reasons.

B. Accrual for 10- and 11-Month Employees

Regular, benefits-eligible 10- and 11-month employees accrue up to two (2) personal days of leave per year. Employees on Leave of Absences will not accrue personal leave. Personal days will be distributed on the following schedule:

New Hires

1. Employees who are hired into benefits-eligible positions effective between August 1st and October 1st will receive two (2) personal days granted on October 1st based on the day of leave as of October 1st.
2. Employees who are hired into benefits-eligible positions effective between October 2nd and December 31st will receive two (2) personal days at the time of hire or eligibility based on the day of leave at the time of distribution.
3. Employees who are hired into benefits-eligible positions effective between January 1st and June 30th will receive one (1) personal day at the time of hire or eligibility based on the employee's day of leave at the time of distribution.

Returning Employees

Employees who are employed with the County as of June 30th of the current year and return in August at the start of the new year, will receive two (2) personal days granted on October 1st based on the employee's day of leave as of October 1st as a benefits-eligible employee.

C. Accumulation Maximum Cap

Personal leave balances are subject to a maximum cap. Employees may accrue up to five (5) personal leave days.

D. Changes in Status

1. Personal leave is not paid out upon termination or transfer to a benefits-ineligible position and has no cash value. Employees who had breaks in service and are rehired will be treated as new hires per above. Balances are cleared upon termination of regular employment.
2. Employees transferring without breaks in service to 12-month positions may request to convert accrued personal leave to annual leave up to a maximum of five (5) days of leave of the new 12-month position.
3. Those employees changing to benefits-ineligible status will have their personal leave balances deactivated and leave will not accrue. In the event that they become benefits-eligible again without breaks in service, the personal leave balances will be re-activated for use and accrual will resume.
4. Employees who have increases in FTE during the year will not receive additional personal leave at the time of the increase. If an employee had an accrued personal leave balance of five (5) days and has an increase in the day of leave, the leave balance will be capped at the rate of the day of leave on the October 1st distribution.
5. Employees who change from regular benefits-ineligible to regular benefits-eligible positions will be treated as new hires per above.
6. If an employee who has a balance at the maximum cap has a decrease in FTE during the year, the balance will be capped at the rate of the new day of leave on October 1st.

E. Use of Personal Leave

Employees may use up to two (2) personal leave days per year. Personal leave requires approval from the department head/designee prior to the leave being taken. An employee must submit his/her request for personal leave to the department head/designee at least five (5) days in advance of the day or days to be taken. If it is necessary for an employee to request personal leave without five (5) days' notice, the department head/designee may require an explanation from the employee regarding the reason for the leave and the short notice.

Guidelines for granting personal leave for eligible personnel are as follows:

1. The department head/designee may limit the number of employees who may be granted personal leave on a given day in order to assure the orderly and efficient operation of the department.
2. Personal leave may be denied to an employee who has not met expectations for attendance during the current and/or previous year.

F. Exceptions

Department heads/designees may grant exceptions to the dates above when there is a bona fide reason for doing so. While two (2) days of personal leave is the standard allowance, they may approve up to five (5) days of personal leave for exceptional circumstances when an employee's personal leave balance permits.

XX. Professional Learning Leave

For information on compensation and leave options for professional learning, please refer to § P-87 Professional Learning Leave and Time.

XXI. Sick Leave

A. Purpose

The County recognizes that its employees may need time away from work due to personal health-related matters, health-related matters in their immediate families, and/or health-related appointments. The County provides a program of paid leave to benefits-eligible employees to cover such circumstances. Employees should schedule appointments and other health-related matters outside of regular work hours whenever possible to minimize the impact on the efficient operation and delivery of services to the public.

Employees and supervisors are encouraged to be flexible when employees or their immediate family members are sick or injured. Depending on the situation, a telework, alternate schedule, or restricted duty accommodation may be considered instead of, or in combination with, sick leave use.

Sick leave is for legitimate health-related matters and may run concurrently with other leave programs available by County policy. Other types of accrued leave may be used in lieu of sick leave when sick leave has been exhausted, but sick leave may not be used in lieu of other types of leave unless specifically stated in a policy. An employee who is unable to return to work due to his/her own or an immediate family member's health-related matter may be separated from employment, subject to applicable law, if it causes an undue hardship on the department, regardless of the employee's sick leave balance. Accrued sick leave is not paid out upon termination. It has no cash value and may not be exchanged for pay; except for those grandfathered employees who elected for a retirement sick leave payout as outlined in that agreement. Employees who have breaks in service and are rehired will begin with zero balances.

Those employees changing to benefits-ineligible status will have their sick leave balances deactivated and leave will not accrue. In the event that they become benefits-eligible again without breaks in service, the sick leave balances will be re-activated for use and accrual will resume.

B. Accrual Rates

Employees accrue sick leave at the rate of one (1) “day” per month worked (10 days per year for 10-month positions, 11 days for 11-month positions, and 12 days for 12-month positions) based on the employee’s day of leave at the time of distribution.

Grandfathered Employees: County employees employed before November 1, 1989 accrue sick leave at a rate of 1.25 days per month (12.5 days per year for 10-month positions, 13.75 days per year for 11-month positions, and 15 days per year for 12-month positions).

An employee may be granted a negotiated amount of sick leave with the prior approval of the Director of Human Resources/designee and the County Executive/designee.

C. Accumulation Maximum Cap

1. There is no maximum cap on sick leave for employees not enrolled in the Virginia Retirement System (VRS) Hybrid Plan.
2. Employees enrolled in the VRS Hybrid Plan shall have a maximum cap of 720 hours.
3. Any employee who becomes eligible for the VRS Hybrid Plan may retain any accrued sick leave, even if it exceeds the maximum cap. However, the employee will not accrue sick leave until the balance is below the maximum cap and then will only accrue to the maximum cap.

D. Sick Leave Use

1. Sick leave may be used by employees for personal health-related matters, health-related matters in an employee’s immediate family, an employee’s health-related appointment, or health-related appointments in an employee’s immediate family.
2. Sick leave may run concurrently as paid leave with other types of leave as appropriate/applicable (e.g., FMLA leave, bereavement leave, income replacement, and Workers’ Compensation).

E. Medical Verification/Returning to Work

1. The County reserves the right to seek medical verification (i.e. a doctor’s note) and medical clearance for sick leave used by the employee for him/herself or immediate family member at any time.
 - a. When an employee has been absent for his/her own medical issue, a supervisor may require that an employee submit to the supervisor a medical release from the treating health care provider certifying that he/she is well enough to return to work. Requests to provide a medical release should be made prior to the employee’s return, when possible, so that the employee may obtain the medical release in a timely manner. If requested, an employee must provide the requested medical release to the supervisor within three (3) business days of the request or upon return to work, whichever comes later.
 - b. The department head/designee may create reasonable guidelines as to when a medical release is expected for employees who are out on sick leave (excluding when concurrent with FMLA leave

use). Such guidelines must be approved by the Director of Human Resources/designee prior to becoming effective.

- c. A medical release should specify the name of the employee, the date on which the employee was seen, if the absence from work was medically necessary, and the date on which the employee is/was able to return to work. It may further stipulate any period of partial or total disability or incapacity to perform a job. If a medical release identifies any disability or incapacity, the department head/designee must contact the Department of Human Resources.
 - d. Supervisors may neither solicit information about the employee's underlying medical condition nor contact the employee's health care provider. If additional information is needed, the supervisor should contact the Department of Human Resources.
 - e. Other return to work guidelines apply to FMLA, Workers' Compensation, Sick Leave Bank, and IRP-STD. Supervisors should consult with the Department of Human Resources when an employee is on these types of leave prior to requesting a medical release or other information.
2. If a supervisor offers restricted duty or other alternative schedule arrangements which the employee is medically able to perform, the employee must return to work in that capacity.

XXII. Sick Leave Bank

A. Purpose

The County authorizes the creation and maintenance of the Sick Leave Bank to be used when a member of the Sick Leave Bank becomes incapacitated by extended illness or injury (defined as more than 20 work days) as long as one-third (1/3) of the eligible members agree to participate in accordance with the terms contained herein.

B. Administration of the Sick Leave Bank

The Director of Human Resources/designee is designated as the administrator of the Sick Leave Bank. Members of the Sick Leave Bank will be assessed one (1) additional day of sick leave at such time as the Sick Leave Bank is depleted to 1600 hours, unless they choose not to participate further in the Sick Leave Bank.

C. Employee Membership in the Sick Leave Bank

Membership in the Sick Leave Bank shall be voluntary and open to all benefits-eligible employees.

An eligible employee may enroll within the first 30 calendar days of employment by donating one (1) day of sick leave. An employee who does not enroll when first eligible may do so during any subsequent Benefits Open Enrollment period by applying, providing satisfactory evidence of good health, and donating one (1) day of sick leave. One (1) additional day may be requested for continued membership in the Sick Leave Bank whenever an assessment is required. The donated days of leave will be deducted from the donor's accrued sick leave balance. Members who have no sick leave to contribute at the time of assessment will be assessed one (1) day at the next available accrual.

D. Requesting Use of Sick Leave Bank

- 1. Requests for use of leave time from the Sick Leave Bank must be made in writing by the member or his/her representative prior to use of any Sick Leave Bank leave.. Requests cannot be applied retroactively except in the case of absences that were presumed to be covered by Workers' Compensation but were subsequently denied.

2. Requests must be supported by appropriate medical documentation. The Department of Human Resources may require additional medical documentation to support the request. Failure to meet applicable requirements set forth in this policy will result in the denial of the members Sick Leave Bank usage request.
3. Members should also be aware of leave under the Family and Medical Leave Act (FMLA) and how it relates to the use of sick leave and Sick Leave Bank leave. Members should also be aware of their rights and responsibilities under the Americans with Disability Act (ADA).

E. Rules for Use

1. General Information

- a. For initial use of the Sick Leave Bank, a member of the Sick Leave Bank must miss scheduled work equivalent to 20 days of leave within 30 workdays for the same illness, injury, impairment, or physical or mental condition, and the member must also have exhausted all of his/her own sick leave. Members are responsible for using other available paid or unpaid leave for time not covered by the Sick Leave Bank.
- b. Eligible members may take a maximum of 45 days of leave from the Sick Leave Bank in any year (defined as a 365-day period beginning with the first day of Sick Leave Bank usage). For example, if an eligible member begins Sick Leave Bank usage on March 1st, he/she may take up to 45 days of leave from the Sick Leave Bank in the following 365-day period.
- c. Days drawn from the Sick Leave Bank for any one (1) period of eligibility must be consecutive, except recurrence or relapse of the original illness will be covered fully on a continuing basis up to the annual maximum of 45 days. There may be more than one period of eligibility (or qualifying illness) during the 365-day period, but only a maximum of 45 days total of Sick Leave Bank leave may be used in the 365-day period. Once a member has used all 45 days of Sick Leave Bank leave, he/she must return to work and must meet the requirements of Section XXI, E(1) before becoming eligible to utilize Sick Leave Bank benefits again.
- d. Sick Leave Bank time will run concurrently with FMLA leave or as part of an ADA reasonable accommodation where applicable and appropriate.
- e. Members using Sick Leave Bank days will not have to replace those days except as a regular contributing member of the Sick Leave Bank.
- f. The Sick Leave Bank request form must be signed by the member's health care provider. The Department of Human Resources reserves the right to require additional medical documentation supporting the request or documentation from a different health care provider.
- g. Participating members enrolled in the Virginia Retirement System (VRS) Hybrid Plan may not withdraw days from the Sick Leave Bank when the member receives benefits pursuant to the Income Replacement Program or has received benefits pursuant to the Income Replacement Program for a same condition.

2. Termination

- a. Upon termination of employment or membership in the Sick Leave Bank, a member may not withdraw the days he/she contributed to the Sick Leave Bank.

- b. The Sick Leave Bank may be dissolved if less than one-third (1/3) of eligible employees agree to participate.

XXIII. Total Leave Exhaustion Guidelines

When an employee has exhausted all applicable paid leave types and wants additional time off from work, he/she should request short or long-term unpaid leave. If unpaid leave is not approved, he/she is obligated to report for work fit for duty. If an employee is unable to work due to injury or disability, he/she should discuss options with the Department of Human Resources prior to leave exhaustion. Employees who do not have approved paid or unpaid leave and do not come to work fit for duty may be disciplined up to and including termination.

XXIV. Unpaid Leave – Leave of Absence (Long-Term)

A. Purpose

An employee may need to request an unpaid long-term leave of absence from his/her regular employment. The County authorizes the County Executive/designee to consider all requests for unpaid long-term leaves of absence and will establish a procedure by which these requests may be processed in a fair and consistent manner. The County Executive/designee will, however, make decisions on granting or denying leave of absence requests based on the best interests of the County. The following procedure is intended to be utilized for leave requests not covered by other County policies.

B. Eligibility

To qualify, an employee must have completed at least six (6) months of continuous employment in a benefits-eligible position prior to commencement of a leave of absence.

C. Period of Leave of Absence

An unpaid long-term leave of absence is for a period of time from 28 consecutive calendar days to up to 12 consecutive months.

D. Requesting Unpaid Leave

1. Leave of absence requests must be submitted in writing to the employee's supervisor as soon as possible in advance of taking the leave; however, this requirement may be waived by the department head/designee based on the circumstances and/or immediate need of the request. The request must state the reason for the leave and the starting and ending dates of the leave. Generally, requests for leave to pursue other employment will not be approved.
2. The employee, supervisor, department head/designee, and County Executive/designee will work together to determine if the request creates a hardship for the County or impedes the County's ability to provide the necessary level of service to the public and any other relevant factors.
3. The County Executive/designee will make a decision to approve or deny the request.

E. Effect on Benefits

1. Employees on unpaid long-term leaves of absence will not accrue annual, personal, or sick leave and will not receive holiday leave or employer contributions to life insurance, VRS, medical insurance, or dental insurance.

2. If an employee has opted for any optional voluntary benefits, the employee must make additional arrangements with the Department of Finance's Payroll Division and/or the vendor providing the benefit/product (as applicable) to cover these obligations since he/she will not be paid salary or wages.
3. An employee requesting an unpaid long-term leave of absence should meet with the Department of Human Resources to discuss the effect of the leave on his/her benefit options.

F. Completion of Unpaid Leave of Absence

1. After completion of the unpaid leave of absence, an employee will be assigned to a similar position in the department from which he/she took leave. However, if the County needs to make reductions in staff, employees on a leave of absence are subject to the procedures outlined in § P-30, Employee Reduction in Force Procedures.

XXV. Unpaid Leave – Leave Without Pay (Short-Term)

A. Purpose

An employee's presence at work is essential. The County's Leave Program has been created to recognize that life circumstances do not always permit an employee to work. There may be unforeseeable circumstances when employees are unable to work and do not have paid leave available to them. The County authorizes the use of short-term leave without pay and to establish a procedure by which these requests may be processed in a fair and consistent manner. To use leave without pay, all other applicable leave options must be exhausted.

B. Period of Short-Term Leave Without Pay (LWOP)

LWOP may be requested and approved through the Time and Attendance System or other applicable process as follows. Requests should be reviewed to determine if they will create a hardship for the County, impede the County's ability to provide the necessary level of service to the public, and any other relevant factors.

1. A regular employee's supervisor may approve up to 10 days per rolling year. Supervisors must also notify the department head/designee of employee LWOP use. Departments may create notification procedures for when and how supervisors keep department heads/designee informed of such use. Department heads/designees are responsible for ensuring reasonable audit procedures for LWOP usage to occur.
2. Eleven (11+) or more days of LWOP per rolling year requires department head/designee approval in writing, as well as department heads/designees notification to the County Executive/designee. The County Executive/designee may create notification procedures. LWOP may not be approved for more than 27 consecutive calendar days.
3. The Department of Human Resources may approve LWOP regardless of the length when it runs concurrently with FMLA leave, Workers' Compensation, IRP, Maternity Leave, Military Leave, or during the Sick Leave Bank initial waiting period, when applicable.

C. Effect on Benefits

1. As long as the employee has income by working or using paid leave in a calendar month, employees on LWOP will continue to accrue and may continue to use holiday leave, annual leave, and sick leave, and may continue to participate in life insurance, medical insurance, dental insurance, and VRS contributions.
2. If an employee on LWOP does not work during a calendar month and does not use any paid leave during the month, the employee will not accrue holiday leave, annual leave, or sick leave and the County will not contribute to the employee's life insurance, medical insurance, dental insurance, or VRS.

3. Employees will be responsible for any applicable employee contributions to their benefits during this period of leave.
4. Employees should meet with the Department of Human Resources to discuss the effect of LWOP on benefits if taking leave for a block of longer than two (2) weeks.

XXVI. Workers' Compensation

For details on Albemarle County's Workers' Compensation Policy, see § P-90. Any additional types of applicable leave will run concurrently with Workers' Compensation when an employee is out for a Workers' Compensation-related injury/illness.

Item No. 8.3. Resolution to Request Split Precinct Waiver from State Board of Elections.

The Executive Summary forwarded to the Board states that Virginia Code § 24.2-307 requires the elimination of split voting precincts for elections held in November 2021 and subsequent elections. Virginia Code § 24.2-307 provides that if a split precinct cannot be eliminated, the local governing body may request a waiver to administer a split precinct in the November 2021 general election.

Albemarle County has 4 split voting precincts — that is, voting precincts where one part of the precinct is in one election district, and the other part of the precinct is in another election district.

The Pantops voting precinct is split between the 57th House of Delegates district and the 58th House of Delegates district. The great majority of voters in the Pantops precinct (1,943) are in the 57th House of Delegates district, and 379 are in the 58th House of Delegates district. Three of the County's split precincts are split between state Senate districts 17 and 25 - the Woodbrook precinct, the Jack Jouett precinct, and the Stony Point precinct. These three precincts' splits will not come into play for the November 2021 election.

This creates confusion on election days because election officers working at the split precincts must be sure to hand voters the correct ballot. In recognition of this potential confusion, the General Assembly passed the law prohibiting split precincts, and requiring these precinct splits to be cured. However, this new law provides that localities, at the request of their local governing bodies, may apply to the State Board of Elections for a waiver. Because of the delay in the decennial redistricting process, as

a result of the delay in the transmittal of the 2020 Census data, the Department of Elections created a simple waiver application for local governing bodies to request to continue administering split precincts for the upcoming November 2021 general election. Because state Senate seats will not be on Virginia ballots in the upcoming November election, only one split precinct in Albemarle County will have 2 different ballot styles - the Pantops precinct will have a ballot style for the 57th House of Delegates district and a ballot style for the 58th House of Delegates district. Although distributing the correct ballots to voters in this precinct will present the same challenges as it has in the past, past experience indicates that this will not be an insurmountable challenge, whereas trying to eliminate the precinct split in the Pantops precinct prior to decennial redistricting would be difficult and impractical, when new precinct and district lines will have to be redrawn sometime in the next several months in order to implement decennial redistricting. Accordingly, the Electoral Board and voter Registrar ask that the Board of Supervisors request a split precinct waiver from the State Board of Elections.

The adoption of the proposed resolution would have no budget impact.

Staff recommends that, after the public hearing, the Board adopt the attached Resolution (Attachment A).

By the above-recorded vote, the Board adopted the Resolution (Attachment A) to request permission to administer split precincts:

RESOLUTION TO REQUEST PERMISSION TO ADMINISTER SPLIT PRECINCTS

WHEREAS, Virginia Code § 24.2-307 mandates that “[e]ach precinct shall be wholly contained within a single congressional district, Senate district, House of Delegates district, and election district used for the election of one or more members of the governing body or school board for the county or city”; and

WHEREAS, Albemarle County (the “County”) has four split precincts: Woodbrook, Jack Jouett, Stony Point, and Pantops (together, the “Split Precincts”); and

WHEREAS, only one split precinct, Pantops, will have a split ballot for the November 2021 election; and

WHEREAS, the Virginia Code requires that the Board of Supervisors (the “Board”) establish precinct boundaries to be consistent with any congressional district, Senate district, House of Delegates district, and local election district by June 15, 2021; and

WHEREAS, due to the COVID-19 pandemic, the 2020 Census (the “Census”) data has not been received by the County; and

WHEREAS, without updated Census data, the County was unable to establish precinct boundaries that eliminate the Split Precincts by June 15, 2021; and

WHEREAS, Virginia Code § 24.2-307 requires the Board apply for a waiver from the State Board of Elections to continue to administer the Split Precincts for any election held in 2021.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors authorizes the Director of Elections and General Registrar to submit a request for a waiver from the State Board of Elections pursuant to Virginia Code § 24.2-307 to administer Woodbrook, Jack Jouett, Stony Point, and Pantops as split precincts for elections held in 2021.

Item No. 8.4. Approval of Underground Right-of-Way License Agreement.

The Executive Summary forwarded to the Board states that in 2006, Qwest Communications Corporation was granted a license by Albemarle County and the City of Charlottesville to install underground fiber optic facilities across a portion of Darden Towe Park. The facilities are exclusively for governmental use as a part of a Richmond to Charlottesville link. Darden Towe Park is jointly owned by Albemarle County and the City of Charlottesville. The installation and initial operation were authorized by a five-year Underground Right-of-Way License Agreement that ran from 2006 to 2010. In both 2011 and 2016, the County and the City approved a new five-year license agreement that ran through the end of 2015 and 2020, respectively. CenturyLink Communications LLC, the legal successor to Qwest, is now requesting a renewal of that license agreement. This new Agreement must be authorized by both the County and City.

CenturyLink Communications LLC is requesting the County and City to approve the renewal of an Underground Right-of-Way License Agreement permitting continued operation of fiber optic facilities across a portion of Darden Towe Park (Attachment A). The location of the fiber optic facilities does not interfere with park activities. CenturyLink agrees that if a conflict arises in the future, they will relocate the facilities at no expense to the County or City. Because of legal limitations placed on cities, the term of the 2006, 2011, and 2016 Agreements, as well as the proposed new Agreement, is five years. The County and City are charging a fair market value annual fee for the license. The Director of Parks & Recreation has reviewed the request and does not object to the proposal. The County Attorney has reviewed the proposed Agreement and finds that it addresses the County’s legal issues and concerns.

The proposed agreement would continue to generate \$840 of revenue for the County in each year of the five-year agreement, representing half of each year's \$1,680 rent payment.

Staff recommends that the Board adopt the attached Resolution (Attachment B) approving the Underground Right-of-Way License Agreement with Century Link Communications LLC for facilities at Darden Towe Park and authorizing the County Executive to execute the Agreement after approval as to form and content by the County Attorney.

By the above-recorded vote, the Board adopted the Resolution (Attachment B) approving the Underground Right-of-Way License Agreement with Century Link Communications LLC for facilities at Darden Towe Park and authorizing the County Executive to execute the Agreement after approval as to form and content by the County Attorney:

RESOLUTION TO APPROVE AN UNDERGROUND RIGHT-OF-WAY LICENSE AGREEMENT WITH CENTURYLINK COMMUNICATIONS LLC FOR UNDERGROUND FIBER OPTIC FACILITIES AT DARDEN TOWE PARK

WHEREAS, the County and the City of Charlottesville entered into 5-year license agreements with Qwest Communications Corporation ("Qwest") or CenturyLink Communications LLC (Qwest's legal successor) in 2006, 2011, and 2016 for the installation and maintenance of underground fiber optic facilities across a portion of Darden Towe Park, which is jointly owned by the County and the City; and

WHEREAS, the Board finds it is in the best interest of the County to enter into a new 5-year license agreement with CenturyLink Communications LLC for the continued operation of the underground fiber optic facilities.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of Albemarle County, Virginia hereby approves the Underground Right-of-Way License Agreement with CenturyLink Communications LLC for underground fiber optic facilities at Darden Towe Park and authorizes the County Executive to execute the Agreement after approval as to form and content by the County Attorney.

* * * * *

UNDERGROUND RIGHT-OF-WAY LICENSE

Permission is hereby granted by the **CITY OF CHARLOTTESVILLE** and the **COUNTY OF ALBEMARLE**, political subdivisions of the Commonwealth of Virginia and the joint owners of the property that is subject to this License (hereinafter referred to as "Licensors") to **CENTURYLINK COMMUNICATIONS, LLC**, a limited liability company authorized to transact business in Virginia (hereinafter referred to as "Licensee") to make excavation into the real property owned by Licensors and as described herein, under the terms and conditions set forth in this License.

1. Term:

This License shall be valid for a period of five (5) years beginning January 1, 2021 and ending December 31, 2025, unless this License is terminated as provided herein.

2. Rights Not Exclusive:

Nothing contained in this License shall ever be held or construed to confer upon Licensee, its successors and / or assigns, exclusive rights or privileges of any nature whatsoever.

3. Conditions of Use:

a. Prior to beginning any work on the property subject to this License, Licensee shall submit detailed engineering drawings to the County of Albemarle for approval, and obtain from the County any permits or approvals that may be required by the County or any other governing authority for the installation of a total of 4,500 linear feet of fiber optic cable at the location more specifically described in section 4 herein. Licensee is further required, before beginning any excavation on the property described herein, to contact all applicable utility companies for location of buried cable, water or sewer services or mains, electric lines, gas lines, and the like. All construction allowed under this License shall be accomplished under the supervision and direction of the County Engineer, or such other person as the County of Albemarle may designate. Licensee shall not unnecessarily obstruct or impair traffic upon any street, road or other public way within Albemarle County and shall comply with all of the County's rules and regulations designed to prevent damage to trees and shrubbery that may be caused by its installation hereunder.

b. Upon making an opening in any portion of the property subject to this License for the purpose of laying, constructing, repairing and/or maintaining Licensee's System, Licensee shall, without unnecessary delay, replace and restore the same to its former condition as nearly as possible, and in full compliance with the provisions of the County of Albemarle's policies, rules, regulations and / or ordinances. Licensee shall re-sod disturbed grassed areas and replace all excavated areas to their original or better condition in order to minimize the disruption of public property. Licensee shall, at its sole cost, repair paving cuts in a good workmanlike manner to specifications outlined by the County.

c. Licensee shall provide safe passageway for pedestrians and vehicles through, in and around the work site areas. Work shall be performed at night, if requested by the County, so as not to impede the regular use of Darden Towe Park. Licensee shall use directional boring in all areas where possible unless otherwise required or approved by the County of Albemarle. Licensee shall meet all local and State requirements for traffic control and notify the County at least 24 hours prior to the commencement of work or the accessing of conduit installed pursuant to this License, except in cases of emergency.

d. Licensee shall not cut or install any ditches or trenches within the root zone of any tree but rather shall bore under the same unless written permission to do otherwise is provided in advance by the County Engineer or his designee.

e. The work authorized by this License shall be the installation, repair, replacement and maintenance of two (2) two-inch (2") conduits containing fiber optic cable, as well as related other facilities and equipment (collectively, the "Facilities"). All such Facilities within Darden Towe Park shall be placed underground.

f. Licensee shall file with the County Engineer true and correct maps or plats of all existing and proposed installations and the types of equipment and facilities installed or constructed, properly identified and described as to the type of equipment and facility by appropriate symbols and marks and which shall include annotations of all public property, public ways, street, road and conduits where the work is to be undertaken. Maps shall be drawn in a scale and in such detail so as to allow proper review and interpretation by the County Engineer, and the same will be filed with the County not less than ten (10) working days before any excavation or installation of said cable or equipment or facilities commences.

g. If, at any time during the term of this Permit, Licensors shall determine, in their sole discretion, that the Facilities of Licensee installed pursuant to this License are in conflict with an intended use of Darden Towe Park by the City or County (and not, for example, to accommodate another private party or utility) and must be relocated, Licensee, upon reasonable notice from Licensors, shall remove, relay and relocate its Facilities at its own expense and within reasonable time schedules established by Licensors, to another location mutually agreeable to Licensors and Licensee. Should Licensee refuse or fail to remove its equipment or plant as provided for herein within 45 days after written notification, Licensors shall have the right to do such work or cause it to be done and the full cost thereof shall be chargeable to the Licensee, or in the alternative, to consider such failure by the Licensee to remove its equipment or plant as abandonment of all ownership rights in said property. Upon relocation, Licensee shall prepare at its own expense and provide to Licensors a revised survey plat that shows the new location of Licensee's wires, cables and equipment.

h. Licensee shall keep Licensors fully informed as to all matters in connection with or affecting the construction, reconstruction, removal, maintenance, operation and repair of Licensee's System installed hereunder. Licensee shall report to Licensors such other

information relating to the Licensee as Licensors may reasonably request in writing. Licensee shall respond to such inquiries on a timely basis.

i. Licensee shall install and maintain its wires, cables, fixtures and other equipment in accordance with the requirements of all applicable County codes, ordinances and regulations, and in such a manner that they will not interfere with any existing installations of the County or of a public utility serving the residents of the County of Albemarle or the City of Charlottesville.

4. Permit Specifications; Payment:

a. The right-of-way occupancy permitted under this License shall be approximately 4,500 linear feet of Licensee's System, to be installed in Darden Towe Park in the location shown on the attached survey plat prepared by Thomas B. Lincoln Land Surveyor, Inc., and dated January 6, 2006, revised February 10, 2006, a copy of which is attached to this License as Exhibit A.

b. The granting of this License is conditioned upon the payment by Licensee to Licensors of the annual sum of One Thousand, Six Hundred Eighty and 00/100 Dollars (\$1,680.00), which represents the fee for the placement and occupation of the facilities for approximately 4,500 linear feet of property in Albemarle County that is subject to this License. Annual payments shall be due and payable on or before January 10th of each year commencing for the year 2021 and shall be due and payable at a like date each year during the term of the Permit. In the event that Licensee's payments are not timely made, a ten percent (10%) surcharge shall be due and payable to Licensors. All payments by Licensee pursuant to this License shall be made to the County of Albemarle, as agent of the Licensors.

5. Safety Requirements:

a. Licensee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage or injury to the public or to constitute a nuisance. Licensee shall install such equipment and employ such personnel to maintain its facilities so as to assure efficient service, and shall have the equipment and personnel necessary to make repairs promptly.

b. Licensee shall install and maintain its System in accordance with the requirements of applicable building codes and regulations of the County of Albemarle and the statutes and regulations of appropriate Federal and State agencies, including but not limited to the Federal Communications Commission and the U.S. Army Corps of Engineers, which may now be in effect or enacted, and in such a manner that will not interfere with any installations of the County of Albemarle or the City of Charlottesville or of any public utility serving residents of the County of Albemarle or the City of Charlottesville.

c. Licensee's System, wherever situated, or located, shall at all times be kept and maintained in a safe operating condition and in good order and repair.

6. Liability and Indemnification:

a. By acceptance of this License, Licensee agrees that it shall indemnify, protect, defend and hold forever harmless the Licensors, their elected officials, officers, agents, representatives and employees, and their successors, legal representatives and assigns, from any and all claims of every kind and nature whatsoever, and from liabilities, losses, costs, judgments, penalties, damages, and expenses, including reasonable attorney's fees and expenses of litigation incurred in the defense of any such claim arising out of or relating to the installation, operation or maintenance by the Licensee of the Licensee's System or the Licensee's failure to perform any of the obligations of this License, including but not limited to claims for injury or death to any person or persons, or damages to any property, as may be incurred by or asserted against Licensors, or either of them, their elected officials, officers, agents, representatives and/or employees, directly or indirectly, by reason of the installation, operation or maintenance by the Licensee of the Licensee's System within the area subject to this License. Licensee shall pay, and by acceptance of this Permit, the Licensee specifically agrees that it will pay all damages and penalties which Licensors, or either of them, may legally be required to pay as a result of installation, operation or maintenance by the Licensee of the Licensee's System or the Licensee's failure to perform any of the obligations of this Permit. These damages or penalties shall include all damages arising from the installation, operation or maintenance of the System authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this Permit, and Licensors shall not be responsible in any manner for any damage to the System and which may be caused by Licensee or other persons regardless of the cause of damage. Notwithstanding the foregoing, Licensee shall not be required to indemnify, protect, defend or hold harmless Licensor(s) for claims arising out of or relating, in whole or in part, to the negligence or willful conduct of either or both Licensor(s).

b. Licensee shall maintain, and by its acceptance of this License, specifically agrees that it will provide throughout the term of the Permit, workers compensation insurance in such amounts of coverage as required by the Commonwealth of Virginia and liability insurance coverage with regard to all damages mentioned in subsection (a) above in the following minimum amounts, whichever is greater:

1. General Liability Insurance- \$1,000,000 per occurrence, \$2,000,000 aggregate limits. Commercial General Liability is to include bodily injury and property damage, personal injury, advertising injury, contractual liability, and products and completed operations coverage. The County of Albemarle and City of Charlottesville are to be included as additional insureds with respect to General Liability coverage.

2. Comprehensive Automobile Liability Insurance including owned, non-owned and hired vehicles. Minimum coverage of \$1,000,000 combined single limit for

each accident. The County of Albemarle and City of Charlottesville are to be included as additional insureds with respect to Auto Liability coverage.

c. Licensee agrees that all insurance contracts providing any of the above-required coverage will be issued by one or more insurance carriers duly authorized to do business in the Commonwealth of Virginia and will contain the following required provisions:

1. Both of the Licensors, their elected officials, officers, agents, employees and representatives shall be included as additional insureds (as the interests of each may appear) as to all applicable coverage:

2. The amount and conditions of said liability and comprehensive insurance may be increased upon sixty (60) days written notice by Licensors should the protection afforded by this insurance be deemed by Licensors to be insufficient for the risk created by this License. At no time, however, will any such increase in the amount of required liability and comprehensive insurance exceed that which is customarily required of other franchises or contractors of services for similar situations of risk.

3. Prior to the commencement of any work pursuant to this License and at least annually thereafter Licensee shall make available to Licensor evidence of such insurance coverage certifying that such coverage is in full force and effect. Evidence of Licensee's insurance is available at www.centurylink.com/moi.

7. Licensors' Rights in License:

a. Licensee shall construct, maintain and operate said System in the locations described in Exhibit A and will at all times comply with all reasonable requirements, regulations, laws and ordinances now in force, and which may hereafter be adopted by the County of Albemarle and be applicable to the construction, repair or maintenance of said system or use of the property subject to this License. Failure of the Licensee to comply with any of the terms of this License or failure to pay the License fees prescribed by this Agreement shall be cause for Licensors to revoke this License. Without limiting the generality of the foregoing, Licensors also reserve the right to terminate and cancel this License and all rights and privileges of the Licensee hereunder in the event that the Licensee: (1) violates any rule, order or determination of Albemarle County made pursuant to this License, except where such violation is without fault or through excusable neglect; (2) becomes insolvent, unable or unwilling to pay its legal debts, or is adjudged a bankrupt; (3) attempts to evade any of the provisions of this License; (4) practices any fraud or deceit upon the Licensors, or either of them or; (5) fails to begin construction of its System within one hundred eighty (180) days from the date this License is granted and to continue such construction without unreasonable delay or interruption until completed.

b. Licensors' right to revoke this License pursuant to section 7.a. may be exercised only after written notice of default and a thirty (30) day period for Licensee to cure such default except for any act of default involving the payment of money or failing to provide any insurance coverage required hereunder in which event said thirty (30) day period shall

be reduced to three (3) business days. The right is hereby reserved to the County of Albemarle to adopt, in addition to the provisions contained herein and in existing applicable ordinances, such additional regulations of general applications to all similarly situated Licensees as it shall find necessary in the exercise of its police power provided that such regulations, by ordinance or otherwise, shall be reasonable and not in conflict with the rights herein granted.

8. Assignment:

The License granted pursuant to this Agreement shall not be assigned by the Licensee without the prior written consent of the Licensors, which consent may be granted or withheld in Licensors' sole discretion; provided, however, that Licensee may assign this License to a governmental entity without consent of the Licensors, and provided further that the sale or transfer of a controlling interest in Licensee shall not be considered an assignment within the meaning of this paragraph.

9. Notice:

For the purpose of giving notice as provided for in this Permit, the following addresses are provided:

For the Licensee:

CenturyLink Communications, LLC
1025 Eldorado Blvd
Broomfield, CO 80021
Attention: NIS ROW

For the Licensors:

Chip Boyles
City Manager
P. O. Box 911
Charlottesville, VA 22902

With a copy to:

Lisa A. Robertson
Acting City Attorney
P. O. Box 911
Charlottesville, VA 22902

And

Jeffrey B. Richardson
County Executive

401 McIntire Road
Charlottesville, VA 22902

With a copy to:
Greg Kamptner
County Attorney
401 McIntire Road
Charlottesville, VA 22902

Unless and until a different address is provided in writing by Licensee to Licensors, the placing of notices in the United States Mail addressed to the Licensee as set forth above by registered or certified mail, return receipt requested, shall constitute compliance with the provisions of this Section.

10. Miscellaneous:

If any section, subsection, sentence, clause, phrase or portion of this Permit is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, independent, and severable provision and such holding shall not affect the validity of the remaining portions hereof. This Permit shall be interpreted and construed in accordance with the laws of the Commonwealth of Virginia. All claims, disputes and other matters in question between the Licensee and Licensors, or either of them, arising out of or relating to this Permit, or the breach thereof, shall be decided in a state or federal court in the Commonwealth of Virginia that has subject matter jurisdiction over the claim or dispute. The Licensee, by accepting this Permit, specifically consents to venue in either state or federal court in Virginia and waives any right to contest venue in Virginia.

WHEREFORE, this Permit has been authorized by the City Council of the City of Charlottesville, Virginia in an open meeting on June 7, 2021 and by the Board of Supervisors of Albemarle County, Virginia in an open meeting on June 2, 2021, and each governing body has authorized the execution of this License by the City Manager and County Executive, respectively, as attested by the Clerk of each governing body, and the Licensee has accepted the terms and conditions of this License as evidenced by its corporate presents which have been executed by and through its authorized officers and the seal of the corporation affixed.

This 15th day of JUNE, 2021.

Licensee:

CenturyLink Communications, LLC

Danett Kennedy
Danett Kennedy (Apr 25, 2021 17:33 MD)

By: Danett Kennedy
Title: Senior Manager

Licensors:

City of Charlottesville

Chip Boyles
By: Chip Boyles
Title: City Manager

Attest: Kyna Thomas
By: Kyna Thomas
Title: Clerk of Council

Approved as to form:

Lisa A. Robertson
By: Lisa A. Robertson
Title: City Attorney

County of Albemarle

Jeffrey B. Richardson
By: Jeffrey B. Richardson
Title: County Executive

Attest: Claudette Borgersen
By: Claudette Borgersen
Title: Clerk to the Board of Supervisors

Approved as to form:

Greg Kampthner
By: Greg Kampthner
Title: County Attorney

Item No. 8.5. SE202000013 Homestay Special Exception Patterson Mill.

The Executive Summary forwarded to the Board states that the applicant requests a special exception pursuant to County Code § 18-5.1.48(i) for a homestay at 198 Patterson Mill Lane to modify County Code 18-5.1.48(j)(1)(v) to reduce the required 125-foot setbacks to 46 feet +/- from the front property line on Patterson Mill Lane, 84 feet +/- from the southwestern property line, and 76 feet +/- from the western property line for a homestay use in the existing primary dwelling.

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

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

By the above-recorded vote, the Board adopted the Resolution (Attachment F) to approve the special exception with the conditions contained therein:

**RESOLUTION TO APPROVE SPECIAL EXCEPTION
FOR SE2021-00013 PATTERSON MILL HOMESTAY**

WHEREAS, upon consideration of the Memorandum prepared in conjunction with the SE2021-00013 Patterson Mill Homestay application and the attachments thereto, including staff's supporting

analysis, any comments received, and all of the factors relevant to the special exceptions in Albemarle County Code §§ 18-5.1.48 and 18-33.49, the Albemarle County Board of Supervisors hereby finds that the requested special exceptions would cause (i) no detriment to any abutting lot and (ii) no harm to the public health, safety, or welfare.

NOW, THEREFORE, BE IT RESOLVED that in association with the homestay at 198 Patterson Mill Way, the Albemarle County Board of Supervisors hereby approves the special exception to modify the minimum 125-foot front, southwestern, and western yards otherwise required for a homestay in the Rural Areas zoning district, subject to the conditions attached hereto.

* * * * *

SE 2021-00013 Patterson Mill Homestay Special Exception Conditions

1. Parking for homestay guests is limited to the existing parking areas, as depicted on the House and Parking Location Exhibit dated May 11, 2021.
2. Homestay ~~rental~~ use is limited to the existing house, as currently configured and depicted on the House and Parking Location Exhibit dated May 11, 2021.
3. The existing screening, as depicted on the House and Parking Location Exhibit dated May 11, 2021, must be maintained, or equivalent screening that meets the minimum requirements of County Code § 18-32.7.9.7(b)-(e) must be established and maintained.

Item No. 8.6. Albemarle County Q4 FY 21 Economic Outlook, **was received for information.**

Item No. 8.7. Rivanna Greenway Project Update (Old Mills Trail Extension), **was received for information.**

Agenda Item No. 9. Action Item: Fiscal Year 2022 (FY 2022) Resolution of Appropriations.

The Executive Summary forwarded to the Board states that the Board of Supervisors adopted the County's FY 2022 Operating and Capital Budget totaling \$466,177,427 during the May 5, 2021 Board meeting. At the Board's June 2, 2021 meeting, staff will ask the Board to consider the following items:

- 1) Adoption of Annual Resolution of Appropriations:** To provide the authority from the Board to spend these funds, the Board's adoption of an Annual Resolution of Appropriations for the fiscal year ending on June 30, 2022 is required.
- 2) Adoption of Resolution of Official Intent to Reimburse Expenditures with Proceeds of a Borrowing:** In addition, the Board's adoption of a Resolution of Official Intent to Reimburse Expenditures with Proceeds of a Borrowing is required to provide the County with the authority to use bond proceeds to reimburse capital program expenditures for the specified projects.
- 3) Update on the FY 2022 Budget:** Finally, staff provided to the Board a third quarter financial report on May 19, 2021 that showed continued revenue recovery in FY 2021, which also has implications for improved FY 2022 revenue projections. As part of the County's 3-6-6 approach to managing the FY 2021 budget, referring to the last three months on FY 2020, the first six months of FY 2021, and the last six months of FY 2021, staff will provide a recommended framework for Board direction to amend the FY 2022 budget with a subsequent appropriation request in July.

Discussion:

1) Adoption of Annual Resolution of Appropriations:

The Resolution of Appropriations appropriates the total County Budget, including both general government and school operating and capital funds, School Special Revenue Funds, and Other General Government Funds appropriations in a single resolution. The Annual Resolution includes the following:

School Division Adjustments

On May 14, 2020, the School Board adopted the School Fund and School Special Revenue Funds. The School Board's adoption is \$1.3 M greater than the budget adopted by the Board of Supervisors on May 5 due to \$1.35 M in additional state revenue, \$0.02 M in additional local revenue, and a decrease of \$0.05 M in use of fund balance. These adjustments are included in this Resolution to align with the School Board's adoption of the School Division's budget and reflected in Attachment A. This amendment does not exceed one percent of the FY 2022 total budgeted expenditures and therefore does not require a public hearing.

County Executive Authority

The appropriation resolution authorizes the County Executive to do the following. In accordance with current practice, all of these transfers or distributions will be reported to the Board of Supervisors as

part of the County's quarterly financial reports.

A) Transfer funding to and from specific Board approved FY 2022 non-departmental reserve accounts to the appropriate department accounts for expenditures. For FY 2022, these specific General Fund reserve accounts are:

- Salary and Benefits Reserve
- Board of Supervisor's Strategic Priority Support Reserve
- Business Process Optimization Reserve
- Pandemic Reserve
- Cigarette Tax Reserve
- Climate Action Pool
- Training Pool
- Minimum Wage Reserve
- Reserve for Contingencies

The specific Capital Fund reserve accounts are:

- Transportation Leveraging Fund
- Neighborhood Improvements Funding Initiative (NIFI) Contingency
- Sidewalk Program Contingency
- Advancing Strategic Priorities Reserve
- Economic Development Funding for Public-Private Partnerships
- Capital Budget Stabilization Reserve

B) Administratively approve budget transfers of unencumbered funds for up to \$500,000 per fund in the fiscal year from one classification or project to another within the same fund and to allocate the County-wide salary lapse budget between department budgets to appropriately reflect where salary lapse actually occurs. This amount is an increase from the current amount of \$50,000 based on a review of practices in peer localities where more flexible appropriation authority is in place and to minimize supplemental appropriations that are more administrative in nature.

C) Administratively approve the carry forward of outstanding grants and capital projects from year to year.

D) Close out grant funds and capital projects, including the transfer of any unencumbered residual funds to the appropriate fund's fund balance. Section X, Paragraph Six of the attached Annual Resolution of Appropriations includes language clarifying requirements for external recipients of County funds.

2) Official Intent to Reimburse Expenditures with Proceeds of a Borrowing Attachment B: The Resolution of Official Intent to Reimburse Expenditures with Proceeds of a Borrowing allows the County to use up to \$45.4 M in bond proceeds to reimburse the County for capital program expenditures.

3) Recommendation and Update to the FY 2022 Budget: Based on the third quarter financial report, which showed a) continued improving consumer driven revenues as FY 2021 progressed (e.g. sales, meals, and transient occupancy taxes); business driven revenues (e.g. business license and bank franchise taxes) now that more meaningful data was available; and other revenues improving based on year-to-date and in particular, third quarter activity, staff recommends increasing the FY 2022 revenue projection by \$3.5 M.

This funding is recommended to be allocated to general government and school operations and capital and debt service based on the shared allocation of local tax revenues, which yields approximately \$1.7 M for general government operations, \$1.4 M for school operations, and \$0.3 M for capital. To explain why the general government portion is greater than the schools, while general government receives a smaller portion of shared tax revenues than the School Division, non-shared revenues, such as community development fees, are also improving, and are included in the \$1.7 M total.

Staff will present a recommendation on June 2 that addresses priorities such as supporting workforce stabilization (e.g. the funding of vacant positions that have been unfilled and defunded or "frozen"). Staff will request Board direction on that recommendation and bring a subsequent appropriation at the July 7, 2021 Board meeting.

The Resolution of Appropriations provides the authority from the Board to spend funds included in the FY 2022 Budget. The FY 2022 Budget update provides additional revenue and an appropriation request will come forward at the July Board meeting, pending direction.

Staff recommends the adoption of the Annual Resolution of Appropriations (Attachment A) and adoption of the attached Resolution of Official Intent to Reimburse Expenditures with Proceeds of a Borrowing (Attachment B).

Ms. Nelsie Birch, Chief Financial Officer, said they were going to appropriate the FY 22 budget that afternoon, and Mr. Bowman had a few slides to walk through to orient the Board to this discussion. She said this is also where they would be discussing the acquisition of conservation easements program (or at 6:00 p.m.).

Mr. Bowman (chief of the Budget Division in the Department of Finance and Budget) said he was there that day for the three action items shown on the slide: adoption of the FY 2022 resolution of appropriations, which is Attachment A of the staff report; adoption of Attachment B, which is a resolution of official intent to reimburse expenditures with proceeds of a borrowing; and FY 2022 budget update and direction for a July 7 supplemental appropriation.

Mr. Bowman said for the past several months, the Board has been developing the budget for FY 2022 that was adopted on May 5th, and as the Board and the public listening may be aware, an adopted budget is just a plan. He said the active appropriation is the official legal authority to spend funds during FY 22, and that was the primary purpose of that day's item. Mr. Bowman explained Attachment A was the resolution that provides that authority.

Mr. Bowman said first, Attachment A included that the resolution reflects the budget that was adopted by the Board of Supervisors on May 5th. He said second, in addition to that budget, there was an amendment from the School Board's action on May 13th where there is additional funding that was included in the School Board's budget that is primarily an additional \$1.4 million in state revenue that is included in this resolution.

Mr. Bowman said third, in the appropriation resolutions, there are times where they will come back to the Board for a supplemental appropriation; there are also times where through authority granted to the County Executive, there is authority to transfer funding for purposes identified in the resolution, which is done on an administrative basis and then reported to the Board through the quarterly financial reports. He said in the past year, their team has been reviewing practices of other AAA bond rated localities and are proposing to expand that authority this year for the dollar amount of changes that are allowed. He said the general practice stays the same in terms of the types of circumstances where this may be used; they generally tend to be administrative in nature rather than items that are more appropriate for the Board, be they policy oriented or legislative terms. He said the goal is to try to reduce the number of items that are administrative in nature that come forward on a Board agenda with an eye towards administrative streamlining of the processes.

Mr. Bowman said the fourth thing is that this also sets requirements for external funding recipients; those are the 60-some community partners who receive funding through one of the County's review processes.

Mr. Bowman said Attachment B has a long title, but in short, this really allows the County to use proceeds in the future to reimburse itself for capital program expenditures. He said this is a routine guideline that is included in every annual appropriation; when the time comes to borrow funds, this allows them to have that set in place.

Mr. Bowman said that was a summary of the first two resolutions and the next slide showed the Board action. He said he noted there was a third item with the budget update; it did not change anything with the first two attachments because with the budget update, they intend to come back with the supplemental appropriation on July 7th. He offered that the Board could take action on the first two items before discussing the third or they could discuss all three items and take action at the end.

Ms. Price said she thought the Board should take action on the first two before discussing the third.

Ms. Mallek said she appreciated the help from Mr. Bowman and Ms. Birch about the transfer changes.

Ms. McKeel **moved** to adopt the Annual Resolution of Appropriations (Attachment A). Ms. LaPisto-Kirtley **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

ABSENT: Mr. Gallaway.

Ms. LaPisto-Kirtley moved to adopt the Resolution of Official Intent to Reimburse Expenditures with Proceeds of a Borrowing (Attachment B). Ms. McKeel seconded the motion. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

ABSENT: Mr. Gallaway.

Mr. Bowman said the third item that afternoon was a fiscal year 2022 budget update where they were seeking the Board's direction where they will bring back a supplemental appropriation to the Board on July 7th. He said a common question from the Board or perhaps the public listening may be why there would be a notable budget update a month after it was adopted, and that would be a very fair question. He said this update is part of the process that had been set in motion 15 months ago at the onset of the pandemic where a managed budget using the 3-6-6 approach was developed, referring to the last quarter

of fiscal year 2020 (the first 3), the first half of fiscal year 2021 (the middle 6) and then the last half of fiscal year 2021 (the last 6).

Mr. Bowman said on May 19th, staff delivered a third quarter financial report to the Board which did show a stabilizing local economy, particularly during activity in the third quarter. He said that third quarter report had implications not just for fiscal year 2021, but there is now also \$3.5 million, or about 1% of the budget, that can now be confidently counted on in revenue in fiscal year 2022.

Mr. Bowman said he wanted to overview at a high level what the 3-6-6 plan looked like in action because it does help explain why they were having this update on that day because it is a little unusual from what they do in most years outside of a pandemic.

Mr. Bowman said they had tried to make solid financial decisions based on the data available at the time during each phase of this 3-6-6 approach, and as they get that data and take actions in the present, they are also recalibrating for the future as needed. He said going back to the start of the pandemic, the County had tried to position itself to be able to maintain reserves and caution should things get worse but also prepared should things get better to be able to advance strategic priorities should conditions improve, which they have, and also to ensure that the investments they were making were allowing them to be a resilient organization for the future as they were in a time of transition.

Mr. Bowman said this all began more than a year ago when they began to implement expenditure reductions given projected revenue shortfalls both in the current fiscal year at the time (which was fiscal year 2020) and fiscal year 2021, and it is notable that they reduced their original recommended fiscal year 2021 budget by about \$21 million, or 6.6%. He said while the impact of the pandemic on the County's revenues had not been as great as projected, they are still with this revenue update below where they thought they would be in fiscal year 2020, so this process has proven very valuable and necessary.

Mr. Bowman said as they began to look at what had happened over the course of the year, in the first quarter of 2021, they saw that fiscal year 2020 had finished with financial reserves intact; they saw that things were performing as expected in fiscal year 2021 with the limited data that they had and that they did not need to make further reductions at that time.

Mr. Bowman said in the second quarter, it was very busy for both staff and the Board as they received meaningful signs that revenues were recovering, and so it allowed for actions like \$34 million in capital projects to be un-paused in the current fiscal year; it allowed for onetime funding to be strategically planned in both fiscal year 2021 and 2022, and the FY 2022 budget was put forward with a more positive outlook than was adopted in FY 2021 back in May of the prior year.

Mr. Bowman said they were still in that last 6 (of the 3-6-6), and this approach was continuing as they were going to have a bond issuance in June generating projected debt service savings in fiscal year 2022; as they look at how that will be applied in the future and as they consider further strategic uses of the American Rescue Plan Act funding, this strategic financial approach is going to continue. He said this would happen in two ways that day, the first of which was this discussion where in fiscal year 2022, the continued recovery primarily in consumer and business driven related taxes would provide additional revenue available in fiscal year 2022. He said that evening, there was an amendment to the fiscal year 2021 budget; based on some onetime revenue that will become available in FY 21, there is the opportunity to create a reserve to hedge against an uncertainty in capital project costs as raw materials and bids are potentially increasing and also to ensure continuation of the ability to respond and recover and reconstitute the organization and community in response to the pandemic.

Mr. Bowman said there is now about an additional \$3.5 million, or about 1% of the budget, for fiscal year 2022 in new revenues. He said this is primarily due to four reasons, the first of which was the continued recovery and strengthening of consumer-driven activity. He said the high-level version was that heading into the third quarter, as they talked among staff and representatives in economic development and the Convention & Visitors Bureau, the general consensus was that third quarter could see potentially a stall or a recovery, as there were higher virus cases, colder weather, and there was a vaccine rollout, but it was in its very early stages (because looking at the third quarter, it is the revenues received in January to March, but a lot of those activities took place in November through February), so it was a little too early to get to where they are today.

Mr. Bowman said second was with the actual data for business-driven taxes, which include business licenses and also franchise taxes (for the Board's understanding, no meaningful revenue is received with business licenses until the end of February, and that would be true in any budget year, but given the impact of the pandemic on businesses during the early stages of the pandemic where there was a "shutdown" and state-mandated and also local restrictions, they knew there would be an impact), and while there has been an impact and those revenues are less than projected in 2020, that revenue impact will not be as severe as predicted.

Mr. Bowman said the third update is on local recordation taxes, and currently, fiscal year 2021 is seeing a record level of these revenues due to the volume and prices and hot real estate market; another record in fiscal year 2022 is now being projected, and it is strong enough where it is appropriate to increase the prior projection for these taxes.

Mr. Bowman said fourth was building permit fees, and in calendar year 2020, a trend was seen where a lot of development activity did slow down compared to prior years; however, based on the fiscal year 2021 third quarter, that activity has been above normal, and overall, these revenues are on track to

finish comparable to prior years. He said this also reflects the Board's action in April based on community development fees which create a little additional revenue from that action as well that was not fully incorporated into the adopted budget.

Mr. Bowman presented a graph to show what this consumer recovery looked like. He said the Board had seen this slide before, but it had been updated. He described the green line as FY 19 with the actual revenue collected for sales tax, meals tax, and transient occupancy tax (also known as hotel tax). He said in FY 19, there was a relatively steady line; there was no pandemic then. He described the blue line as FY 20, and the Board had seen this trend before, where they have three quarters of very strong performance over the green line of FY 19; that all changes very dramatically heading into the last quarter of FY 20 with the onset of the pandemic.

Mr. Bowman said the orange line represented where they were in the current fiscal year, fiscal year 2021. He said they had started the year recovering from the spring of 2020 but still far below the FY 19 actual. Mr. Bowman said they saw in the second quarter that they began to run roughly even with that, though there was a little slowdown in January, and that was the information available when they had to finalize the recommended budget. He said they had a little bit of a hint of what February may be, but really when they prepared the recommended budget, to the left of the red line on the graph was the data set they had for orange (FY 21). He said what had been seen since then in the following four months was that that orange line had really fundamentally changed, now consistently exceeding the green line (FY 19) in the current year, especially in February and in May.

Mr. Bowman said that May data was preliminary; he had actually just pulled that off the day prior on the first of the month but no reason to expect that there was anything unusual with that number. He said across the board, there had been not just a continued recovery but really a significant step-up these last few months from where they were in the past. Mr. Bowman said to say this recovery would be coming at some point would be a given, but no one knew it would happen at this point, and whether the summer or fall had been the unknown they were trying to navigate for. Mr. Bowman said while there still is uncertainty out there, they still have the reserves to hold that in place, but he thought this picture tells it well in terms of what they knew and when and what had changed since then to show what the recovery has looked like for these revenues as they have been volatile over the last year.

Mr. Bowman said he would turn over the presentation to the County Executive to present the recommended framework for the Board's direction.

Mr. Richardson said for the Board's consideration that evening, the recommended framework for their consideration was to identify the revised revenue projections being \$3.5 million over and above compared to the fiscal year 2022 adopted. He said that would go into the revenue split by formula with \$300,000 to capital and debt, \$1.4 million to schools, and for local government, it is an additional \$1.7 million. Mr. Richardson reminded the Board that as they work through the budget process, a familiar slide had been put in front of them that he does not have ready to show this evening, but it is a triangle with the base being the financial condition, the middle piece recognizing the economy and the stabilization of the economy, and the third, the tip part of the triangle, is workforce stabilization.

Mr. Richardson said the Board is familiar because he has spoken to the Board both one-on-one in discussions and also publicly in Board meetings that they continued to be very cautious with their approach on the support they gave their workforce; the past year at this time, they were looking at a budget that had no contemplated raises in it, and it was due to the fact that the last quarter of revenue in FY 20 had really drastically dropped due to the pandemic. He said the economy has slowly stabilized, and revenues have slowly clawed back. He said they have had an extremely conservative year, and so they have continued to monitor the data that they have seen.

Mr. Richardson said the Board should be reminded that back on January 28, 2021, as they were getting ready to get into the nitty gritty part of the budget process, they held a joint meeting with the School Board and the Board of Supervisors, and the Board had heard from the Human Resources Department, who spoke about what was going on with some of the benchmark local government agencies related to school staff as related to specifically teachers.

Mr. Richardson said also the Human Resources Department had put benchmark survey data in front of this Board that talked about a public safety pay plan; specifically, they were identifying that since the start of the public safety pay plan, which went online January 1, 2019, and they had spent considerable money and resources to get that plan up and going, they had recent salary data to suggest that there was some significant movement in the last 6 to 9 months with public safety pay that had resulted in entry level pay for police officers being approximately 8% behind their identified market and commensurate for fire and sheriff of somewhere around 7% as well. Mr. Richardson said with that, accompanying applicant pools that were concerningly low and lacking diversity, they began to really pay close attention to that as the revenue picture began to stabilize.

Mr. Richardson assured the Board that he came to them that evening confident that the data suggested that they needed to reconsider with their public safety pay plan the prior allocation of 2%, and he would recommend that they do 5% (2% + 3%) that would be effective July 1st for the reasons that he had outlined that evening, and that does go back to the January 28 discussion with both the School Board and with the Board of Supervisors.

Mr. Richardson said in addition to that, there have been as many as 18 positions recently that have been frozen (coming down from a number more significant than that the prior year) and they are

continuing to look at the growth in the revenue picture and will continue to work with departments to unfreeze. He said the vast majority of those positions are outside of the public safety department, and they are looking to unfreeze, post, and get back online those positions as they are allocated in the budget.

Ms. Mallek said she was grateful at the cautious way that the County had managed with its senior staff leadership over the last year to get them to where they were. She said it was so wonderful to perhaps have a choice, and she knew they would continue to be careful and cautious.

Ms. LaPisto-Kirtley concurred with Ms. Mallek and said she liked the direction they were going and how everything was being managed.

Ms. Palmer asked Mr. Richardson when he had said they were looking to reduce the number of frozen vacant positions from 18 whether he had said more about that.

Mr. Richardson said he did not state a number that they were moving toward because they were continuing to work through that. He said Mr. Walker and Mr. Henry were working with the departments and working with Finance and Budget to determine what could be budgetarily unfrozen and gotten back online. Mr. Richardson said there had been a combination of considerations, and so they were continuing to work through that, but they were fiscally confident that they were moving at a cautious pace and that they were in no way stretching or obligating themselves in the 2022 budget to where they would not be balanced at the end of the year. He said he did not give a number that they were working towards but had just said they were working through that and were beginning to unfreeze those positions in priority order with work with both Finance and Budget and with operating departments that were affected.

Ms. Palmer said she knew that Mr. Richardson had provided a list of those vacant positions in the past and asked if he could email that to the Supervisors.

Mr. Richardson said he would ask staff and aim to have an updated list to Ms. Palmer by the end of business day on Friday. He explained that number may be less than 18 as there may be some that are en route or actually being posted.

Ms. McKeel said she appreciated this very clear report. She said she was very supportive of this approach. She said she liked taking it very carefully and thoughtfully working their way into the expenditures. She said she was especially pleased to see that they were going to be looking at some of those vacant positions that were frozen; she is sure staff will be prioritizing those positions, but a discussion about the thought process of how that prioritization happens might be helpful at some point.

Ms. McKeel said that getting back to the workforce stabilization, she has been especially concerned about the police, sheriff's department, and fire and rescue based on a market study that was done recently that talked about how far behind the market the public safety pay plan was. She asked Mr. Richardson to help her understand a little bit the 5%. She said she was supportive of going from 2% to 5%, but she thought the market study showed they were further behind than 5%. She asked him to address that for her so she would have a good understanding of where they were and where they were hoping to move to for those employees because these are the critical safety positions.

Mr. Richardson said it was always extremely helpful to get strong, refined, analytical data that gives a really good bellwether of where they stand with an identifiable market. He told Ms. McKeel she was right that the data suggested they had slipped further behind than the recommendation of 5%. He explained that one side of the equation was looking for benchmark data to give guidance as to where they stood in the market that they are comparing to, and the second side of the equation was affordability. He said the data can be compelling as it stands on its own, but they also must look at the financial picture, which brings them back to the triangle of financial condition, economic stability, and where they are budgetarily with the operating dollars and flexibility or inflexibility they have.

Mr. Richardson said staff had done an excellent job in a number of areas, and so they were very confident that they could recommend the increase from 2% to 5% because; 1) it is warranted and justified; 2) it is critical to stay competitive on the recruitment front in public safety; 3) it is also critical to recognize that turnover is exceptionally expensive in public safety, and so replacement of people who leave the organization who are fully trained is extremely expensive in a number of ways.

Mr. Richardson said the bottom line is they have recommended what they can afford at this time, but he would also suggest that they not take it and just set it down and not pick it up until a year from now. He said they will have to keep a constant watch, within reason, for how they are doing with the public safety pay plan. He noted this Board had supported a lot of work that took place in 2018 (and probably prior in 2017) to get a refined public safety plan built, designed, funded, and operationalized, and it was concerning to him that they fell behind fairly quickly the last 6 to 9 months. He said while he is thrilled that they were able to make the recommendation that they were that day, they would continue to monitor it; he said he had worked with the Finance and Budget team to make sure that the recommendation that day was a very solid recommendation and that they could not only just afford it now but could also afford that going forward.

Ms. McKeel said obviously she was very thankful for the 5%; they had worked very hard to get the public safety pay plan in place, and the idea was for it to be market-based and that it would keep the public safety officers on market, and she did not want to lose track of that. She said it still remains a concern to her, but she understands the affordability piece.

Ms. Price told Mr. Richardson she concurred with the comments of the other Supervisors. She said as they look at the slide, it can be broken down into two parts; one of the parts is that because of the efficient and effective management of resources by County staff, they are now in a position to maintain the triple-AAA rating and now have these additional funds to apply to the needs that the County has. She applauded them for the work they have done there.

Ms. Price said turning back to the increased public safety pay plan, as with all the other Supervisors, she wholeheartedly supported that and recognized that they are a market-driven economy when it comes to labor force, and if they are not able to retain the people in the positions they need, then the County and community will suffer, and she fully supported this increase to the public safety pay plan.

Ms. Price said coming from a military background, which is somewhat comparable to what they did with the pay raises in general here with the County, there may be an across-the-board percentage increase, but also in the military, there are special pays that go to people in different communities (aviators, special warfare, surface warfare, whatever it may be). She said they find themselves in that same sort of a situation here where they may be able to give an across-the-board pay raise to everyone, but there are certain components of the labor force that have to be paid extra to maintain the quality and the numbers necessary.

Ms. Price cautioned that when the Board approved the 1% payment to all the employees (and hesitated to call that a bonus given there had been no pay raise and gap positions and everything), later on they discovered that there had been some individuals that had been overlooked in that. She said she was not sure exactly what the totality of the segment of employees qualify as public safety plan, but she hoped that the County staff had looked into this to make sure they were not inadvertently omitting a category of individuals.

Ms. Price said she too supported the increase from the 2% to 5% and the ability to reduce the number of frozen vacant positions based upon County staff analysis of where they need to move forward and fill those other positions. She said it would be great to fill them all, but they definitely need to fill the ones that they have right now.

Ms. McKeel **moved** that the Board accept the recommended use of the fiscal year 2022 revenue update. Ms. Mallek **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

ABSENT: Mr. Gallaway.

Ms. McKeel thanked Ms. Birch and staff because she had requested a short, bulleted section of where they were saving money and revenues they were putting aside so she could see the list because there were some community members that had expressed some concern, and she wanted to say to Ms. Birch that she thought on page 2, she had been given what she asked for, and she was appreciative.

Ms. Palmer said at the very beginning of this discussion, Ms. Birch had mentioned she thought they were going to talk about the ACE program then at this period of time, but at the beginning of the meeting, they had added it to the agenda at 6:00.

Ms. Birch said they would be prepared there.

Mr. Richardson said he wanted to close the discussion from the staff's perspective on the public safety pay plan by saying that the data drove their consideration and recommendation to come back to the Board, and the data was compelling. He said the staff was looking back in the January and February timeframe when things were not as stable or on as sound a footing as they were, and they were struggling with what they would be able to recommend, recognizing that staff across the County government had had a tremendously trying year, and that comes from a lot of different perspectives.

Mr. Richardson said the compelling data as it relates to the public safety pay plan jumped out, and it was also tied back to a lot of work that had transpired since January of 2019 when they recognized the need to separate that work group for the specifics of what is involved with public safety. He said they will take a scalpel approach going forward not just with public safety but also across County government and will begin to build good strong compensation data over the course of time to come back in the future, hopefully during the budget process, to make recommendations on why they would do some things and what the strategies would suggest might yield the best benefits, again wrapped around workforce stabilization.

Mr. Richardson said they would come back that evening at 6:00 to discuss ACE, but related to ACE, over the course of the last several weeks, he had spoken to Board members about the bond refinancing, issuing additional debt, also the continuing improving revenue picture, and it has been in those conversations that at least four Board members on this Board had said at the appropriate time they wanted to revisit the funding of ACE, and so that is why this was coming forward that day. Mr. Richardson said as the Board goes through the FY 2021 budget amendment and appropriations, that would be a good time to at least have an initial discussion and see what the Board's interest is regarding that program, and Ms. Palmer is the liaison to the ACE committee from this Board.

Ms. Price said it was helpful to know that it would be a discussion and not a decision that day.

Ms. Mallek said Ms. McKeel had mentioned some really great explanations that she had received and asked Ms. Birch to share those with all of them.

Ms. McKeel explained to Ms. Mallek that she was talking about page two of five in the packet where there was a bulleted list of where the monies were being put, and it was not anything that she had received specially.

ANNUAL RESOLUTION OF APPROPRIATIONS
OF THE COUNTY OF ALBEMARLE
FOR THE FISCAL YEAR ENDING JUNE 30, 2022

A RESOLUTION making appropriations of sums of money for all necessary expenditures of the COUNTY OF ALBEMARLE, VIRGINIA, for the fiscal year ending June 30, 2022; to prescribe the provisions with respect to the items of appropriation and their payment; and to repeal all previous appropriation ordinances or resolutions that are inconsistent with this resolution to the extent of such inconsistency.

BE IT RESOLVED by the Albemarle County Board of Supervisors:

SECTION I - GENERAL GOVERNMENT

That the following sums of money be and the same hereby are appropriated from the GENERAL FUND to be apportioned as follows for the purposes herein specified for the fiscal year ending June 30, 2022:

Paragraph One: ADMINISTRATION

Board of Supervisors	\$710,197
Executive Leadership	\$2,983,199
Human Resources	\$884,460
County Attorney	\$1,150,073
Finance & Budget	\$6,787,114
Information Technology	\$4,540,639
Voter Registration and Elections	<u>\$1,132,700</u>
	\$18,188,382

Paragraph Two: JUDICIAL

Clerk of the Circuit Court	\$930,453
Commonwealth's Attorney	\$1,569,290
Sheriff	\$3,018,121
Circuit Court	\$183,005
General District Court	\$40,800
Magistrate	\$4,575
Juvenile Court	\$127,769
Public Defender's Office	<u>\$84,371</u>
	\$5,958,384

Paragraph Three: PUBLIC SAFETY

Police Department	\$20,082,975
Fire Rescue Department (including City Fire Contract, System-wide Fleet Mgmt., and Forest Fire Extinction)	\$17,643,060
Charlottesville Albemarle Rescue Squad	\$58,150
Crozet Volunteer Fire Department	\$169,040
Earlysville Volunteer Fire Company	\$167,294
East Rivanna Volunteer Fire Company	\$222,062
North Garden Volunteer Fire Company	\$136,664
Scottsville Volunteer Fire Department	\$164,906
Seminole Trail Volunteer Fire Department	\$287,286
Stony Point Volunteer Fire Company	\$144,441

Western Albemarle Rescue Squad (WARS) (including Contingency: WARS MOU)	\$407,565
Volunteer Fire Rescue Tax Credit	\$75,000
Emergency Communications Center	\$3,058,829
Albemarle Charlottesville Regional Jail	\$4,216,703
Blue Ridge Juvenile Detention Center	\$535,234
Charlottesville Albemarle SPCA	\$652,550
Virginia Juvenile Community Crime Control Act (VJCCCA)	<u>\$52,231</u>
	\$48,073,990

Paragraph Four: PUBLIC WORKS

Facilities and Environmental Services	\$5,073,213
Rivanna Solid Waste Authority (RSWA)	<u>\$1,705,559</u>
	\$6,778,772

Paragraph Five: HEALTH AND WELFARE

Department of Social Services	\$18,719,899
Albemarle Housing Improvement Program (AHIP)	\$412,000
Boys & Girls Club	\$56,650
Charlottesville Free Clinic	\$116,699
Charlottesville/Albemarle Health Department	\$821,999
Child Health Partnership	\$319,861
Computers4Kids	\$14,193
Foothills Child Advocacy Center	\$44,791
Georgia's Friends	\$24,560
Jefferson Area Board for Aging (JABA)	\$377,985
Legal Aid Justice Center	\$39,435
Light House Studio	\$16,642
Literacy Volunteers	\$26,827
Local Food Hub	\$10,000
Meals on Wheels	\$10,000
Monticello Area Community Action Agency (MACAA)	\$44,500
Offender Aid and Restoration (OAR)	\$218,805
On Our Own	\$13,179
PACEM	\$946
Piedmont Court Appointed Special Advocates	\$9,500
Piedmont Family YMCA	\$10,000
Piedmont Housing Alliance (PHA)	\$60,757
ReadyKids	\$72,450
Region Ten	\$813,260
Sexual Assault Resource Agency (SARA)	\$21,855
Shelter for Help in Emergency (SHE)	\$93,443
The Bridge Line	\$15,914
The Haven	\$15,813
Thomas Jefferson Area Coalition for the Homeless (TJACH)	\$5,500
United Way	\$173,978
Women's Initiative	<u>\$14,853</u>
	\$22,596,294

Paragraph Six: EDUCATION

Piedmont Virginia Community College	\$24,529
-------------------------------------	----------

Paragraph Seven: PARKS, RECREATION AND CULTURE

Parks & Recreation	\$3,144,920
Charlottesville/Albermarle Convention and Visitor's Bureau	\$606,281
Charlottesville Symphony Society	\$2,500
The Front Porch	\$2,500
Jefferson-Madison Regional Library	\$4,717,255
Jefferson School African American Heritage Center	\$10,000
Live Arts	\$2,500
Municipal Band	\$8,000
Paramount Theater	\$2,500
Sin Barreras - Sabroso Festival	\$2,500
Virginia Discovery Museum	\$2,500
Virginia Festival of the Book	\$10,000
Virginia Film Festival	<u>\$10,000</u>
	\$8,521,456

Paragraph Eight: COMMUNITY DEVELOPMENT

Department of Community Development	\$6,769,589
Office of Economic Development	\$572,273
Central Virginia Partnership for Economic Development	\$54,861
Central Virginia Small Business Development Center (CVSBDC)	\$36,000
Virginia Career Works - Piedmont Region	\$16,458
Central Shenandoah Planning District Commission	\$6,137
Charlottesville Area Transit	\$1,000,000
Jaunt	\$2,179,308
Regional Transit Partnership	\$68,750
Rivanna Conservation Alliance - Streamwatch	\$15,000
Thomas Jefferson Planning District Commission	\$133,353
Thomas Jefferson Soil and Water Conservation	\$123,200
Virginia Cooperative Extension Service	<u>\$221,675</u>
	\$11,196,604

Paragraph Nine: REVENUE SHARING AGREEMENT

Revenue Sharing Agreement	\$15,411,834
---------------------------	--------------

Paragraph Ten: TAX REFUNDS, ABATEMENTS, & OTHER REFUNDS:

Refunds, Abatements, and Tax Relief	\$1,314,000
-------------------------------------	-------------

Paragraph Eleven: OTHER USES OF FUNDS

Transfer to School Operations	\$141,108,965
Formula Transfer to Capital Projects and Debt Service Funds	\$30,142,066
One-Time Transfer to Capital Projects	\$405,542
Transfer to Water Resources Fund	\$1,456,448
Transfer to Economic Development Authority Fund	\$305,000
Board's Strategic Priorities Support	\$665,000
Reserve for Contingencies	\$615,708

Salary and Benefits Reserve	\$215,000
Minimum Wage Reserve	\$280,000
Training Pool	\$60,000
Cigarette Tax Reserve	\$516,000
Pandemic Reserve	\$350,000
Early Retirement	<u>\$691,100</u>
	\$176,810,829

Total GENERAL FUND appropriations for the fiscal year ending June 30, 2022: \$314,875,074

To be provided as follows:

Revenue from Local Sources	\$277,220,952
Revenue from the Commonwealth	\$24,802,726
Revenue from the Federal Government	\$7,135,311
Transfers In from Other Funds	\$2,780,227
Use of Fund Balance	\$2,935,858

Total GENERAL FUND resources available for fiscal year ending June 30, 2022: \$314,875,074

SECTION II: GENERAL FUND SCHOOL RESERVE FUND

That the following sums of money be and the same hereby are appropriated for GENERAL FUND SCHOOL RESERVE FUND purposes herein specified to be apportioned as follows for the fiscal year ending June 30, 2022:

Paragraph One: GENERAL FUND SCHOOL RESERVE FUND

Transfer to the School Fund	\$5,221,040
-----------------------------	-------------

Total GENERAL FUND SCHOOL RESERVE FUND appropriations for fiscal year ending June 30, 2022:	\$5,221,040
---	-------------

To be provided as follows:

Use of Fund Balance	\$5,221,040
---------------------	-------------

Total GENERAL FUND SCHOOL RESERVE FUND resources available for fiscal year ending June 30, 2022:	\$5,221,040
--	-------------

SECTION III: REGULAR SCHOOL FUND

That the following sums of money be and the same hereby are appropriated for SCHOOL purposes herein specified to be apportioned as follows for the fiscal year ending June 30, 2022:

Paragraph One: REGULAR SCHOOL FUND

School Fund Expenditures	\$211,246,077
--------------------------	---------------

Total REGULAR SCHOOL FUND appropriations for fiscal year ending June 30, 2022:	\$211,246,077
---	----------------------

To be provided as follows:

Revenue from Local Sources (General Fund Transfer)	\$141,108,965
Revenue from Other Local Sources	\$1,860,657
Revenue from the Commonwealth	\$59,345,179
Revenue from the Federal Government	\$3,682,761
Transfers	\$27,475
Transfer from General Fund School Reserve Fund	\$5,221,040

Total REGULAR SCHOOL FUND resources available for fiscal year ending June 30, 2022: \$211,246,077

SECTION IV: OTHER SCHOOL FUNDS

That the following sums of money be and the same hereby are appropriated for the purposes herein specified to be apportioned as follows for the fiscal year ending June 30, 2022:

Paragraph One: OTHER SCHOOL FUNDS

Other School Funds	\$19,207,068
--------------------	--------------

Total OTHER SCHOOL FUND appropriations for fiscal year ending June 30, 2022: \$19,207,068

To be provided as follows:

Revenue from Local Sources	\$6,601,829
Revenue from the Commonwealth	\$1,495,855
Revenue from the Federal Government	\$6,101,506
Transfers	\$5,007,878
Use of Fund Balance	\$0

Total OTHER SCHOOL FUND resources available for fiscal year ending June 30, 2022: \$19,207,068

SECTION V: OTHER GENERAL GOVERNMENT FUNDS

That the following sums of money be and the same hereby are appropriated for OTHER PROGRAM purposes herein specified to be apportioned as follows for the fiscal year ending June 30, 2022:

Paragraph One: OTHER GENERAL GOVERNMENT FUNDS

Computer Maintenance and Replacement	\$675,355
Yancey Strengthening Systems Grant	\$100,000
Commonwealth's Attorney Delinquent Fines and Fees	\$60,000
Victim-Witness Grant	\$181,111
Regional Firearms Training Center - Operations	\$206,420
Regional Firearms Training Center - Capital	\$90,000
Criminal Justice Grant	\$731,081
FEMA SAFER Grant	\$592,140
Water Resources	\$1,456,448

Courthouse Maintenance	\$31,392
Old Crozet School Operations	\$119,006
Vehicle Replacement	\$1,270,955
Bright Stars Program	\$1,552,037
Children's Services Act	\$10,344,679
Martha Jefferson Health Grant	\$4,000
Housing Assistance Fund	\$4,053,426
CACVB Fund	\$1,553,129
Darden Towe Memorial Park	\$309,402
Tourism	\$1,054,914
Economic Development Authority	\$427,993
Economic Development Fund	\$1,617,883

Total OTHER GENERAL GOVERNMENT FUNDS appropriations for fiscal year ending June 30, 2022: \$26,431,371

To be provided as follows:

Revenue from Local Sources	\$2,682,554
Revenue from the Commonwealth	\$7,738,271
Revenue from the Federal Government	\$4,744,661
Transfers In from Other Funds	\$3,964,962
Use of Fund Balance	\$7,300,923

Total OTHER GENERAL GOVERNMENT FUNDS resources available for fiscal year ending June 30, 2022: \$26,431,371

SECTION VI - GENERAL GOVERNMENT CAPITAL IMPROVEMENTS FUND

That the following sums of money be and the same hereby are appropriated from the GENERAL GOVERNMENT CAPITAL IMPROVEMENTS FUND to be apportioned as follows for the purposes herein specified for the fiscal year ending June 30, 2022:

Paragraph One: COURTS & JUDICIAL

Court Facilities Addition/Renovation	\$25,171,089
--------------------------------------	--------------

Paragraph Two: PUBLIC SAFETY

Fire Rescue Apparatus Replacement Program	\$2,411,004
Police County 800Mhz Radio Replacements	\$994,912
Police Mobile Data Computers Replacement	\$524,831
Police Patrol Video Cameras Replacement	\$89,610
Police Technology Upgrade	<u>\$203,000</u>
	\$4,223,357

Paragraph Three: PUBLIC WORKS

General Government Maintenance Programs	\$2,431,000
Ivy Landfill Remediation	\$567,000
Moores Creek Septage Receiving Station	\$109,441

Ivy Fire Station 15 Maintenance Obligation	\$50,000
Regional Firearms Training Center Capital Reserve - County Share	<u>\$39,600</u>
	\$3,197,041
Paragraph Four: COMMUNITY DEVELOPMENT	
Economic Development Funding for Public-Private Partnerships	\$1,000,000
Transportation Leveraging Program	<u>\$3,000,000</u>
	\$4,000,000
Paragraph Five: HEALTH AND WELFARE	
The Center at Belvedere	\$500,000
Paragraph Six: PARKS, RECREATION & CULTURE	
Moore's Creek Trail and Trailhead Park Projects	\$86,108
Paragraph Seven: TECHNOLOGY AND GEOGRAPHIC INFORMATION SYSTEMS (GIS)	
County Server/Infrastructure Upgrade	\$490,932
Paragraph Eight: OTHER USES OF FUNDS	
Cost of Issuance	\$634,515
Administrative Services	\$451,777
Project Management Services	\$1,363,291
Borrowed Proceeds Transfer	<u>\$12,060,295</u>
	\$14,509,878
Total GENERAL GOVERNMENT CAPITAL IMPROVEMENTS FUND appropriations for fiscal year ending June 30, 2022:	\$52,178,405
To be provided as follows:	
Revenue from Local Sources (General Fund Transfer)	\$2,899,961
Revenue from Local Sources (Other Transfers)	\$31,392
Revenue from Other Local Sources	\$6,575,124
Revenue from the Commonwealth	\$122,500
Borrowed Funds	\$32,360,283
Use of Fund Balance	<u>\$10,189,145</u>
Total GENERAL GOVERNMENT CAPITAL IMPROVEMENTS FUND resources available for fiscal year ending June 30, 2022:	\$52,178,405

SECTION VII: SCHOOL DIVISION CAPITAL IMPROVEMENTS FUND

That the following sums of money be and the same hereby are appropriated from the SCHOOL DIVISION CAPITAL IMPROVEMENTS FUND for the purposes herein specified to be apportioned as follows for the fiscal year ending June 30, 2022:

Paragraph One: EDUCATION (SCHOOL DIVISION)

Mountain View Expansion and Site Improvements	\$6,247,576
School Bus Replacement	\$1,500,000
School Maintenance/Replacement	\$7,500,000
State Technology Grant	\$700,000
School Technology Replacement Program	\$988,000
Total SCHOOL DIVISION CAPITAL IMPROVEMENTS FUND appropriations for fiscal year ending June 30, 2022:	\$16,935,576
To be provided as follows:	
Revenue from Local Sources (General Govt Capital Programs Transfer)	\$12,060,295
Revenue from Other Local Sources	\$1,269,517
Revenue from the Commonwealth	\$960,000
Use of Fund Balance	\$2,645,764
Total SCHOOL DIVISION CAPITAL IMPROVEMENTS FUND resources available for fiscal year ending June 30, 2022:	\$16,935,576

SECTION VIII: DEBT SERVICE

That the following sums of money be and the same hereby are appropriated for the function of DEBT SERVICE to be apportioned as follows from the GENERAL GOVERNMENT DEBT SERVICE FUND and the SCHOOL DIVISION DEBT SERVICE FUND for the fiscal year ending June 30, 2022:

Paragraph One: SCHOOL DIVISION DEBT SERVICE FUND

Debt Service - School Division	<u>\$18,331,729</u>
Total SCHOOL DIVISION DEBT SERVICE appropriations for fiscal year ending June 30, 2022:	\$18,331,729
To be provided as follows:	
Revenue from Local Sources (Transfer from General Fund)	\$17,873,916
Revenue from the Commonwealth	\$378,423
Revenue from the Federal Government	<u>\$79,390</u>
Total SCHOOL DIVISION DEBT SERVICE resources available for fiscal year ending June 30, 2022:	\$18,331,729

Paragraph Two: GENERAL GOVERNMENT DEBT SERVICE FUND

Debt Service - General Government	<u>\$9,971,049</u>
Total GENERAL GOVERNMENT DEBT SERVICE appropriations for fiscal year ending June 30, 2022:	\$9,971,049

To be provided as follows:		
	Revenue from Local Sources (Transfer from General Fund)	\$9,773,731
	Revenue from Local Sources (Transfer from Stormwater Fund)	<u>\$197,318</u>
Total GENERAL GOVERNMENT DEBT SERVICE resources available for fiscal year ending June 30, 2022:		\$9,971,049
GRAND TOTAL - DEBT SERVICE FUNDS		\$28,302,778

**TOTAL APPROPRIATIONS INCLUDED IN
SECTIONS I - VIII OF THIS RESOLUTION
FOR THE FISCAL YEAR ENDING JUNE 30, 2022**

<u>RECAPITULATION:</u>		
Appropriations:		
Section I	General Fund	\$314,875,074
Section II	General Fund School Reserve Fund	\$5,221,040
Section III	School Fund	\$211,246,077
Section IV	Other School Funds	\$19,207,068
Section V	Other General Government Funds	\$26,431,371
Section VI	General Government Capital Improvements Fund	\$52,178,405
Section VII	School Division Capital Improvements Fund	\$16,935,576
Section VIII	Debt Service	<u>\$28,302,778</u>
		\$674,397,389
Less Inter-Fund Transfers		(\$206,908,801)
GRAND TOTAL - ALBEMARLE COUNTY APPROPRIATIONS		\$467,488,588

SECTION IX: EMERGENCY COMMUNICATIONS CENTER

That the following sums of money be and the same hereby are appropriated from the **EMERGENCY COMMUNICATIONS CENTER FUND** for the purposes herein specified to be apportioned as follows for the fiscal year ending June 30, 2022:

Paragraph One: EMERGENCY COMMUNICATIONS CENTER FUND		
	Emergency Communications Center	<u>\$7,358,179</u>
Total EMERGENCY COMMUNICATIONS CENTER FUND appropriations for fiscal year ending June 30, 2022:		\$7,358,179
To be provided as follows:		
	Albemarle County	\$3,060,027
	City of Charlottesville	\$1,679,076
	University of Virginia	\$1,589,088
	Revenue from Other Local Sources	\$422,363

Revenue from the Commonwealth	\$579,180
Revenue from the Federal Government	\$28,445

Total EMERGENCY COMMUNICATIONS CENTER FUND resources available for fiscal year ending June 30, 2022: \$7,358,179

SECTION X

All of the monies appropriated as shown by the contained items in Sections I through IX are appropriated upon the provisos, terms, conditions, and provisions herein before set forth in connection with said terms and those set forth in this section. The Chief Financial Officer and Clerk to the Board of Supervisors are hereby designated as authorized signatories for all bank accounts.

Paragraph One

Subject to the qualifications in this resolution contained, all appropriations are declared to be maximum, conditional, and proportionate appropriations - the purpose being to make the appropriations payable in full in the amount named herein if necessary and then only in the event the aggregate revenues collected and available during the fiscal year for which the appropriations are made are sufficient to pay all of the appropriations in full.

Otherwise, the said appropriations shall be deemed to be payable in such proportion as the total sum of all

realized revenue of the respective funds is to the total amount of revenue estimated to be available in the said

fiscal year by the Board of Supervisors.

Paragraph Two

All revenue received by any agency under the control of the Board of Supervisors included or not included in its estimate of revenue for the financing of the fund budget as submitted to the Board of Supervisors may not be expended by the said agency under the control of the Board of Supervisors without the consent of the Board of Supervisors being first obtained, nor may any of these agencies or boards make expenditures which will exceed a specific item of an appropriation.

Paragraph Three

No obligations for goods, materials, supplies, equipment, or contractual services for any purpose may be incurred by any department, bureau, agency, or individual under the direct control of the Board of Supervisors except by requisition to the purchasing agent; provided, however, no requisition for items exempted by the Albemarle County Purchasing Manual shall be required; and provided further that no requisition for contractual services involving the issuance of a contract on a competitive bid basis shall be required, but such contract shall be approved by the head of the contracting department, bureau, agency, or individual, the County Attorney, and the Purchasing Agent or Chief Financial Officer. The Purchasing Agent shall be responsible for securing such competitive bids on the basis of specifications furnished by the contracting department, bureau, agency, or individual.

In the event of the failure for any reason of approval herein required for such contracts, said contract shall be awarded through appropriate action of the Board of Supervisors.

Any obligations incurred contrary to the purchasing procedures prescribed in the Albemarle County

Purchasing Manual shall not be considered obligations of the County, and the Chief Financial Officer shall not

issue any warrants in payment of such obligations.

Paragraph Four

Allowances out of any of the appropriations made in this resolution by any or all County departments, bureaus, or agencies under the control of the Board of Supervisors to any of their officers and employees for expense on account of the use of such officers and employees of their personal automobiles in the discharge of their official duties shall be paid at the rate established by the County Executive for its employees and shall be subject to change from time to time.

Paragraph Five

All travel expense accounts shall be submitted on forms and according to regulations prescribed or approved by the Chief Financial Officer.

Paragraph Six

Any funds appropriated herein to recipients who are not directly governed by the Board of Supervisors ("External Recipients") may be used only for the exclusive and singular purpose for which the funds are appropriated, subject to any additional conditions as stated in the Approved Budget, County policies, County agreement with the External Recipient, or as otherwise required or proscribed by law or ordinance. External Recipients have an affirmative fiscal duty to account for the appropriate and most responsible use of the funds and, as an express condition of the appropriation and in addition to other reporting requirements, must provide an accounting upon request by the County within 30 days in a form determined by the Department of Finance and Budget. External Recipients must be able to at all times account for any County funds appropriated to them separate from donations from any other source. Failure to adhere to these conditions or to the purposes for which the appropriations are made may, among other things, affect future appropriations. The Department of Finance and Budget is authorized to withhold transfers of appropriated funds to any External Recipient until any pending requests for reporting and accounting have been met to the County's satisfaction. If any funds allocated to an External Recipient remains unused at the end of FY 22, the unspent balance must be returned to the County unless a County agreement with the External Recipient, an agreement to which the County is a party pertaining to the funding terms of the External Recipient, or the applicable law, provides otherwise.

Paragraph Seven

The County Executive is authorized to:

- 1) administratively approve budget transfers of unencumbered funds of up to \$500,000.00 per fund in the fiscal year from one classification, department, or project to another within the same fund;
- 2) allocate funding to and from the below identified classifications to appropriate budget line-items for expenditure:

Expenditure Classifications Eligible for Transfer Under this Resolution:

General Fund

- Salary and Benefits Reserve
- Board of Supervisors Strategic Priority Support Reserve
- Business Process Optimization Reserve
- Pandemic Reserve
- Cigarette Tax Reserve
- Climate Action Pool
- Training Pool
- Minimum Wage Reserve

- Reserve for Contingencies

Capital Funds

- Transportation Leveraging Fund
- NIFI Contingency
- Sidewalk Program Contingency
- Advancing Strategic Priorities Reserve in CIP
- Economic Development Funding for Public-Private Partnerships (P3s)
- Capital Budget Stabilization Reserve

3) allocate salary lapse between department budgets; and

4) administratively approve the carry forward of outstanding grants and capital projects and programs from year to year.

5) close out Capital projects and transfer any unencumbered residual funds to the Capital Improvement Fund fund balance.

6) close out grant funds.

Paragraph Eight

The Chief Financial Officer is hereby authorized to transfer monies from one fund to another, from time to time as monies become available, sums equal to, but not in excess of, for the appropriations made to these funds for the period covered by this resolution of appropriations.

Paragraph Nine

All resolutions and parts of resolutions inconsistent with the provisions of this resolution shall be and the same are hereby repealed.

Paragraph Ten

This resolution shall become effective on July 1, 2021.

**RESOLUTION OF OFFICIAL INTENT TO REIMBURSE
EXPENDITURES WITH PROCEEDS OF A BORROWING**

WHEREAS, the Albemarle County Board of Supervisors, Virginia (the “Borrower”) has or intends to acquire, construct and equip the items and projects set forth in Exhibit A hereto (collectively, the “Project”); and

WHEREAS, plans for the Project have advanced and the Borrower expects to advance its own funds to pay expenditures related to the Project (the “Expenditures”) prior to incurring indebtedness and to receive reimbursement for such Expenditures from proceeds of tax-exempt bonds or taxable debt, or both.

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

1. The Borrower intends to utilize the proceeds of tax-exempt bonds (the “Bonds”) or to incur other debt to pay the costs of the Project in an amount not currently expected to exceed \$45,439,184.

2. The Borrower intends that the proceeds of the Bonds be used to reimburse the Borrower for Expenditures with respect to the Project made on or after the date that is no more than 60 days prior to the date of this Resolution. The Borrower reasonably expects on the date hereof that it will reimburse the Expenditures with the proceeds of the Bonds or other debt.

3. Each Expenditure was or will be, unless otherwise approved by bond counsel, either (a) of a type properly chargeable to a capital account under general federal income tax principles (determined in each case as of the date of the Expenditure); (b) a cost of issuance with respect to the Bonds; (c) a nonrecurring item that is not customarily payable from current revenues; or (d) a grant to a party that is not related to or an agent of the Borrower so long as such grant does not impose any obligation or condition (directly or indirectly) to repay any amount to or for the benefit of the Borrower.

4. The Borrower intends to make a reimbursement allocation, which is a written allocation by the Borrower that evidences the Borrower's use of proceeds of the Bonds to reimburse an Expenditure, no later than 18 months after the later of the date on which the Expenditure is paid or the Project is placed in service or abandoned, but in no event more than three years after the date on which the Expenditure is paid. The Borrower recognizes that exceptions are available for certain "preliminary expenditures," costs of issuance, certain de minimis amounts, expenditures by "small issuers" (based on the year of issuance and not the year of expenditure) and expenditures for construction of at least five years.

5. The Borrower intends that the adoption of this Resolution confirms the "official intent" within the meaning of Treasury Regulations Section 1.150-2 promulgated under the Internal Revenue Code of 1986, as amended.

6. This Resolution shall take effect immediately upon its passage.

Agenda Item No. 10. SE202100018 Beauchamps Homestay Special Exceptions.

The Executive Summary forwarded to the Board states that:

The applicant has requested three (3) special exceptions in association with the proposed homestay at 943 Jefferson Lake Drive:

1. **Increase the Number of Guest Rooms** – Pursuant to County Code §18-5.1.48(i)(1)(i), the applicant is requesting a special exception to permit up to five guest rooms, instead of the two (2) guest rooms otherwise permitted by County Code §18-5.1.48(j)(1)(v).

2. **Reduce Required Minimum Yards** – Pursuant to County Code § 18-5.1.48(i)(1)(ii), the applicant is requesting a special exception to reduce the 125 ft. setback otherwise required by County Code §18-5.1.48(j)(1)(v).

3. **Waive Owner-Occupancy** – Pursuant to County Code § 18-5.1.48(i)(1)(iv), the applicant is requesting a special exception to waive the owner occupancy requirement of County Code § 18-5.1.48(j)(1)(iv), to allow a resident manager for the homestay.

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

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

Mr. Svoboda, Director of Zoning, said Ms. Rebecca Ragsdale was also with him for the presentation to answer questions. He said the current item was special exception 2021-18. He said the property is located at the corner of Jefferson Lake Drive and Thomas Jefferson Parkway across the road from Michie Tavern. He said it is approximately 3.28 acres in size and is located within the Scottsville magisterial district.

Mr. Svoboda said he would briefly review the homestay regulations. He said this was a parcel that falls in the category of five acres or less, so it would be a rental of two guest rooms, 125 feet for parcel boundaries, no use of accessory structures, and no whole house rentals. He said there are four possible special exceptions in this category; one is use of an accessory structure, which is actually not part of this application. He said the others are a reduction in setback, an increase in the number of guest rooms, and the ability to request the waiver for the owner to use a resident manager.

Mr. Svoboda said the applicant was requesting three of the four possible special exceptions: a reduction of the 125, an increase from two guest rooms to five guest rooms, and the ability to allow for the resident manager.

Mr. Svoboda said when they had talked about the two to five rooms in the past with the Board, the two rooms was put in there to keep it more residential on those smaller lots; the five was a cap that was related to how they address bedrooms for rent or bedrooms that are let in the building code. He said with six or more, different building code requirements come into play, and that is a different animal under the building code as well as the zoning ordinance; they match that definition to have some continuity in regulation there.

Mr. Svoboda said the Board was familiar with the factors to consider, and basically it boiled down to there being no detriment to abutting lots or neighborhood and that there is no harm to public health, safety, or welfare. He said incidentally, the abutting property owners (as the process requires) had been

notified and, to date, there had been no objection.

Mr. Svoboda said the property is located across from Michie Tavern; it is approximately 3.28 acres. He said there is an existing historic main house (943 Jefferson Lake Drive) and an existing cottage (941). He said 943 is the subject of this homestay application and therefore the subject of the special exception. He said parking is located in front of the main house, and there is existing vegetation along the western and eastern property lines that provides screening; there are attachments D and E within the packet that would also help with that. He said he had some additional slides that show the layout of the property.

Mr. Svoboda said he would move into the specifics a little bit about the area; this one was kind of unique. He said this particular property is adjoined by nonresidential and undeveloped and historic uses on all sides. He said Monticello Gardens Cemetery is located to the west and the north; property owned by the Thomas Jefferson Foundation, Monticello, is located to the east; and Michie Tavern is to the south. He said other nearby properties are owned by the UVA Foundation; there is Carter Mountain Orchard, the Saunders Trail, and Montalto. He said also the property is located within the Southern Albemarle rural historic district, and the dwelling (which is 943) was actually built in 1942 and is listed as a contributing structure to that district. He said Thomas Jefferson Parkway, also known as Route 53, is designated as a national scenic highway and is on the Journey Through Hallowed Ground; this was established in 2009 as the primary touring route for visitors to explore the scenic and historic landscape along the 180-mile route.

Mr. Svoboda presented one photograph taken near the end of the driveway to demonstrate what it looked like from Route 53; the next photo was taken about halfway down the driveway and showed the house (943) and the layout. He said the homestay would be located at 943, which is the larger L-shaped structure; the west and north is all owned by the cemetery, and the east side is owned by Thomas Jefferson Foundation.

Mr. Svoboda reminded the Board that two guest rooms was a limit that had been adopted to maintain residential character on those smaller subdivision lots, smaller in relationship to rural areas (not 10-acre parcels but those subdivisions that are 5 acres and less and have a subdivision feel for them). He said the property at 943 Jefferson Lake Drive is not located within an area that has that residential character but instead is surrounded by nonresidential uses including a cemetery, an historic tavern, and Monticello. He said the entrance to the property is located on Jefferson Lake Drive, which is a private road, and the access is for that homestay parcel; previously it provided access to the cemetery. Mr. Svoboda noted that under "other matters from the public," the property owner had mentioned that he still allows the cemetery some use to that. Mr. Svoboda demonstrated aerial photographs showing all the parcels owned by Monticello Memorial Gardens, which was all cemetery property. He said some of the Supervisors may have been on the Board when the cemetery had come in for their special permit for that expansion when they acquired those properties.

Mr. Svoboda said in regard to the guest rooms, staff does not believe that the increase in the number of guest rooms to five at this particular location would change the character of the area or cause a detriment to the abutting properties.

Mr. Svoboda said the homestay regulation again requires 125 feet; the intent of that was to increase the setback and provide some buffer for the residential neighbors or neighborhood, abutting property owners, so they could enjoy the peacefulness of their property. He said special exceptions for a reduction in those required yards is allowed. He demonstrated a picture of the parking on the west side at about 45 feet from the property line, describing it as really 100-some feet from Route 53, and also parking on the east side at about 80 feet (the east side is owned by Thomas Jefferson Foundation, and the west side is the cemetery).

Mr. Svoboda said with the reduction in setbacks with the access on that private road (which the property owner at "other matters" had mentioned had no history of accident in that particular location), staff does not believe that the increase in the number of the bedrooms, which theoretically would cause an increased number in trips, would alter the character of the area or cause a detriment to the abutting properties.

Mr. Svoboda said he thought the Board had only had one other property that had requested the resident manager (a property out on Woodlands), and that particular application also requested a reduction in setback. He said neither one of those was approved (it was the same application); both portions of the special exception request were completely denied. He said that was the only resident manager request that had come before them; staff has had discussions about the resident manager with other property owners, but that was the only request, so to date there has been no approved allowance for the resident manager.

Mr. Svoboda said one of the things they did when they looked at this not only for the location and the surrounding neighborhood was to kind of weigh it against also one of the concerns they had during the process which was whether it would remove any housing stock from the market. He said on this particular parcel, there are actually two dwelling units which are permitted; the cottage is a long-term rental, and the house currently is not but was a long-term rental; there is a unit there where a resident manager or owner could reside, and that is the plan of the property owner once the renovation is complete. He said there is a valid, active building permit, and the owner is following the permit. Mr. Svoboda said the applicant had also stated in "other matters" that once the renovation is done, he would move the resident manager, if allowed, back into the main house and then resume long-term rental with others at the cottage.

Mr. Svoboda summarized that there is no residential character to the area as it is pretty commercial in that particular “corner” of 53 (so-called because of the curve); not far from there, there is another small road where the fraternal order of police lodge is and then there are some residences down that road (a few of those are actually owned by the tavern property, and there are two more down there owned by one individual and a larger house at the end of the road as the crow flies about a quarter-mile away, which is the closest residence to this particular piece). He said again with the housing stock, they know that the previous use of two single families is still proposed to be the use (it really cannot be anything else if the regulation is being followed); both the big house (943), where the homestay is proposed, and the cottage will remain in long-term rental status. He said based on those circumstances, staff would recommend approval of the special exceptions, and they do have a list of conditions.

Ms. Mallek said she appreciated the description about the different numbers of rooms as far as being residential versus rooming house versus hotel. She asked if there were different building code rules on these three categories and whether those were then taken into account with this application for this to be five rooms rented to others plus a sixth room for the resident manager.

Ms. Mallek said during the development of this program, they had really emphasized the need to help individual family people who lived on a property, and so this was a big change. She said this was a different approach altogether, and she was interested to hear what the applicant had said during matters from the public that morning that there is no longer really a house there; it would be rooms with individual entrances and people coming and going and not seeing each other, so that is also very different than the approach they have had so far with the homestay, where there may be five bedrooms, but they would most often be used by people who all come together in a large group to benefit and make use of a property.

Mr. Svoboda said five rooms is the cap to let or rent out. He provided an example of a 10-bedroom house that is a single-family house and falls under the residential building code and said if two of those rooms of the ten were rented out, it was still a residence under the building code; if five of the ten were rented out, it was still a residence under the building code. Mr. Svoboda said that if six of the ten were rented out, that would be when it changes. He said the particulars are vast with the sixth one because it is going to depend on the style of construction, ingress/egress requirements that kick in, ADA requirements, sprinklers depending on type of construction, exit signs, so it really does become part of a commercial structure once the sixth room for let is hit. He said they would be talking about that some more in August because there is a section in the building code that also talks about occupancy loads, so they want to make sure to stay fresh on that particular subject, but currently the five bedrooms to let matches up with the building codes nomenclature for a single-family dwelling.

Ms. Mallek asked if she misunderstood that there would really be only four guest rooms plus the one where the tenant would live or whether it was five guest rooms plus the one where the tenant would live, which would then put it into the sixth.

Mr. Svoboda said the sixth is a long-term rental, but it makes it a single-family house. He provided an example that if Ms. Mallek owned the 10-bedroom house and rented it to him, that would be 10 bedrooms to let, but it is a single-family house, so that use has an impact on determining how that code structure works.

Mr. Svoboda said they had spent a lot of time, and it was after a month delay, he recalled, in 2019 when they actually added the resident manager provision. He said they had rescheduled from June/July to August to add that resident manager language. He said most of the discussion in his memory was that they had talked a lot about the family farm—there were some people that had spoken about inheriting that and wanting to make sure that worked; however, at the time, they did not have complete areas of consensus. He said they were on the fence as far as whether they wanted to do it and when or where they wanted to do it, so while it did get adopted, it only got adopted in the five-acre parcels or less; it did not get adopted in the five acres or larger.

Mr. Svoboda said he is not disputing the memory, but as the umpire, the regulation states that they can make the application, and the Board can look at it on its merit. He said they have talked to others who are in residential neighborhoods and have discussed the commercial nature of the way things take place and looked at whether a particular application would be appropriate in a residential neighborhood on a smaller lot. He said an application would have to be analyzed on its merits, but if it is surrounded by other quarter-acre lots, the default in that area (as is here) is the two bedrooms by right unless there is a special condition under analysis. He said this analysis had been part of the discussion, and when they had talked about those parcels, some of the discussion was also about owning two parcels next to each other or one's farm surrounding his two-acre house in the middle and other special circumstances that would allow for going to the five.

Mr. Svoboda said he did go back through and look at some of the minutes for the workshops and their discussion at the Board meeting, and surprisingly, for his memory, the amount of time he thought they had spent talking about it did not seem to be that same amount of time that was reflected in the minutes. He said he recalled it being a hot-button issue that had gotten them emotionally charged, but he does not know if they actually spent a lot of time on this. Mr. Svoboda said when they meet again in August, they will be talking about this again.

Ms. Mallek said his history helped her to remember that most of the discussion in her recollection was that the resident manager was there to be the liaison with the neighbors and to be the single point of

contact; one of their former colleagues, Ms. Price's predecessor, made a big deal about how this was the magic solution to help with the problems of not having the owner living there.

Ms. LaPisto-Kirtley recapped that the main house has six bedrooms; they are only asking for five because the sixth bedroom would be the home of the resident manager, therefore taking it out of the commercial realm.

Mr. Svoboda replied that was correct.

Ms. LaPisto-Kirtley confirmed the other little house is not part of it because that is a long-term lease.

Mr. Svoboda replied that was correct; it was greater than 30 days so does not fall into the transient housing category.

Ms. LaPisto-Kirtley asked theoretically if they only let five rooms in that house whether that resident manager could live in the small adjacent structure (the other house).

Ms. Mallek replied affirmatively.

Ms. LaPisto-Kirtley asked if the two separate houses were on different parcels.

Mr. Svoboda replied they were on the same parcel. He corrected his previous statement and said technically the closest house was the other house on this parcel, but then the next closest house would be the one that is approximately a quarter mile away.

Ms. LaPisto-Kirtley asked if the company that owned this was an LLC that was owned by the applicant.

Mr. Svoboda answered that it was.

Ms. LaPisto-Kirtley asked if it was totally in his name or others.

Mr. Svoboda replied that according to his conversation with the applicant, he is the sole proprietor of the LLC, although he did not have the corporate papers to verify that.

Ms. LaPisto-Kirtley asked if they could ask for that verification like they do with the ABC rurals where they ask for who owns the LLC.

Mr. Svoboda replied yes.

Ms. LaPisto-Kirtley asked if they approved this whether it was conditioned upon the fact that he was the owner of the LLC, and if he decided to sell his LLC to somebody who lives in Alaska, for example, whether that would then violate this condition.

Mr. Svoboda replied if that were a condition, the answer would be correct, and said Mr. Kamptner may want to jump in, but that is akin to conditioning the special exception to a specific owner, meaning, if he owned the property as an individual and the Board conditioned it to him, and he sold it to Ms. LaPisto-Kirtley, that is a similar concept under the law.

Ms. LaPisto-Kirtley asked if she were purchasing it whether she would be able to have the special exception or if it would only go with him under the LLC.

Mr. Svoboda said if they were to condition it to the LLC, it would only go to the LLC, depending on how it was worded. He said if he was following Ms. LaPisto-Kirtley correctly, the condition would be to the LLC ownership (which would be him), and if he sold it, it would not be her, so then the special exception would be void.

Ms. LaPisto-Kirtley said that provided a level of safety; she understood that the gentleman is in the area and has basically skin in the game, but this would add a level of safety for the County for that LLC to not be sold off to Alaska.

Ms. Price said she thought they needed Mr. Kamptner's input.

Mr. Kamptner offered some corrections. He said looking at the application, unless they have changed their form of ownership, it is a corporation, which is a little bit different. He said they have talked about the idea of conditioning special exceptions to particular owners. He said if the issue is the resident manager, his recommendation would be that they develop a condition that focuses on that particular issue if that is the one that is triggering the concern about who owns the property, and that is a little bit different than just saying that the special exception disappears when the ownership changes, which creates some legal issues.

Ms. LaPisto-Kirtley said she was not worried about the resident manager because the owner of the LLC who owns the property is ultimately going to be responsible if it is not well managed. She said she was more concerned about the LLC staying within the area, so to speak, with someone who respects the area.

Mr. Kamptner said that was an issue that arises with every single land use approval in that they really do not control the ownership. He said the Board's decision needs to be based upon the impacts created from the use itself and not who the owner of the property is, and they may need to make certain that there are conditions in place. He said while these regulations were developed, there was a lot of time that was spent dealing with this particular issue of having management of these properties that was responsive to issues that were arising. He said they have the other regulations that deal with having somebody who is responsive to issues that arise even if they are doing a whole house rental.

Ms. LaPisto-Kirtley said she would rather see a resident manager on a larger acreage, but in this circumstance here, there was no one else around to bother, so to speak, but it did concern her that it is under five acres. She asked if there was a way to make sure that the resident manager is in the house and that they do not rent out the six rooms while the resident manager is in the other little house.

Mr. Svoboda said that was part of the condition 1, and the way they currently do it (although they want to talk about that program also due to resources) is to look at the postings online as far as the number of bedrooms that are rented and check that.

Mr. Svoboda said he wanted to touch on one of Mr. Kamptner's points and said there is a difference between responsible agent and resident manager, so the responsible agent is the agent who, when the property owner is off-site in the whole house rentals, is the person that is notified and responsible for taking care of any issues or problems, and when they do adjacent notification, that is part of the form that they get and part of the contact information.

Mr. Svoboda said the resident manager lives on the property and acts as the owner (in the owner's capacity as that manager); there could be dual phone numbers, but the similar information is given out when the adjacent property owners are contacted to let them know about the homestay if there are issues. He said as some on the Board may recall, one of the issues was about the neighbors being able to get their hands on somebody who would be responsible for what is happening.

Ms. LaPisto-Kirtley said she would just want to verify the actual owner(s) of the LLC.

Ms. Palmer said she got a little bit confused when Mr. Kamptner was explaining the ability for the Board to tag the resident manager issue with the corporation ownership. She asked if he was saying that they could sometime in the future tie one of these special conditions to the ownership of the place.

Mr. Kamptner replied no, that he was trying to say that if the concern was having responsible management of the property, they should focus on a condition that creates some obligations on the resident manager to do so; they do have the obligation under the regulations, but if there are additional concerns about the resident manager managing the activities on the property, then it should be clarified that way and not through a condition that blows up the special exception when ownership changes. He said that particular type of condition really lacks that nexus to the impacts on the property because that future owner is unknown; the next owner may be somebody who wants to live in the house and only rent out two rooms.

Ms. Palmer asked if the owner of the property were going to be living in that sixth bedroom whether it would be legally possible for the Board to tie any special exception on one of these homestays to the ownership of the property.

Mr. Kamptner answered they could if there were something in the record that showed that it was a reasonable condition, and off the top of his head, he does not have one. He said during prior special exception applications, he had noted for the Board that there was about a two-year period in the late 1980s when the Board did that, and in a lot of ways, it was a trap for innocent owners who had special exceptions who when they went from a corporation to an LLC voided their special use permit and had to start the process all over again with really no material change in the effect or the long-term activity but then had to go through a process that ended up being the same as it was before.

Ms. Palmer said she recognized that people buy properties all the time to rent out, and one does not normally think of that as a commercial activity, but this felt like a rezoning of a residential property that is in the midst of a bunch of commercial properties, and they are basically saying it could now be a much heavier commercial use than prior. She asked for a comment on that because they are greatly increasing the commercial ability of a piece of property when they do this.

Mr. Kamptner said it was not a rezoning; it was reaching the limits of the homestay framework that the Board had created when it adopted the ordinance. He said the request is for three special exceptions. Mr. Kamptner said they are maximizing the rooms, but when the Board adopted the regulations, it determined that up to five rooms was permissible, though they wanted to evaluate it on a case-by-case basis; they determined they were willing to allow resident managers but wanted to evaluate each application on a case-by-case basis.

Mr. Kamptner said this example is what is in front of the Board now: They have this piece of property with this house that has six bedrooms, and it is unlike some of the other homestay applications, is not out in the country on a huge piece of property, is also not in a suburban neighborhood with R4 zoning that is surrounded by other immediate neighbors. He said this was a particular scenario with these particular surrounding properties that help define what the Board's analysis is because the two criteria that are laid out for the Board are whether there is any detriment to abutting lots and whether or

not there is a harm to public health, safety, or welfare.

Mr. Kamptner said that Mr. Svoboda had touched on the safety aspect with respect to the building code and his discussion about the entrance onto 53. Mr. Kamptner said he was not sure this raised any health-related issue, which left the Board with looking at the welfare, and that gets to whether it is commercial or a homestay and whether approving these special exceptions changes the welfare of the community if the special exception is approved given all the facts that pertain to this particular application.

Ms. McKeel said the Board deals with all the special exceptions separately; in other words, none of them set precedent for the next one, so if they approve this particular one, it is not tying the Board into having to approve anything that comes to them with a residential manager.

Mr. Kamptner agreed.

Ms. McKeel said she felt comfortable that was the way they have really dealt with all of these (each case as individual). She asked Mr. Svoboda to confirm they could not get into a situation where that sixth room was rented out, and a property management company was hired.

Mr. Svoboda confirmed.

Mr. Kamptner said he and Mr. Svoboda agreed with Ms. McKeel because the property management company is not a resident manager.

Ms. McKeel affirmed they would not get into a situation where that sixth room turned into another rental while they were using a property management company.

Mr. Svoboda explained that would violate the maximum of five rooms to let and would no longer meet the definition of the homestay.

Mr. Kamptner said that would also trigger some building code issues as well.

Ms. McKeel said she guessed there was a way they would find out about that.

Mr. Svoboda said as an example, they routinely deal with accessory apartments that pop up when a house, for instance, goes for sale or there is a listing, and the realtor will call and say they need verification that this is a legal additional bedroom. He said the realtor may be told they do not have any permits for that; they will have to either take it out or come back in and get the appropriate permits and update it to the current code because if they did not get the permits prior, then whether or not it was built under code does not apply. He said that was an example that was not unusual.

Ms. McKeel said in looking at this, she is concerned about public safety and Route 53; that is a dangerous road, and there have been some bad accidents on that road, and they are all of a sudden going to be setting up five rooms of people to be using that exit or entrance onto 53, which is blind and dangerous. She noted the owner had spoken to VDOT, who said it was all okay, but she was not sure she had a comfort level with coming in and out of that, especially when talking about people unfamiliar with the area who do not know that road, and so maybe that was enough to tickle that concern she had. She said for her, that is health and public safety.

Mr. Svoboda said there was no data that they were able to produce, either pros or cons, other than the feel that one has for it when driving it for oneself and the feel that one has coming down that road and seeing the buses queued up at Michie Tavern getting ready to pull out or pull in depending on whether they had just dropped off at Monticello or not. He said there are some things to pay attention to when navigating that stretch of road, but other than that, there is not crash data, for instance, for that particular turn; the road itself is another story in the different locations.

Ms. McKeel said they look at these types of concerns with everything they discuss, and there is no data because there has never been a property renting five rooms there with another resident manager living there and then yet another cottage. She said that was really putting a lot of people into that egress and ingress.

Ms. Price said she did visit the property and speak with the owner. She asked Mr. Svoboda to pull up the aerial shot again so she could frame a few things for reference for the other Supervisors. Ms. Price described the location of the driveway and the private road that comes onto the property off of 53. She described on the drive heading from 20 up the hill with Michie tavern on the right, heading up to Monticello, there is a hard right bend in the road where that comes off as a sharp left fork, and it immediately proceeds steeply down the hill.

Ms. Price said if one is coming down the hill from Monticello towards 20, one is coming around a hard left turn, and it is an exceptionally hard right turn to go onto the road, and it drops below you. She said she drives a monster truck, and as she was coming down 53, she did not feel she could safely navigate that right turn, partly because of the size of her vehicle, partly because of the steepness of the drop. She said she actually went past the property, turned around at the cemetery, came back up the hill, and made the left turn right at the corner (that hard right turn), and it is a little hairy because one has no idea until the last second if a car is coming down the hill as they are getting ready to take that left turn across traffic to the fork and then down the hill.

Ms. Price said the applicant did say that he is looking into that, and she wanted to follow up with Ms. McKeel was just saying that prior to this remodeling, there was one family that was residing in the big house; now there is a separate building (941). Ms. Price described the parking areas and said the rectangular parking lot to the left of the 941 residence was exclusively for the use of the occupants of that building. She said there are two parking areas; there are three to four parking spaces that are first passed, then going past the house, there is ample room for parking down at the upper end of the L with the garage that goes under the residence. She noted there was plenty of parking, and it is differentiated between the rental house versus the homestay building. She said the little bit of the driveway seen coming from the second parking is access for the backyard of the rental house and is not to be used by the homestay occupants if this is approved.

Ms. Price said that one of the concerns she has with this overall process is when an owner invests substantial sums of money into remodeling before the approval has been obtained. She said there is a risk that an owner takes when they do that, but this is extensive remodeling of the building. She said they did go into the building and walked around, and it appeared very clear even in the midst of the remodeling that it needed substantial work if the building was going to remain as a usable structure.

Ms. Price said it was not exactly five bedrooms but actually five suites that were being developed through the remodeling with what she would call an apartment on the ground floor; it is one floor in the front and two floors in the back. She said four of the suites are on the top floor, and the apartment for the resident manager and the fifth suite are on the bottom floor; each of them has two entrance points, a front and a back, and each has a private deck or patio with privacy that has been provided. She said as indicated, there is no communal indoor gathering place, so it is not the situation where five suites open up into a common area (a party room); these are separate and not connected in any way, and one cannot access directly from one of the units into the other unit.

Ms. Price described looking into the inside corner of the L where the sidewalk goes up to the house that there was a porch overhang there, and two of the doors are there; the others are off to the right, and then the basement unit can be accessed either from the main floor or from the back. She said the apartment for the resident manager is accessible from the ground floor and from the back.

Ms. Price said she has watched over an extended period of time the work being done on the smaller rental house (941) because every time she comes down 53, it is right in front of her before the hard left turn. She said they have basically taken an old building that was unusable and turned it into a modern house for rental. She said if this application is approved, it would consist of a family living in the house, the resident manager living in the apartment below the house, and up to five suites being rented in the main part of the house, so it is extensive work that is being done with plumbing, electrical, and all those things.

Ms. Price said her first concern was with the access point coming off Thomas Jefferson onto the property because of the blind curve, heading east on 53, the hard right turn to the driveway and the drop down heading west on 53. She noted the property owner had said he has already gotten an engineer looking at how he can raise the elevation and make that safer. Ms. Price said she would definitely like to have that part of the contingency that it becomes a safer entrance because of going from one family to potentially seven different families that could be there (the five that rent the homestay, the one of the property manager's on the ground floor, and the family that is living in the rental house), and that is a substantial increase in volume over the previous where it was just a resident manager couple that was living there.

Ms. Price said the other thing that ties into this was that since it is not all going to be long-term tenants or owners of 30 days or longer in length, there are going to be people who are less familiar with the safety risks of that intersection, so she has some concerns there.

Ms. Price said she did reach out to Monticello and spoke with a representative there, and they feel comfortable with the use of this property. She said they see the ability to have other visitors to Monticello nearby as a benefit, and they did not see a particular concern with unauthorized egress or access through this property onto the property that they own; as Mr. Svoboda pointed out, it is basically surrounded by the cemetery or the Thomas Jefferson Foundation property.

Ms. Price said this was a very unusual if not unique application coming before the Board. She said to find a property of approximately this size with this sort of a request in a setting such as this is at least unusual if not fully unique. She said she does not believe that a decision made on this property has precedential value, as Ms. McKeel and Mr. Kamptner have confirmed, and she can clearly differentiate this from previous applications that she has seen before the Board. She said, for example, on this one, with one minor exception where she believes there was an outdoor patio that has been closed in to make part of a bedroom, there has been no change to the square footage of this structure as opposed to taking a building and greatly expanding it and totally changing the footprint and the volume of square footage in the building, so this is largely intact within the previously existing boundaries of the building itself.

Ms. Price commented that while these decisions are not precedential and while the Board is not obligated or required in any way to state reasons for approval or disapproval of a particular application, she does think it is helpful for community members to know where they see their concerns and where they see things may be mitigated so that they will have at least a better sense of what the Supervisors are looking for when they reach these decisions.

Ms. Price said first she was looking at the character of the community, and as has been

addressed, this was pretty unique. She said there are virtually no residential properties near this; it is surrounded by a cemetery, Thomas Jefferson Foundation, Michie Tavern, and while there is a road a little farther to the west that has the police officer's union located there, and there are about a half dozen residences down that street, they are pretty far away, so this is not in an otherwise residential community. She said the fact that it is a smaller parcel of land does not necessarily result in the type of impact that might be expected if this were surrounded by other residential properties. Ms. Price said there are no other properties around where there is a consistency with the neighboring properties and character of the community to address.

Ms. Price said here, they actually have added a residence (941) that prior to this was not being used as a residence, so it does not actually diminish available housing stock, and a favorable factor is that by having the 941 rented on a long-term basis and a resident manager, there are actually two different entities that help to provide some sort of supervision to reduce the potential of this becoming a party house, that and the fact that the five units are all separate and distinct.

Ms. Price said she always has some concerns with moving away from owner-occupied to resident manager. She said she did not believe legally that they could put a constriction on who owns it, whether it is an entity, a partnership, a family, an LLC, a corporation (she would defer to Mr. Kamptrner on that).

Ms. Price said as she looks at the three different exceptions, she does not see any adverse impact from waiving the 125-foot setback; there is no other property or residence nearby that would be adversely impacted by that.

Ms. Price said the five rooms are unusual in the sense that the Board has not approved many, if any, of those.

Ms. Price said they have had one or maybe a couple of resident manager requests before, and that always gives her a little more pause; upon full analysis, however, she does not necessarily see under the unique circumstances of this particular property that that would be the concern that she would have if this property and this application were located in a different neighborhood or community where it might impact the character of it. She said for her, right now, the biggest concern is the safety aspect of the access point off of 53.

Ms. Mallek said Mr. Svoboda had mentioned that they did not have any accident data or anything else; she asked if that had been requested. She asked if there was a formal process either by the applicant or the County staff or whether that was something they just did not have any information on because it was not part of the process yet (and so they do not know because they did not ask).

Mr. Svoboda said that would be correct; as part of their process, they would ask VDOT to analyze an existing single-family dwelling, and they would look at it as that, and it would not bump to a commercial use, but that is something they probably would want to consider in cases such as this.

Ms. Mallek asked if Mr. Svoboda was confident that there were no accident reports on this site because someone has asked that fact from the police department or somebody.

Mr. Svoboda said they had just the information from the owner, but that can be verified.

Ms. LaPisto-Kirtley stated that her concern regarding the LLC was to make sure that there were not a number of different corporations coming in and buying up properties and having a resident manager. She said that was her concern, but she definitely was in favor of a resident manager and in favor of an LLC provided they knew who owned the LLC and that it was not some big corporation-type thing. She asked Mr. Svoboda if they had a kitchen available to the five rooms. She noted that if they each have a separate entrance and were not associated with each other, it was almost like a motel.

Mr. Svoboda said it was correct that there was no kitchen in each individual room and no obvious access to the kitchen. He said he did not know the plans of whether or not they would serve breakfast; it was not something that was indicated and was not his perception of how this would be operated. Mr. Svoboda said it was strictly the bedroom to let.

Ms. LaPisto-Kirtley said with just the bedrooms to let and more of a commercial enterprise, she wondered if the seven days a month/45 days a year would be adhered to or adequate for this enterprise.

Mr. Svoboda responded that would not apply here because the whole house rental is not allowed on the smaller parcels; it is the farm parcels, the larger parcels, that allow for whole house rental, and this was not a whole house rental because it would either be owner-occupied or have the resident manager.

Ms. LaPisto-Kirtley asked if that meant they could rent all the rooms out all the time.

Mr. Svoboda confirmed and said it was the same way as if they lived there and had two bedrooms where they could still do the same thing.

Ms. LaPisto-Kirtley repeated they could rent the two bedrooms out as many days as they wanted and asked where the seven days a month and 45 days a year came in.

Mr. Svoboda replied that was the larger parcels where one would do a whole house rental, and theoretically the owner would be absent or not on grounds and have the responsible agent available.

Ms. LaPisto-Kirtley clarified that was an agent but not a resident manager.

Mr. Svoboda answered yes, so the 45 days applies to five acres and larger (this is 3.28 acres), so that particular regulation does not apply, and whole house rentals are not permitted. He said their definition of whole house rental may not be the English version of that (which would be that it appears the whole house is being rented out); in the zoning ordinance, it meant that the owner was not on grounds or present when the whole house was being rented, which was part of the initiation of the responsible agent for those.

Ms. LaPisto-Kirtley asked if one did have a whole house rental on, for example, 20 acres whether it still would be limited to seven days and 45 days.

Mr. Svoboda answered yes for the whole house rental and gave the example of himself as the owner who had vacated the property so he could rent his whole house that he lived in to Ms. LaPisto-Kirtley; if he stayed there, he could rent two rooms, and that would not count.

Ms. LaPisto-Kirtley for a point of clarification asked about the example of owning the big house and then having a resident manager on an adjoining cottage.

Mr. Svoboda said the resident manager option is not available on the larger lots; it would have to be owner-occupied.

Ms. LaPisto-Kirtley said that made no sense at all.

Mr. Svoboda said they would talk more about that in August; as Ms. Mallek had pointed out, this came about as a result of talking about the larger parcels that were owned either by an LLC or trust or corporation. He said that was how this had been originally discussed, but it ended up on the five acres or less as opposed to the five acres or more.

Ms. Palmer noted the individual had not asked for six rooms but asked if it was correct that there would be higher requirements by VDOT on this entrance if he had six rooms.

Mr. Svoboda answered it was more than just VDOT, it was also building code, ADA upgrades, possible site plan because it takes it to a whole different place than an accessory use to a single-family dwelling, which is what a homestay is supposed to be. He said in this particular case, as Mr. Kamptner had pointed out, they were reaching the threshold of what that is; this is probably one of the examples of threshold, of maximizing this particular type of use on a piece of property.

Ms. Palmer said they all knew on this Board how hard Mr. Svoboda's department works to try to get to all these sites when they need to inspect or need to look at something that has been reported or that they have found out because the Supervisors have all witnessed the lack of staff time to do all the things they need to do with all the complaints and whatnot, and they also know that when there is a zoning violation, it frequently goes for months and months, and the County ends up paying the court costs if it is taken to court, etc.. She said the resolution process if there is somebody doing something incorrect (not to say that this person would ever do anything incorrect), hypothetically, if there were a problem, finding a solution to that problem is difficult in many cases. She said they had all had those in their districts and watched staff work hard to rectify only for it to go on for years.

Ms. Palmer said her concern was that this really had reached its limit and was a commercial operation; clearly, it was designed from the beginning to be. She said it has the very unique circumstances, but at the same time, it has risen to the level of really for public safety requiring that it be a commercial property where VDOT gets involved, and all those things get involved, to make sure that it is safe. She said that is where she has gotten by carefully listening to all the information that she has received. She said she appreciated all of staff's work because she really did understand the uniqueness of the area; she was just overwhelmed by the safety issues that could arise by having this many people on this property at one time without a proper entrance, and there may be a proper entrance in the future, but right now, that was not required.

Ms. McKeel said they have chosen not to approved other proposals that had less traffic impact in her opinion. She said she is very concerned about this entrance; having said that, she is willing to try and figure out what they could do because she does appreciate the fact that they have spent money, but to put people that are not even familiar with that road using this entrance and exit is very concerning to her.

Ms. McKeel noted that Ms. Price had mentioned that he was willing to do something to try to ameliorate the problems with that entrance. She said she was only going to be able to support this if, in fact, they had some sort of a condition, but she did not know what they wanted to do with that. She said if the applicant could work with VDOT and some engineers to get this entrance safer, then she would be happy to support it because of the uniqueness of the property; it was the safety issue on that road she was very concerned about. She said she appreciated the question about the traffic data, but whatever the past traffic data was would not make any difference because there was one house, and the people that lived in that house knew that road; to her, that makes a huge difference. She said it is turning into a commercial property, which is fine, but he must be able to address that entrance and exit for her.

Ms. Price concurred.

Ms. Mallek said Mr. Svoboda's comments a few minutes prior really struck her; this really was not an accessory use on a single-family house anymore, and she cannot really pretend that it is, and that is where it helped to crystallize for her the fact that the limit is passed in her mind to what they were talking about with the intent of this. She said the other thing that has come to the forefront is that it should not be an excuse to get a permit when a whole lot of money is spent without the permit first; that is a very dangerous slippery slope, and people do those things at their risk knowing that they may not be getting the permission to do what they think they were going to do all along. She said she is not sympathetic to that argument, and she cannot support it.

Ms. Price concurred with that. She said she had two strong feelings on this, and the first was that she thought that what the applicant was doing was really saving a piece of property that likely was going to fall into total disrepair, disuse, and would be a blight, and that would not be helpful. She said she would not be looking favorably upon this if it were located anywhere else in terms of residential area or things like that because it would be so out of character of the surrounding properties. She said it is a totally unique application they have before them and is not really an accessory use of a primary structure; it is a primary use of a structure with an accessory being a resident manager.

Ms. Price said when she visited, the owner pointed out what he described as a "kitchen of sorts" (that is her recollection more than his exact language), which struck her as that it was not going to be a full kitchen; it would be more sort of a kitchenette where some food could be prepared but one could not really live there.

Ms. Price said the biggest issue for her was the safety as well, and she agreed with what both Ms. Mallek and Ms. McKeel were saying that prior data was irrelevant to what was taking place now. She said she would turn to Mr. Kamptner or Mr. Svoboda; she did not want to necessarily push for disapproval but was not prepared right now to push for approval. She asked if there were ways they could defer this and send it back for further study.

Mr. Kamptner said yes, and even if it were unanimous in support, he would recommend deferring so that staff had time to develop a meaningful condition dealing with the traffic entrance issue.

Ms. Price said though this is pushing the envelope of what the homestay regulation is, because of the uniqueness of this property and its location, it is one that she could see herself being open to, provided the safety issues can be met and not in any way feel bound because it would not be precedential on any other application coming before the Board. She said they must look at each one as it comes to them and not based upon what may have happened in another location.

Ms. LaPisto-Kirtley said after hearing from the other Supervisors, she is realizing more and more the fact that they have six suites with separate entrances tells her it is not a location for a whole house rental family to be there to get together, and maybe they have a kitchenette, but it is like individual motel rooms. She said that it is what it is feeling like, and she is hoping someone tells her she is wrong because she really does want to approve this. She said the ingress/egress really worries her. She said it almost seems like they need to rezone and let him put in a hotel type of situation.

Mr. Kamptner asked having heard the physical arrangement of the suites and kitchenette being mentioned whether that was in reference to the resident manager's space.

Ms. Price said no and that when she used the term kitchenette, that was what she had taken from the applicant when she was out there, and he made reference to a kitchen of sorts (which she should have followed up and did not). She said she did not take that as a full kitchen (oven, dishwasher, all those things) but more a suite, which was essentially a sleeping area, a great room, and a place where one could prepare some food but not really a kitchen, more an extended-stay suite rather than an apartment. She said as for the resident manager downstairs, that would be the largest of the six identifiable components, and it was her understanding it would be a full apartment with a full kitchen and everything that would go along with it.

Ms. Price said it appeared to her that the consensus of the Board was to defer action on this and send it back to County staff to try and get some of these questions answered. She asked if they needed a motion on that.

Mr. Svoboda said he wanted to be clear on what they would be bringing back to the Board, which was a VDOT analysis, and he wanted to caution everyone that they may not have the same safety concerns. He said they would look at that and maybe what suggestions for improvement would be out there. He said also what he was hearing was probably a floor plan of the building and each suite would be beneficial to look at.

Mr. Kamptner said he thought they needed that to make certain that it meets the definition of a homestay.

Mr. Svoboda said they would check that on the final zoning anyway because if they had a kitchen, then it would be a duplex, and that is a different critter under the ordinance and would require different things, and there cannot be a homestay in a duplex.

Mr. Kamptner said there must be rooms for dining and meeting for the guests, so when he hears the five individual suites with the exterior access without those rooms for dining and meeting, it falls outside of the definition of a homestay. He said they need to lock all that down.

Ms. Price said to Mr. Svoboda they would want not just VDOT but their own County traffic engineers in terms of a safety analysis because, as has been mentioned, data from the past is irrelevant to the proposal for the future.

Mr. Svoboda asked if there would be a need to draft something to deal with the responsible agent, meaning adding that as part of a condition.

Ms. Price replied if they had a resident manager, there would not be a responsible agent.

Mr. Svoboda agreed and said he did not know if there was an extra layer there based on any impacts.

Ms. Price said she did not think so, but the other cautionary tale for other community members was to submit your plans before engaging in remodeling and expenditure of substantial funds just to make sure that what they are desiring to do will fall within what the Board is able to approve.

Ms. LaPisto-Kirtley said she did not have a problem with an LLC; she just would like to know who is in the LLC.

Ms. Price said that was a valid point.

Ms. Mallek asked if there was any help to do a straw poll before sending staff on a large research project.

Ms. McKeel said she was not sure she understood what Ms. Mallek meant by a large research project. She added that VDOT may not have concerns about this, but she has concerns about it and is hoping to have something at that entrance corrected, whatever needs to happen to make it better.

Ms. Price said they all agreed on that.

Ms. Palmer said the straw poll was a good idea because if it does not even meet the definition of a homestay, then there is a whole other issue, and this was a hotel for gosh sakes.

Ms. McKeel said she was confused when Ms. Mallek said research project and asked if that was what she had been referring to.

Ms. Mallek said it had sounded like a considerable amount of work to draft up all sorts of conditions and figure out all these things, and she wanted to make sure there were four people in favor of it before they had to do that.

Ms. McKeel said she saw what she had meant.

Ms. Price asked for help with phrasing because she thought they were going to send it back to County staff to get back in touch with the applicant, get more information, and then determine where it falls.

Ms. McKeel said she was happy with that because if they had a design, and staff could look at it, they would know better to answer some of Mr. Kamptner's concerns. She said they need to be able to hear from the applicant around the concerns about the entrance.

Ms. Price said there appeared to be consensus on that and asked Mr. Kamptner and Mr. Svoboda if that was clear.

Mr. Kamptner said he counted at least three or four who would support deferring for staff to come back with the information, perhaps a new condition and more specific plans.

Ms. Price said she saw four hands go up for that.

Ms. Palmer said before staff does a lot of work, they need to find out first whether it even is qualified as a homestay.

Ms. Price agreed that would be the first thing for County staff to look at, and then if it does not, they stop at that point; if it does, then they look at the other concerns.

Mr. Kamptner asked for a motion to defer action on this based upon what was just discussed.

Ms. LaPisto-Kirtley **moved** to defer SE202100018 Beauchamps Homestay Special Exceptions indefinitely. Ms. McKeel **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

ABSENT: Mr. Gallaway.

Mr. Kamptner said staff would bring it back when there was time on the agenda and the questions

had been answered.

Agenda Item No. 11. Presentation: Shenandoah National Park Report.

Mr. Kenney said he was the new superintendent of Shenandoah National Park and had arrived last October. He said the park is surrounded by eight counties, and he has been working his way around to all the Boards of Supervisors to say hello and give a quick update about what is going on in Shenandoah National Park.

Mr. Kenney provided background on himself, saying he has been a 30+ year veteran of the park service and moved to Virginia in October; he was at Yellowstone National Park where he served as the deputy superintendent, prior to that in North Carolina, prior to that in Colorado, prior to that in Florida, so he has bounced around the country a bit with the park service but glad to have landed at Shenandoah at this point in his career.

Mr. Kenney said it was an interesting time to be a park manager and just in the public in general with the pandemic going on; they were not immune to COVID-19 in the national parks as far as managing a large workforce. He said he never would have imagined a year ago March that they would be talking about record visitation in the year of a pandemic, but they were. He said Shenandoah ended the year 15% up from the previous year, and one would have to go back 25 years in its history to have seen that level of visitation in Shenandoah. He said October when he arrived was extremely busy; they ended up having visitation at 53% over 2019 levels, which is quite a lot of people to manage since October is their busiest month annually anyhow because of fall color. He said that was just something that they have had to manage their way through.

Mr. Kenney said they were closed for about six weeks, and then when they reopened, obviously people thought of parks as being a safe place to come, which was a positive thing in some respects but was a challenge to manage that and manage all those levels of anxiety and expectations and things like that.

Mr. Kenney said 2021 is probably setting up to be another busy year within the parks. He said all indicators are that they should anticipate seeing high visitation levels again. He said their April visitation was up significantly over previous years; they had a busy January even. He said February was slow, but there was a lot of ice and snow. He said other indicators are showing a high visitation; Delaware North Corporation, who runs the lodging and the waysides in the park under a contract, is seeing high demand for reservations, and campground reservations are up. He said that is all setting up for another year of pretty significant visitation in his mind and will bring benefits to the communities as far as tourism but will also bring challenges since they are still managing their way through the pandemic (but what is perceived at this point to be the tail end of the pandemic).

Mr. Kenney said there will be some project work going on in the park. He said the old joke is that there are two seasons, winter and then road construction season, and that applies to national parks as well. He said they will have a fairly significant road project going in milepost 50 to 65, and the Skyland terrace has been completely demolished; they are dealing with some drainage issues and structural issues with the lodge there, which hosts the dining room and store and bar and things at Skyland, and it is totally being redone. He said they had hoped to get that done earlier in the season, but it slipped; unfortunately, it seems that is what happens with projects often. He said they kept finding additional problems as they unearthed and tore out the old terrace, but the end product is going to be spectacular. He said they are making a connection to the dining room, and there will be an opportunity for outdoor dining at the terrace connected to the dining room, which will be nice. He said they will be working on a lot of projects that fell through the cracks last year because they could not hire as many people, so things like vista management and other activities will be ongoing and back up to normal operations.

Mr. Kenney said the Board may have heard about the Great American Outdoors Act that was passed by the last Congress and signed into law by President Trump. He said this is a remarkable piece of legislation as it is directing revenue coming off of oil and gas sales to deal with the maintenance backlog of facilities related to public lands (national parks, forest service lands, fish and wildlife service), but national parks are the biggest beneficiary of this and could see north of six billion dollars over five years.

Mr. Kenney said Shenandoah was fortunate enough to capture approximately 27-28 million dollars for fiscal year 2021. He said another road project related to Skyline (a preservation project) will be underway; in this calendar year, most of it will be in the design phase, and most of the work will actually be seen implemented in fiscal year 2022. He said they also captured a small amount of money to demolish some facilities that are obsolete and no longer needed in the park, but again, it is about a 27-28 million dollar amount of money that will flow into Shenandoah National Park through that Great American Outdoors Act. He said obviously, contractors will be hired, jobs created, materials and things acquired in the local communities, and those are all positive things, and ultimately the park will be retiring what they call deferred maintenance, so that is a good thing.

Mr. Kenney said they are in the process of competing for the remaining four fiscal years of projects related to the Great American Outdoors Act; they have submitted proposals for over 230 million dollars' worth of work, some large infrastructure-type projects, which is really a key focus to the Act, water and wastewater systems. He said many of the systems are antiquated and have outlived their lifecycle; just as the Supervisors deal with at the County level, these things come with not small price tags and so

they are in the “competition” internally for these dollars, and their projects are being vetted up through their regional office and the national office for consideration. He said he feels positive that they are positioned well as a park to capture some additional monies out of this funding source which will help with the infrastructure, and ultimately the goal there is to make the place better for visitors. He said they want to be able to treat the sewage and provide clean drinking water and would seek to improve some campground facilities and things along those lines, which will be all positive for the visitor.

Mr. Kenney said they are very fortunate to have a park like Shenandoah in Virginia, and they are all part of that community. He said his philosophy about managing national parks as he has moved around the country is to make sure that they are part of the community. He said it is a little challenging in Shenandoah in the sense that it is such a long linear park, and it makes it difficult being based in Luray to get down to Charlottesville on a regular basis, but he does that; it is important that they work in collaboration with the counties and the communities that surround this park and try to come up with solutions to concerns that may come up. He said he would encourage them to continue this dialogue when they can because those at the local level will often hear things and constituents may start with them, and he encouraged the Board to not hesitate to contact him if he can be of any assistance and try to resolve things. Mr. Kenney said they cannot manage Shenandoah as an island; they need to work with everybody that surrounds them, and he is committed to doing that and looks forward to working with the Board of Supervisors.

Ms. Mallek said as someone who in 1971 had her two-day honeymoon at Big Meadows, she loved the park in many ways. She asked if the Blue Ridge committee was still meeting because they had not heard anything about it in a long time.

Mr. Kenney replied that it was meeting, and they just had a meeting within the last couple of weeks, and he did not believe anyone from Albemarle County attended.

Ms. Mallek said her second question was going to be whether they had a roster and who was on it; they need to make sure they are not absent at those meetings ever again. She said she was thrilled to hear all the improvements because the capital improvement program has been in great arrears for a long time due to funding, so that was great. She said separately some other time, she would talk to Mr. Kenney about the weed control; she did participate in a public comment period the year prior about some sort of aerial spraying or something of invasive species right around some springs on the eastern slope, and she would like to learn what is happening with that but would do that separately.

Ms. LaPisto-Kirtley thanked Mr. Kenney, said she was glad they were doing well, congratulated him on his new position, and welcomed him.

Ms. Palmer said given the time, she would connect with him at another time as she did have some questions. She asked Mr. Kenney to email the Board the information on the Blue Ridge committee.

Ms. McKeel said she wanted to ask some questions about the forests and trees but in an effort to save time would not. She thanked him for coming and welcomed him to the community.

Mr. Kenney said that staff had his contact numbers, and his email has cellphone numbers on it. He said for those who wanted to follow up with him, he looked forward to talking to all of them. He said he would get them some more information about the Blue Ridge Committee and who was on there from Albemarle County, and if they needed to update their mailing list, they would do so.

Ms. Price said she was always looking for a silver lining out of the pandemic and thought they could see across the country a greater appreciation of the value of the national parks and forest service and the outdoors and how it needs to be protected. She thanked Mr. Kenney for what he does to ensure that it is protected and available for public use.

Agenda Item No. 12. Presentation: Board-to-Board, May 2021, a Quarterly Report from the Albemarle County School Board to the Albemarle County.

Mr. Graham Paige (Chair, School Board) said he would like to start by announcing their Student Equity Advisory Team (SEAT) would be holding a virtual town hall for teens called “Removing our Masks: Creating Safe and Anti-Racist School Spaces.” He said the meeting would address questions of hypervisibility and creating a safe and welcoming environment for in-person learning. He said this town hall would be held by zoom and had been organized by SEAT and their faculty advisor Karen Waters-Wicks. He said SEAT had been very active in helping make Albemarle County public schools’ efforts toward anti-racism a reality. He said the group helped write the ACPS anti-racism policy and had held one virtual town hall meeting which previously concerned the correlation between the expanding opportunity gap for the community in the COVID pandemic.

Mr. Paige said he was also very pleased to announce that Mr. Reed Gillespie, who currently serves as the associate principal at Western Albemarle High School, had been appointed principal of the division’s first fully virtual school. Mr. Paige said the new school which debuts on August 23rd will provide synchronous learning on a full-day schedule; in addition to Mr. Gillespie, the school is hiring a faculty that will be fully devoted to online instruction. Mr. Paige said the new school is a one-year pilot and furthers the expansion of choice that has led to more diversity in the range of learning experiences available to students. He said on June 1st, all families in the school division received an intent form asking them to declare whether their child would attend school in person or virtually when the new schoolyear begins in

August. He said families that choose to enroll one or more of their children in the virtual school will receive follow-up information regarding registration for course offerings and will be asked to commit to the virtual school for at least one semester through January of the next year.

Mr. Paige said Mr. Gillespie's focus as a leader has been on designing programs and working with students on academic coaching; his previous experience includes leading a weekly Twitter program for educators and being a frequent presenter at Edcamp, the professional development resource for Digital Promise, an education nonprofit authorized by the U.S. Congress to expand learning opportunities for students by speeding up innovation in how students learn. Mr. Paige said this year, Mr. Gillespie led a student-teacher committee to redesign instruction around technology integration to support online and hybrid learning and expanded the school's community outreach, adding improvements to its website and the production of video tutorials.

Mr. Paige said they have made several other wonderful principal appointments to the school division. He said the new school leaders are C'ta DeLaurier, who will be the principal of Virginia L. Murray School; Maureen Jensen, who will become Stony Point's principal; and Angela Stokes, who will be Stone-Robinson's next principal. He said all three will succeed incumbents who announced in April that they would be leaving their positions on June 30th.

Mr. Paige said Ms. DeLaurier is currently the assistant principal of Buford Middle School in Charlottesville; she will be returning to a school division that she served for nearly 20 years, first joining Albemarle County public schools in 2000 as an elementary school classroom teacher. He said she later became a reading and math interventionist and then an instructional coach, primarily serving elementary and middle school teachers with improving classroom strategies, practices, and effectiveness.

Mr. Paige said Ms. Jensen is a talent development resource teacher for both Red Hill and Scottsville elementary schools, supporting students in all grades. He said she previously was a division-wide lead coach for talent development and gifted services and for English instruction for elementary, middle, and high schools; she also taught at Jack Jouett and Burley middle schools and was a district director for the AVID program, an internationally award-winning program that introduces students to college preparation skills. Mr. Paige said while Ms. Jensen was at Jouett, the school received demonstration status from the program for the quality of their program.

Mr. Paige said Ms. Stokes is moving up from assistant principal at Stone-Robinson to principal. He said similar to her colleagues, she served in the division's coaching program as a lead instructional coach; she also has been an academic data coach at Mountain View Elementary School, working with teachers on their professional development. Mr. Paige said she led two division-wide student programs, Check & Connect, in which volunteers from the community mentor elementary school students, and Let 'Em Shine, which received a national grant to study and design historical monuments.

Mr. Paige said they are also very pleased to announce that in the pursuit of increasing accessibility for all Albemarle County public school families, they are expanding their translation tool for communications. He said for the past few years, they have used Google Translate website translator widget to provide free and automatic translation via website content; however, Google announced in 2019 that they would no longer support their website translator widget. Mr. Paige said eventually, the tool will cease to work, probably without any warning.

Mr. Paige said in order to ensure that Albemarle County public schools' web content is accessible to users who prefer to read text in a language other than English, they have partnered with a website translation service called Weglot; for Albemarle County public school website visitors, Weglot will behave similarly to Google Translate. He said a dropdown menu located in the upper right corner of their website will allow users to select an alternate language; in response, Weglot will automatically detect and translate text contents in the selected languages. Mr. Paige said as of the launch on May 3rd, the dropdown menu will include English, Spanish, Arabic, Korean, Nepali, Pashto, Swahili, and Chinese. He said moving forward, the division will continue to partner with the ESOL team to make sure the language offerings meet the standards of the students, their families, and community.

Mr. Paige said the County school continues to move forward with its name review process; members of the Jack Jouett Middle School community were recently asked to share their views about the name of their school through an online survey that closed on Thursday, May 27th. He said the survey asked participants if they favor the school's current name or have suggestions for a new name. He said this process is part of a school naming review being conducted by a 16-member community advisory committee in accordance with a division-wide policy; the policy requires a community review of all schools in the division that are named for an individual to ensure those school names reflect the division school values of excellence, young people, community, and respect.

Mr. Paige said at their meeting place that evening at 6:30 p.m. via zoom, community members will be able to offer comments on the names that were proposed through the survey. He said the Jouett advisory committee is led by Ms. Hannah Peters, a Jouett teacher, who chairs the advisory committee. He said the committee includes parents from Jouett and from the four elementary schools that send students to Jouett; Jouett's principal, faculty and staff; a student alumna; and members of the community who do not presently have children attending the school. Mr. Paige said following that evening's public meeting, the committee will narrow the list of suggested names to five semifinalists, which again will be subject to community input. He said if the Jack Jouett name is among the semifinalists, the committee will conduct research on Jouett, who was a captain in the Revolutionary War credited with warning of a British plot to kill Thomas Jefferson. He said the School Board's naming review policy requires the

advisory committee to seek to notify any family members of a school's namesake as part of its process; Ms. Peters said the committee welcomes any information from the public regarding the Jouett family history or its descendants.

Mr. Paige said at its May 13th meeting, the Albemarle County School Board adopted an operating budget for the 2021-2022 schoolyear of \$211.2 million, an increase of 9% over the current year. He said the adopted budget represents an increase in the School Board's funding request of \$209.9 million that was presented to the Board in March. He said the division's high revenue results from recovering economies at the State and County levels, and these increases have made possible an emphasis next year on improving employee compensation. He said the School Board's approval of raises next year will make stronger the division's ability to recruit, develop, and retain a competitive workforce. He said the scale and step increases for teachers will total 5.2% for eligible faculty, and eligible classified staff will see their salaries raised by 4%. He said all Virginia Retirement System eligible employees will earn at least \$15 per hour, and some part-time employees will see enhanced health insurance benefits.

Mr. Paige said next year's budget will restore nine and a half positions that were frozen in the current year; also restored were two programs postponed from a year ago, an expansion of the division's equity staff and the adoption by all schools of the division short-term educational program (STEP). He said one new program is included in the 2021-22 budget: student safety coaches focused on best practices for student, employee, and school visitor safety. He said this team will be housed across secondary schools and serve as a resource for the elementary schools that feed into them. He said this program is designed to improve school climates, student attendance, and relationship with students.

Ms. Mallek congratulated Mr. Paige on the virtual school pilot and said she looked forward to finding out how it goes because this past year, they have all learned a lot about kids learning in the kitchen, even on really crummy downloads like she has at her house.

Ms. LaPisto-Kirtley said she was also looking forward to hearing more about the virtual school. She said that should be very interesting and told Mr. Paige he was a leader.

Ms. Palmer asked Mr. Paige to give them what the process was going to look like for the decision for moving the fifth graders from Mountain View over to Walton or not; she was confused on how the decision was going to be made.

Mr. Paige said the final decision was not going to be made until late in July, but one of the main questions they received first was whether or not extended-day afterschool programs would be available, and that is one thing that is being investigated. He said the second thing also was playground equipment at Walton for elementary students, so that is also being investigated. He said the final decision will not be reached until late July, and it will depend partly on how many kindergarten students are enrolled at Mountain View; if that enrollment is low enough, they will probably be able to keep all fifth graders at Mountain View, but it would depend on that too. He said there are a lot of things in play right now, but the final decision would not be made until July.

Ms. McKeel said it was wonderful to see the school buses rolling in her neighborhood again. She walks the dog and is thoroughly enjoying seeing the kids and the school buses. She said she applauded the virtual school concept; children learn in different ways at different times through different access ports, and so it is wonderful that they are showing leadership and doing this. She said she looked forward to following how it plays out and how it works. She said Mr. Paige was exactly right to hire a principal and treat it just like a school.

Ms. Price said she concurred with the other Supervisors and applauded everything that the School Board had done over the last year and a half with this pandemic, and what they have had to deal with and how they have come through is remarkable. She said she appreciated Mr. Paige's responding to the question about Mountain View Elementary School and Walton Middle School; they are getting a lot of questions about that.

Ms. Price said she thinks it is also appropriate to remind the community members that there are areas that fall under the exclusive jurisdiction of the School Board as there are areas that fall under the exclusive jurisdiction of the Board of Supervisors, and she accepts and acknowledges those areas that fall under the School Board's jurisdiction while they as Supervisors also have to pay attention to their own decisions as they impact the school system just as the School Board decisions impact the Supervisors' decisions. She said she appreciated Mr. Paige's discussion on that and thanked him for everything they have done this year.

At 5:47 p.m., Ms. Price proposed that the Board defer their closed meeting until the end of their session and instead take a recess before returning at 6:00 p.m.

Non-Agenda Item: Recess.

The Board recessed its meeting at 5:48 p.m. and reconvened at 6:01 p.m.

Agenda Item No. 16. From the Public: Matters Not Listed for Public Hearing on the Agenda or on Matters Previously Considered by the Board or Matters that are Pending Before the Board.

Mr. Paul McArtor (Scottsville district) said he lives next door to Mountain View Elementary, and Mountain View is why he wanted to speak that evening. He said he wanted to start with a statement of appreciation that he heard at the end of the last session that two Supervisors had asked about the update at Mountain View. He said for those who may not know the details, Mountain View is in a state of emergency right now, and he used that because the term overpopulation has been used for years, but there is a difference between overpopulation and the students cannot fit on campus and must be shipped off to another school.

Mr. McArtor said to get to a state of emergency like this is definitely a failure on behalf of the school system and the School Board, and they have been met with the appropriate outrage from parents about that failure, but the reason he was speaking that evening was to make sure that everybody understood, including both the Board of Supervisors and the Planning Commission, that the failure was set up by the Board of Supervisors and the Planning Commission.

Mr. McArtor said in the time that he has been there and the time that Mountain View has been overpopulated, there have been eight different developments approved in the Mountain View area; those have most been high-density developments. He said he was actually very much pro-development and did believe there needed to be far more houses built in Albemarle County to help with the housing crisis and affordable housing issue, but it is the job of the Planning Commission and the Board of Supervisors to ensure that the right facilities and infrastructure are there before approving any new projects, especially ones that are adding additional students to an overcrowded school already.

Mr. McArtor said he brought this issue up at a community meeting for one of the other projects that is in the process of trying to get approved, and the response that he was given was that there was an expansion planned for Mountain View. He said it is very important for everybody to understand that a planned expansion is not the same thing as having a seat for a child at a school; it is not a solution for the current problem, and when the expansion itself is only large enough to solve the current problem, it is definitely not responsible governance to continue packing in more students into the area without having a long-term solution.

Mr. McArtor said the reason he was there besides making sure that it was understood that the responsibility and blame go long past the School Board and the school system and also to the Board of Supervisors and Planning Commission was to make sure they have the promise of the Board of Supervisors that they are going to devote all resources and efforts as with any other emergency to get this issue resolved and also to ask that the Board of Supervisors and the Planning Commission be responsible with their approvals and halt any other approvals that would deliver students to Mountain View prior to an expansion being completed.

Agenda Item No. 17. **Public Hearing: FY 2021 Budget Amendment and Appropriations.**

The Executive Summary forwarded to the Board states that Virginia Code §15.2-2507 provides that any locality may amend its budget to adjust the aggregate amount to be appropriated during the fiscal year as shown in the currently adopted budget; provided, however, any such amendment which exceeds one percent of the total expenditures shown in the currently adopted budget must be accomplished by first publishing a notice of a meeting and holding a public hearing before amending the budget. The Code section applies to all County funds, i.e., General Fund, Capital Funds, E911, School Self-Sustaining, etc.

The cumulative total of the FY 2021 appropriations itemized below is \$15,375,983.13. Because the cumulative amount of the appropriations exceeds one percent of the currently adopted budget, a budget amendment public hearing is required.

The proposed increase of this FY 2021 Budget Amendment totals \$15,375,983.13. The estimated expenses and revenues included in the proposed amendment are shown below:

PROPOSED FY 2020-21 BUDGET AMENDMENT

<u>ESTIMATED REVENUES</u>		
Local Revenues	\$	5,282,355.39
State Revenues	\$	71,856.00
Federal Revenues	\$	5,109,581.94
General Fund Balance	\$	4,267,614.00
Other Fund Balances	\$	644,575.80
TOTAL ESTIMATED REVENUES	\$	15,375,983.13
<u>ESTIMATED EXPENDITURES</u>		
General Fund	\$	4,809,470.00
Special Revenue Funds	\$	1,174,575.80
School Special Revenue Funds	\$	5,109,581.94
Emergency Communications Center	\$	(17,644.61)
Capital Projects	\$	4,300,000.00
TOTAL ESTIMATED EXPENDITURES	\$	15,375,983.13

The budget amendment is comprised of a total of ten (10) separate appropriations as described in Attachment A.

After the public hearing, staff recommends that the Board adopt the attached Resolution (Attachment B) to approve the appropriation for local government and school projects and programs, as described in Attachment A.

* * *

Appropriation #2021072 **\$130,000.00**

Source: Children Services Act (CSA) Fund Balance \$ 130,000.00

This request is to appropriate \$130,000.00 from the CSA Fund Balance to the General Fund for tax refunds based on anticipated expenditures in FY 21. This amount in the CSA Fund Balance is not anticipated to be needed in FY 21 based on year-to-date trends.

Appropriation #2021073 **\$9,567,614.00**

Source: General Fund's Fund Balance \$ 4,267,614.00
Local Revenue \$ 5,300,000.00

This request is to appropriate \$4,267,614.00 of FY 20 General Fund year-end undesignated funds for the following uses, pursuant to the Board's direction during the FY 22 annual budget development process.

- \$3,067,614 to the Business Process Optimization Reserve
- \$600,000.00 to the Housing Fund
- \$600,000.00 to the Climate Action Reserve

This proposed use of General Fund balance will not reduce the County's 10% unassigned fund balance or 1% Budget Stabilization Reserve; however, it does reduce the amount of undesignated funds that would be available for other uses.

Additionally, this request is to appropriate \$5,300,000.00 in additional local revenue anticipated in FY 21 identified during the third quarter (3Q) financial report provided to the Board of Supervisors at the May 19, 2021. This funding is recommended to be allocated as follows:

\$1,000,000 to the Pandemic Reserve
\$4,300,000 to create a Capital Budget Stabilization Reserve. This reserve is intended to provide flexibility given in increased uncertainty for purposes such as contingency for projects; revenue stabilization, or cash equity. The resolution (Attachment B) authorizes the County Executive to allocate funding to and from this Reserve to appropriate budget line-items for expenditure. In accordance with current practice for other County Executive authorization, all of these transfers or distributions will be reported to the Board of Supervisors as part of the County's quarterly financial reports.

Appropriation #2021074 **\$0.00**

Source: Transportation Leveraging Program* \$ 600,000.00

*This portion of the appropriation does not increase or decrease the total County budget.

This request is to appropriate \$600,000.00 from the Transportation Leveraging Program to the Ivy Road Sidewalk Project to cover bids that exceeded the currently appropriated construction budget. This project supports pedestrian safety by providing sidewalk along Ivy Road from the existing sidewalk at the Charlottesville City limits to Stillfried Lane. The project includes crosswalks and pedestrian signals at the Old Ivy Road (railroad underpass) and Ivy Road intersection, bike lane facilities, curb & gutter, and storm water drainage system improvements.

Current bids received for the project are over the currently appropriated budget. After reviewing the current bids, coordinating with Virginia Department of Transportation (VDOT) and engineering firms, and comparing to regional bid results, staff believes that the over-budget pricing received for this project is in alignment with the current market and therefore requests additional funding to complete this project.

Appropriation #2021075 **\$50,000.00**

Source: State Revenue \$ 50,000.00

This request is to appropriate \$50,000.00 in State Revenue for a grant received from the Department of Criminal Justice Services for Body Worn Cameras for the Police Department. A local match of \$65,581.00 will be provided from the Seized Assets Fund, which is currently appropriated, for a total project cost of \$115,581.00.

Appropriation #2021076 **\$11,856.00**

Source: State Revenue \$ 11,856.00

This request is to appropriate \$11,856.00 for funding from the Library of Virginia to the Clerk of the Circuit Court to reimburse expenses for restoration work on record books.

Appropriation #2021077 **\$0.00**

Source: Reserve for Contingencies* \$ 125,470.00

*This appropriation does not increase or decrease the total County budget.

This request is to appropriate the following from the Reserve for Contingencies:
\$118,395.00 to the Department of Voter Registration and Elections for ExpressVote Ballot Marking Devices for use by voters with special needs. This device upgrade is mandated by the Virginia Department of Elections and is required to be in place for the November 2021 elections.
\$7,075.00 to the Albemarle Charlottesville Regional Jail (ACRJ) for the County's share of the filing for a federal State Criminal Alien Assistance Program (SCAAP) grant that is received by ACRJ. SCAAP reimburses localities for compensation expenses incurred for correctional officers who supervise aliens in local and regional jail facilities. This expense is billed directly to each of ACRJ's participating localities as a supplemental budget item that differs from the regional cost allocation formula for ACRJ. At the end of FY 21, the County may receive a credit for SCAAP funding in the context of ACRJ's total budget reconciliation.

After approval of the appropriations in this attachment, the FY 21 General Fund Reserve for Contingencies balance will be \$350,449.39. Of that amount, \$107,789.00 is for unanticipated expenses that may require ongoing funding and \$242,660.39 is for expenses that may require one-time funding.

Appropriation #2021078 **\$10,000.00**

Source: State Revenue \$ 10,000.00

This request is to appropriate \$10,000.00 for a grant from the Virginia Tourism Corporation to the Charlottesville Albemarle Convention & Visitors Bureau (CACVB). The grant reimburses advertising expenditures spent on behalf of the County of Albemarle, City of Charlottesville, and its tourism partners. The County serves as the fiscal agent for the CACVB.

Appropriation #2021079 **\$514,575.80**

Source: Proffer Fund balances \$ 514,575.80

This request is to appropriate \$514,575.00 from Proffered Fund's fund balances for affordable housing to the Housing Fund, where it will be added to the Housing Fund Reserve. This Reserve is intended to support housing initiatives that are one-time costs and will support the County's strategic and housing goals.

Appropriation #2021080 **\$5,109,581.94**

Source: Federal Revenue \$ 5,109,581.94

This request is to appropriate \$5,109,581.94 in federal revenue to the School Division. As part of the FY 21 budget adopted by the General Assembly, Federal Coronavirus Response and Relief Supplemental Appropriation Act (CRSSA) funds are available for divisions to fund needs that are unmet due to the pandemic. This Federal funding has specific guidelines and a specific reimbursement process. Funds can be utilized following the expenditure of the Federal CARES Act funding provided earlier in the fiscal year. These funds are anticipated to be used primarily for the purchase and location of 4 sets of mobile classrooms on the 3 high school campus sites and 1 set of mobile classrooms at Henley Middle School. The purchase of these classrooms will provide additional space at some of the school facilities that are challenged in providing increased space to facilitate social distancing among students returning to school in the fall. It is anticipated that once these mobile units are purchased and installed, the remaining funding will be used to partially fund the learning recovery programs being offered after the end of the regular school year.

Appropriation #2021081 **(\$17,644.61)**

Source: Local Revenue \$ (\$17,644.61)

This request is to de-appropriate \$17,644.61 in local revenue and related expenditures for the Emergency Communication Center's (ECC) Public Safety CAD Technology and Regional 800 MHz Communications System projects. This adjustment is to reconcile FY 20 balances after the year end close and to reflect that reconciliation prior to any carry forward of project balances to FY 22. The County serves as the fiscal agent for the ECC.

Mr. Bowman (chief of budget division with the Department of Finance and Budget) said this item was a public hearing and action item to amend the fiscal year 2021 budget. He said under the Virginia

code, the County is required to hold a public hearing when the change in budget is greater than 1%, and that was the case that evening. He said the total change was around \$15.4 million, and there were three primary reasons for this, the first of which was an appropriation of \$4.2 million from the general fund's fund balance; he emphasized this was fund balance above the policy requirements for items such as climate action, housing, and business process optimization. He said all these topics were discussed in detail with the Board during the budget work sessions for fiscal year 2022, and that day would be the action based on that prior discussion.

Mr. Bowman said the second notable item was \$5.1 million in federal revenue that was pandemic-related being provided to the school division in fiscal year 2021.

Mr. Bowman said staff was recommending appropriation of \$5.3 million in fiscal year 2021 from improved local revenue projections. He said the first allocation was to create a \$4.3 million capital budget stabilization reserve; staff is recommending as they go out through some bidding projects and see the cost of raw materials rising to not wait until the fiscal year 2023-2027 capital improvement process to get ahead of any changes that may be in project budgets, but to go ahead and take some one-time money that is available now as part of the 3-6-6 management approach to budget for this uncertainty ahead of time. He said if it is not needed, that can be available later in the capital budget process, and this would be along the same spirit as in the last 15 months to create that flexibility and hedge for that uncertainty to allow things to continue to move forward as the Board originally intended.

Mr. Bowman said the second item was to add an additional million dollars to the County's local pandemic reserve; this was a reserve that was created when the CARES funding received from the federal government was closing out prior to when they knew there was funding coming from the American Rescue Plan Act (ARPA), and while they certainly looked to utilize the ARPA funding as much as they could, there may be projects or initiatives out there that are not a good fit for the compliance with that, so this \$1 million provides some additional flexibility for the Board as they continue to navigate the pandemic.

Mr. Bowman said Attachment A includes all the details of appropriations for approval on June 2nd. He said after the public hearing, staff recommends the Board adopt the resolution Attachment B. He commented that it was added to the agenda that they have a discussion around the ACE program which was separate from the public hearing.

Ms. Price asked Mr. Bowman to go back to the previous slide. She noted the top line which talked about \$15.4 million, but when the figures were added, it was \$14.6 million. She asked if the \$0.8million was addressed between the three subtotals.

Mr. Bowman said there were other appropriations from grant revenues and some other smaller adjustments that he had not walked through in detail, for the sake of time. He said if there were any specific questions on items, they could go into that.

Ms. Price confirmed there was no one signed up and closed the public hearing.

Ms. Palmer **moved** to adopt the attached Resolution (Attachment B) to approve the appropriation for local government and school projects and programs, as described in Attachment A. Ms. McKeel **seconded** the motion.

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

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

NAYS: None.

ABSENT: Mr. Gallaway.

RESOLUTION TO APPROVE ADDITIONAL FY 2021 APPROPRIATIONS

BE IT RESOLVED by the Albemarle County Board of Supervisors:

- 1) That the FY 21 Budget is amended to increase it by \$15,375,983.13;
- 2) That Appropriations #2021072; #2021073; #2021074; #2021075; #2021076; #2021077; #2021078; #2021079; #2021080; and #2021081 are approved;
- 3) That it hereby authorizes the County Executive to allocate funding to and from the Capital Budget Stabilization Reserve to the proper budget line-items for expenditure; and
- 4) That the appropriations referenced in Paragraph #2, above, are subject to the provisions set forth in the Annual Resolution of Appropriations of the County of Albemarle for the Fiscal Year ending June 30, 2021.

* * *

APP#	Account String	Description	Amount
2021079	4-1200-99900-499000-999999-1008	SA2021079: Funding from Proffer Funds to Housing Fund	\$514,575.80
2021079	3-1200-51000-351000-512088-9999	SA2021079: Funding from Avinity Estates Proffer Funds to Housing Fund	\$266,176.23
2021079	4-8589-93010-493010-930239-9999	SA2021079: Funding from Avinity Estates \$266,176.23 and Hyland Park \$27,265.66 Proffer Funds to Housing Fund	\$293,441.89
2021079	3-8589-51000-351000-510100-9999	SA2021079: Funding from Avinity Estates \$266,176.23 and Hyland Park \$27,265.66 Proffer Funds to Housing Fund	\$293,441.89
2021079	3-1200-51000-351000-512068-9999	SA2021079: Funding from Belvedere Proffer Funds to Housing Fund	\$28,536.70
2021079	4-8536-93010-493010-930239-9999	SA2021079: Funding from Belvedere Proffer Funds to Housing Fund	\$28,536.70
2021079	3-8536-51000-351000-510100-9999	SA2021079: Funding from Belvedere Proffer Funds to Housing Fund	\$28,536.70
2021079	3-1200-51000-351000-512101-9999	SA2021079: Funding from Hyland Park Proffer Funds to Housing Fund	\$27,265.66
2021079	3-1200-51000-351000-512066-9999	SA2021079: Funding from Kenridge Proffer Funds to Housing Fund	\$907.05
2021079	4-8570-93010-493010-930239-9999	SA2021079: Funding from Kenridge Proffer Funds to Housing Fund	\$907.05
2021079	3-8570-51000-351000-510100-9999	SA2021079: Funding from Kenridge Proffer Funds to Housing Fund	\$907.05
2021079	3-1200-51000-351000-512095-9999	SA2021079: Funding from Leake (Glenmore) Proffer Funds to Housing Fund	\$52,933.47
2021079	4-8573-93010-493010-930239-9999	SA2021079: Funding from Leake (Glenmore) Proffer Funds to Housing Fund	\$52,933.47
2021079	3-8573-51000-351000-510100-9999	SA2021079: Funding from Leake (Glenmore) Proffer Funds to Housing Fund	\$52,933.47
2021079	3-1200-51000-351000-512096-9999	SA2021079: Funding from Livengood (Glenmore) Proffer Funds to Housing Fund	\$8,219.63
2021079	4-8574-93010-493010-930239-9999	SA2021079: Funding from Livengood (Glenmore) Proffer Funds to Housing Fund	\$8,219.63
2021079	3-8574-51000-351000-510100-9999	SA2021079: Funding from Livengood (Glenmore) Proffer Funds to Housing Fund	\$8,219.63
2021079	3-1200-51000-351000-512070-9999	SA2021079: Funding from Poplar Glen Proffer Funds to Housing Fund	\$601.31
2021079	4-8546-93010-493010-930239-9999	SA2021079: Funding from Poplar Glen Proffer Funds to Housing Fund	\$601.31
2021079	3-8546-51000-351000-510100-9999	SA2021079: Funding from Poplar Glen Proffer Funds to Housing Fund	\$601.31
2021079	3-1200-51000-351000-512102-9999	SA2021079: Funding from Rivanna Village Proffer Funds to Housing Fund	\$129,935.75
2021079	4-8584-93010-493010-930239-9999	SA2021079: Funding from Rivanna Village Proffer Funds to Housing Fund	\$129,935.75
2021079	3-8584-51000-351000-510100-9999	SA2021079: Funding from Rivanna Village Proffer Funds to Housing Fund	\$129,935.75

Non-Agenda Item: Discussion Regarding the Acquisition of Conservation Easement Program.

Ms. Palmer reminded Ms. Price that they were going to take a couple of minutes to talk about the ACE program.

Ms. Palmer said she had brought this up, and her understanding was that there were other Board members who were interested in hearing this. She said the ACE committee did not make a formal recommendation the current year until now because the thought was that there was going to be no money for the ACE program this year, but there was a particularly high-scoring piece of property that the committee was interested in, and now that they had gotten through this initial budget period, they wanted to bring that to the Board’s attention.

Mr. Bowman said earlier in the day in a different presentation, he had provided a history of where the County had been in the pandemic at a very high level. He said for the Board’s education, he wanted to provide a similar funding history of where they had been for ACE and why. He said he would walk through where they had been, where they were now, and what funding could look like in the future.

Mr. Bowman said prior to the pandemic, around February 2020, there was about \$1.3 million that was in the ACE budget; this is one of the programs that lives in the overall capital improvements program. He said at the onset of the pandemic, there was an assessment for all capital improvements (not just ACE) of how much should be moved forward to complete projects or things that were well underway and how much would need to be paused while they continued to wait and assess the actual impacts of the pandemic on revenues and operations. He said as a result of that process, of that \$1.3 million due to ACE, \$0.3 million was moved forward to continue, and that was to complete two easements that were in progress, and the remaining \$1 million was paused to be considered later.

Mr. Bowman said the two easements have been completed, and of that \$300,000, there is a balance in the ACE budget now of around \$58,000 that is actually local money and also that exists from some State money the County has received. He said the County needs to provide the money up front locally but can then later apply for reimbursement to the State to recover some of those costs, and that funding from the State then goes back for future easement purchases. Mr. Bowman summarized that there was about \$58,000 remaining from those two easements that have now been completed.

Mr. Bowman said moving ahead into the fall during the 3-6-6 approach, they did a process with the Board and with the CIP advisory committee and looked at all the projects that were paused and what could be considered to be un-paused in FY 21 and FY 22. He reminded the Board of the slides they had seen with a list of about 20-some projects that were waived based on a few criteria, and the Board and the CIP advisory committee had weighed in. He said while ACE was prioritized, it was not among the highest priorities that were recommended to be un-paused for FY 21 or in FY 22.

Mr. Bowman said fast-forwarding to February 2021, the FY 22 budget was recommended by the County Executive, and that recommendation included the CIP advisory committee's recommendation, so in short, there was no funding for ACE in the initial recommended budget. He said as they worked through the budget process with the Board and the public, the budget was adopted in May of 2021, and there was no change to ACE funding, so currently the additional funding for ACE in 2022 is zero.

Mr. Bowman said looking ahead to the future, staff was envisioning with the Board's involvement an upcoming FY 23-27 capital improvements program process where they would begin to take a long-term look at long-range financial planning processes in a way that they had not done due to the uncertainty of the pandemic. He said certainly ACE funding and any other projects that were paused or may not have been conceived before could be contemplated through that process.

Mr. Bowman said for ACE (or anything), if the Board wanted to move forward sooner than the FY 23-27 process, there were always options out there where staff could generate options for the Board to consider. He said one item where the Board had done that in the current year, as an example, was the Board had set aside funding in its Advancing Strategic Priorities Reserve in the Capital Program; the Board used that in the current year to move forward things like the next convenience center in the County or some of the design work around the intersection at Reas Ford Road.

Mr. Bowman said currently there was a balance of around \$2 million in there. He said he understood that evening to be intended really as discussion about what was possible, but should the Board direct staff, they could go back and prepare some options if the Board wanted to move forward on this or any other capital priorities.

Ms. Mallek said she had no quibble with how they got there currently; everybody did just the right thing, but now that things were looking much more positive, she very much supported putting money back into that account to 1) complete the Campbell easement that has been underway and 2) to make sure that they are drawing down the maximum amount of state match money they possibly can. She said she would support this because even during the recession of 2008, 2009, and 2010, the very frugal Board that was there then maximized the amount that they could get from the state by having a match available, and this program has been underway for 21 years and has been very successful through ups and downs, and she hoped that they would be able to find some money to put in to be able to complete this easement.

Ms. LaPisto-Kirtley concurred with Ms. Mallek. She said if they can match the state funds, that would be a benefit for all, and she would like to see something like that and would support it too.

Ms. Palmer said she wanted to say a couple of things about this particular property that was put on hold before the pandemic. She said the owner was still very interested in the easements; it was a family farm of about 180 acres and scored quite highly in the scoring process in part because it has a lot of distance along streams, and it also is adjacent to another open space. She said the staff person in the ACE committee that deals with this had not done a thorough evaluation of the property with regard to exactly how much it would cost to get the easements because there was the thought that there was not any money to go for it; however, the estimate is that the easement would cost about \$400,000, and so if they were to get the matching grant from the state, they could move forward with some amount of that.

Ms. Palmer said they do not know the exact amount at this point, which goes back to just making sure that there is enough money in the ACE program to go forward. She said there is another property or properties that were put on hold at the end of that period; however, they did not score as highly as this one did, so this one is particularly of interest at this point in time (not that they could not do more with more money). She said if they were to ask the staff to go ahead and value this for the cost and get this in, it would be very beneficial to the County.

Ms. McKeel said she was a little surprised and felt like this was sprung on them at the last minute, and so while she was sure that some have been talking about this, she just did not realize they were going to be making a decision about this that evening. She said she in general favors the ACE program and thinks it does a lot and is very beneficial to the County; she does think over the years, there have been times when it has been appropriate to step back from it. She said she thinks the community does not really understand it very well. She said it sounded to her like they were just going to give permission that evening for staff to do this and asked if they were having a discussion about it or giving direction to staff to do this and come back to the Board.

Ms. Price said it was a discussion that evening and not a decision. She said the discussion would be more towards whether this was something they wanted staff to provide a report back to them on, not deciding that they were going to dedicate funds towards at that time.

Ms. McKeel said she was always happy to have more information, and if it came back to them, then she would like to have a discussion not around just funding it and an automatic funding of it, but she would like to have an agenda item for the community about the pros and cons around the ACE program

and why they support it because she does not think many of the people in the community even understand it.

Ms. McKeel said the other part of that was she felt comfortable and understood the revenue-sharing piece and not leaving money on the table, but she wanted to know specifically which projects were not going to be funded if the ACE program were funded. She said because they have been in a challenging budget cycle, she feels like they would be taking it out of their process, and their process would be to keep it in the FY 23-27 capital improvements program process. She said if they take it out and just choose to fund it, that is fine, but she specifically needed to know which projects were not going to be funded if they fund the ACE, and she needed real numbers on it. She said if the people that she was hoping to get hooked up to public sewer in the urban ring on Barrack's Road were not going to be hooked up because of the ACE program, that was not a tradeoff she was willing to make right now on the spur of the moment.

Ms. McKeel said she does support the ACE program and thinks it is a great program used appropriately and has voted for it very often, but in a time where they are challenged around the future and dollars and have some critical needs coming up, she needed to know what the tradeoff was.

Ms. Price said she supported the ACE program and also wanted to be very cautious as it was not just dollars but also staff capacity. She said one of the things that she would like for County staff to let them know was what they could afford to do financially and what they could afford to do based on personnel resources. She said just because the economic situation was looking better now than thought before did not necessarily lead her to believe that they needed to go ahead and just be spending money; they must look at those priorities. She said as with all the Supervisors, she was always open to hearing more information to help them make a better decision, and she was not prepared that day to say that she was ready to commit any money to anything outside of what had already been through their process and in their budget.

Ms. Price said she was open to hearing back from staff as to whether this was something they could afford to do financially and resource-wise, but also she does not want to just leave money sitting on the table that they may otherwise be able to get, so she is in favor of more information at this point. She asked Mr. Richardson if that helped him.

Mr. Richardson said that helped somewhat. He said he would go back over this from the beginning, and his effort was to try to address not just Ms. Price's question but also Ms. McKeel's points that she made about this coming up at the last minute. He said over the last several weeks, they have been discussing a number of financial issues that they have been executing on including the refinancing of debt and also bond issuance; they received the third quarter financial report that was discussed earlier in the day in the afternoon session, and all along the way, the Board has been seeing that they were trying to follow the 3-6-6 model.

Mr. Richardson said Mr. Bowman had gone through the background on this particular issue, ACE, and Ms. Mallek said she did not have any question about where they were on it and now how it has evolved, but several weeks ago, as they were speaking with Board members, he knew for sure four Board members said they would be interested in looking at ACE again. Mr. Richardson said the first time they could do that was that night, and they did that in the accompaniment of looking at their recommendations for adjustments to the FY 22 budget, and then they did that also this evening with adjustments to the FY 21 appropriations.

Mr. Richardson said staff had not approached this that evening with an expectation necessarily that they would get a final direction from the Board. He said Ms. Palmer as the liaison to the ACE committee basically was laying out that there was an opportunity with an existing property that the ACE committee would say had scored very well, and so that opportunity was there. He said with \$58,000 in the account, it was going to take more money and an action by the Board; it did not have to be in the next 30 days but was going to have to take an appropriation through a Board action in order to raise the money in the ACE program to be able to consider moving forward on this property moving into the ACE program.

Mr. Richardson said, as Ms. McKeel had mentioned, this would be looking at this outside of the normal process where they are looking at all the capital projects and ranking and rating them, talking about them, comparing them and such, and so they were not doing that at this time. He said they would start that process in the fall, so it was really at the Board's pleasure. He told Ms. Price when she says she would like more information on this, if the Board wants to consider doing this appropriation prior to the fall, prior to the CIP planning work going back into full motion, if the Board wanted to do that at any point in time, staff would be prepared to come back and present some options on how they might move money that is currently not designated for something specifically in order for the Board to get this piece of property within the ACE program.

Mr. Richardson said he was trying to explain how they got there and where they were right now, but specifically to them doing more, he would want more information after tonight; the more information could be for them to come back and give examples of where there was undesignated capital reserve that could be committed to this, and staff would be happy to do that. He said if there was more work to do in the ACE program with the employee that does the analysis, they would be happy to do that, or if the Board said push it to the fall, they would be happy to do that. He said he was trying to be clear so that all the Board members knew how they had gotten to where they were that night.

Ms. Price thanked Mr. Richardson and said she was one of the four who had said when it was brought up that she would like to know more about it. She said part of her concern was that this had come up, and a couple of weeks ago, it was Three Notch Trail that came up, and her concern was whether the Board was simply saying they were not going to add things to the plan (but let us add this and that to the plan), and that is where the staff capacity part comes in that leads her to be a little concerned about moving too fast forward on this as well as the fact that they are still coming out of some of the economic recovery, and things were looking better right now, but that does not necessarily tell her she wants to go spend the money yet.

Ms. Mallek said in a normal year, all the preparation work would have been done by the ACE committee and overseen by Mr. Herrick (or whoever the attorney is now who sits in with them); there would have been a full ranking, and there would have been a determination of development rights done by the staff person who does that particular job in order to get a better handle on what the easement would be likely to cost, and that has not been done yet because everything was put on hold for very good reason. She said getting that work done would give bona fide information to the Board about whether there is a realm of possibility that they could transfer enough extra in to meet the match and therefore get this easement or not; the whole reason she was in support was getting caught up on the information that normally would have been coming forward and would have been all done before it was brought to the Board even the first time.

Ms. Palmer said the state applications were due in the fall, and they expect they would be due in October, so as Ms. Mallek said, what they really would like to do is have the committee and the staff person assigned to that committee (her understanding is that is all that staff person does) move forward to evaluate this to get a more concrete idea of what would be needed. She said they would have to have at least the hope that something might materialize in the way of money if they were to make that application.

Ms. Price asked if they would not know until later what the state funds might be.

Ms. Palmer said the state does have a million dollars that they have set aside, and they have said they have been averaging about six applicants each time was her understanding, and she sent this email over to Mr. Richardson right after she got it (yesterday). She said they have been very successful in the past, but they cannot say how much the state would match; whether they would match completely, or it would be some portion of that is unknown at this point, but the state is continuing to do it and does have a million dollars in the fund, and the application would be due in the fall.

Ms. McKeel asked if the application were due in the fall whether they could not discuss this or have this come up as part of staff's work perhaps or the ACE committee work in time to do that. She said they were looking at the fall but wondered if it would be too rushed to try to do it within that time frame. She said she agreed with Ms. Price on the staff time; they talk about not adding anything, and then everyone has their projects that they are wedded to and like so much and want to add them, but she is concerned because certainly everyone can name some things that have come up that seem to be emergencies.

Ms. Palmer said she did not consider this an emergency; it was put on hold, and the work was not done that would normally have been done.

Ms. McKeel added that there was work that was not done on other things as well; this was not the only thing that did not get done, and she was concerned about what projects were not going to be funded. She said they already have CIP projects coming in way over their cost, and she has been told by staff that some of these projects might have to be scaled back. She is not sure she is willing to scale back the projects that they have determined are appropriate so that they can go outside of process and fund this.

Ms. McKeel said she was not against the ACE program, and if they were going to do that, they certainly owed a discussion to the community as to why they were doing it and what the pros and cons are of the ACE program.

Mr. Walker said he wanted to speak specifically to the staff resource question, as obviously there are different aspects that the Board is considering here, and that was to acknowledge that to the degree that they are very, very concerned about how it is that they commit staff, particularly in community development, to projects and programs, they do have a staff person (0.5 FTE) that is dedicated to the ACE program and to his understanding has capacity to do work in support of that program; he is not dedicated to other things. He said to address that issue specifically as it related to staff capacity, it does not impact other items on the CDD work program.

Ms. LaPisto-Kirtley said she sees them taking advantage of the state's match for the ACE program and also hears what Ms. McKeel is saying regarding hooking up some of those homes in the urban area to sewer, but she thinks that is going to take a longer time. She said she would like to see that as a program whereby they pay for the hookup but then also there is a quid pro quo when they sell it that they get paid back so it can be paid forward for other homes, something like that, whenever the property is sold. She said that was in general because there may be some other solutions, but she did not want to do just an absolute giveaway but tie it to the home when it sells, so that might be a longer process to figure out but yet have the money there.

Ms. McKeel apologized and said she should never have given an example; she was only giving an example of a project. She said there are CIP projects coming in that are more expensive.

Ms. LaPisto-Kirtley said she understood; she just thought Ms. McKeel's project was a good one.

Ms. McKeel said if they were talking about climate and environment, to have people not hooked up in the urban ring to public sewer is not acceptable; having said that, they have all these CIP projects coming in at more money than they were expecting, and she is very concerned as to what projects would have to be reduced and where the money would come from. She said that she is not against ACE; at this point in time, she is concerned.

Ms. Price said the question before the Board is whether they ask County staff to do an evaluation and analysis of this potential use of ACE money. She said based upon Mr. Walker's statement that they do have the capacity within County staff, she is willing to support that but not ready yet to make a decision as to whether or not they expend the money. She asked Mr. Richardson if that was the question that they have before them.

Mr. Richardson said Ms. Price's summarization was correct, and Mr. Bowman had given an example that if they get further down the line with this, and it is scoped and priced and firmer with those numbers, they would come back, and one example would be to take that money from the strategic issues reserve. He said if they did that, while Mr. Walker said there was staff capacity right now, just off the cuff, they would say that if the money is earmarked for that, that would mean that money is earmarked and would not be earmarked for something else. He said he did know currently examples of what those projects would be; as they get a little further into the fall, it will become a little clearer also with ARP funding and also with formation of the five-year plan. He said the further they get into the fall, the clearer they are on what things are in play. He said there is a clear opportunity here with this from the ACE committee, and they cannot do the CIP before the CIP is ready.

Ms. Price said that was helpful, and also a little more time would then give them the ability to evaluate what other cost increases on other projects may be so that even though there may be funds available for the ACE program, they may determine that the funds are really needed for things that have already been approved.

Ms. Mallek said there are several more intervals at which point the Board would need to make a decision; first would be accepting the staff work, then accepting the appraisal, and then later approving the application to the state, and then if the application is approved but the Board decides not to go ahead with the purchase then, then the money goes back into the pot. She said that money that goes back into the pot is something the County had benefited from in past years because they had a match while other people did not, so the County got their money. She said it rotates around until it all gets used up, but there are many, many opportunities through the next six months for information to be gathered and for decisions to be made. She said because it was the budget question, that was why the question was raised that evening in order to also give a chance through the next six months for this information to be developed properly.

Ms. Price said it appeared to be her there was consensus to allow staff to do this initial evaluation work. She asked if that was sufficient for Mr. Richardson.

Mr. Richardson said it was. He said Mr. Rapp was on the call from the community development department, and Mr. Walker supervises CDD. He said Mr. Rapp had some direct connection into that program and asked Mr. Rapp if he had a good idea of what they need to do leaving that evening in terms of additional work.

Mr. Rapp (planning director) said he believed so; it sounded clear to him. He said the ACE committee had made a recommendation to accept the preliminary rankings and to authorize the appraisal of that property, so they would first need to make a determination as to whether or not there were any usable development rights with the zoning department, and once they had that answer, the next step would be to move forward with the formal appraisal to get an actual firm cost of what this easement would be worth.

Ms. McKeel said she was still confused about the staff time. She asked Mr. Rapp to confirm that his staff would not have to be involved in this other than the ACE committee support staff who would be the person whose time would be used for this.

Mr. Rapp said that was correct, and his primary role with the County was to administer the ACE program, conduct assessments, and manage the process of applications.

Ms. McKeel said she had no problem with that and was all for more information; having said that, when the money is identified, she wants to know which projects are not going to be funded so that ACE could be funded. She said she just has to know that because they have projects that are funded right now that they are being told are coming in, and they are struggling to find the money to afford them. She thanked Mr. Richardson for clarifying and said she did understand why they got to where they were; she was just a little surprised to see it pop up that evening specifically.

Ms. Price said she would accept responsibility for not ensuring that got passed once four of them had identified that they would like to know more about it.

Ms. McKeel stated she had said she would like to know more about it but thought it was going to be in the fall, and they would have a discussion around the program and the pros and cons for the

community, and she did not realize it was going to come up this quickly.

Ms. Palmer said she would take some responsibility as the liaison; she had scurried to get all the information together very recently, but they recently had an ACE committee meeting, and it became obvious that they needed to get the information to the Board sooner rather than later.

Agenda Item No. 18. **Public Hearing: Virginia Community Development Block Grant.**

The Executive Summary forwarded to the Board states that the Virginia Community Development Block Grant (VCDBG) is a federally funded grant program administered by the Virginia Department of Housing and Community Development (DHCD). Since 1982, the DHCD has provided funding to eligible units of local government (non-entitlement communities only) for projects that address critical community needs, including housing, infrastructure, and economic development. Albemarle County has received numerous grants in previous years to support housing and community improvement initiatives. The VCDBG application process requires two local public hearings be conducted. The purpose of the first public hearing is to provide information on eligible activities that may be funded by CDBG, the amount of funding estimated to be available, and past activities undertaken with CDBG funds, and to receive public comment on this information and potential community development and housing needs. The follow-up public hearing is held in order to consider proposed project applications and must take place prior to the DHCD application due date. Applications must be submitted by the County to the DHCD; however, the proposed activities may be undertaken by partner agencies.

Over the years, Albemarle County has been successful in receiving a number of CDBG grant awards. The most recent grant was awarded in 2016 to improve 29 owner-occupied homes in the Alberene neighborhood. Staff is in the process of closing out this project. Prior grants have resulted in improved infrastructure for the Oak Hill subdivision and preservation of owner-occupied homes and rental units located in neighborhoods throughout the County.

The County is currently working with Habitat for Humanity on a Vibrant Communities Initiative Grant, which includes \$1 million of CDBG funds, to assist in developing the first phase of the Southwood Redevelopment Project. As a non-entitlement community, Albemarle County is eligible to apply to the DHCD for up to approximately \$1.5 million in CDBG funding for projects that benefit low- and moderate-income persons, prevent slums and blight, or address urgent community needs. Eligible activities include economic development, housing rehabilitation, housing production, community facilities and community service facilities. Community development projects can receive varying levels of funding, depending on the nature of the activity, or by combining multiple activities. For Fiscal Year 2022, DHCD is making available \$10,450,503 in competitive grant funding, \$700,000 to support planning grants, and \$7 million in open submission and urgent need grant funds. The open submission and urgent need grant funding also supports projects and services provided in response to community needs arising due to the COVID-19 pandemic. Activities eligible for CDBGCV funding include projects to address food security issues, homeless services and emergency housing, and small business recovery.

Albemarle County is currently seeking community input on community needs that may be addressed through a CDBG project. The County is also soliciting proposals for potential CDBG grant applications. For any project to be considered by the County for CDBG funding, the applicant must notify the County no later than June 12, 2021. All funding requests shall include a brief description of the project, the proposed use of CDBG funds, and a description of the beneficiaries of the proposed activity. Priority will be given to proposals addressing COVID-19 related community needs.

There is no budgetary impact until an application is made to the DHCD and approved for a funded project. Projects approved for CDBG funding generally require some level of local funding support, which may include funding provided by the project sponsor.

Staff recommends that the Board receive information on available CDBG funding and eligible uses and hold the public hearing to receive input from the public on potential community development and housing needs. Staff also recommends that the Board set the second required public hearing to review and approve the submission of any proposed applications to the DHCD for August 4, 2021.

Dr. Pethia (housing policy manager for Albemarle County) said she was there to talk about the Community Development Block Grant (CDBG) program. She said since 1982, the Virginia Department of Housing and Community Development (DHCD) has provided funding to eligible units and local government for projects that address critical community needs including housing, infrastructure, and economic development. She said the CDBG program application process requires local government to hold two public hearings prior to submitting applications for funding. She said the purpose of the first public hearing is to provide information on the types of projects eligible for CDBG funding, the amount of funding estimated to be available this fiscal year, past activities the County has undertaken with CDBG funds, and to receive public comment on this information and potential community development and housing needs that may be addressed through the CDBG program, so now action is required by the Board that evening. She said staff will schedule a second public hearing with the Board at a future date should any proposals for CDBG projects be received by staff.

Dr. Pethia said Albemarle County has been successful in receiving a number of CDBG grant awards over the past several years. She said in 2016, the County received CDBG funding to improve 29 owner-occupied homes in the Alberene neighborhood; other past projects include infrastructure

improvements for the Oak Hill subdivision and a home preservation project in Crozet. She said currently Albemarle County is working with Habitat for Humanity of Greater Charlottesville on a Vibrant Communities Initiative grant which includes \$1 million of CDGB funds to assist in the development of the first phase of the Southwood redevelopment project.

Dr. Pethia said that evening's public hearing was to solicit input on potential projects for FY 2022 CDBG applications. Dr. Pethia said Albemarle County was eligible to apply to DHCD for up to approximately \$1.5 million the coming fiscal year. Dr. Pethia said those projects that receive funding must either benefit low- and moderate-income persons, prevent slums or blight, or address urgent community needs; eligible activities include economic development projects, housing rehabilitation, housing production, community facilities, and community service facilities.

Dr. Pethia said for FY 22, DHCD is making available approximately \$10.4 million in competitive grant funding, \$700,000 to support planning grants, and \$7 million in open submission and urgent need grant funds. She said this last category of grant funding is also being used to support projects and services provided in response to continuing community needs that have arisen due to the COVID-19 pandemic; activities under this category include funding to address food insecurity issues, homeless services and emergency housing, and small business recovery. She said for any project to be considered by the County for CDBG funding, community partners should notify the County no later than June 12, 2021; all funding requests should include a brief description of the proposed project, the proposed use of CDBG funds, and a description of the beneficiaries of the proposed activity. She said a priority for this year would be given to proposals addressing COVID-19 related community needs.

Ms. Mallek said as Dr. Pethia was speaking, she immediately started thinking about the urban ring sewer hookups that they had been talking about a few minutes prior because the Oak Hill neighborhood did benefit from having all their individual failing septic systems taken away and all those people out there hooked up to the sewer, which took years to happen but was fabulous.

Ms. Mallek asked for people who may not be as skilled at grant writing as others whether it was a possibility that Dr. Pethia could provide help to them to polish up their application. She asked whether people with an idea could contact her, and she could give them an assignment about what to make better or something.

Dr. Pethia said the County is the one who needs to submit the application, so she would definitely work with any project partners in finalizing that application.

Ms. LaPisto-Kirtley asked who could apply for these grants, whether individuals, an organization, the County, or developers.

Dr. Pethia said the County had to submit the application, so the County is the applicant, but they are open to working with nonprofit organizations or private developers, and generally those are who they usually work with. She said if there was a community group, they would take charge of that project and lead it, and that was also an option.

Ms. LaPisto-Kirtley asked for examples of previous grants received.

Dr. Pethia said they often get grants work with AHIP to do housing rehab projects with those grants. She said the Oak Hill sewer project was a County project; they worked with the water and sewer authority to carry out that work, and they are currently working with Habitat on the Southwood project with CDBG funding. She said typically it has been with nonprofit partners.

Ms. LaPisto-Kirtley asked whether that included 501(c)(3)'s also.

Dr. Pethia replied yes.

Ms. Palmer said she was very much involved with the Oak Hill sewer project, and Albemarle County Service Authority (ACSA) had tried to do it with Buckingham Circle also, and it failed because there just were not enough people willing to sign on. She said Oak Hill was a real success; however, it took a tremendous amount of work to get enough homeowners or renters to sign on it to actually get the grant, so it was an interesting process.

Ms. McKeel apologized for slipping away; her doorbell rang, and there was someone at her door telling her there was a four-foot copperhead in her yard.

Ms. Price confirmed there were no sign-ups and closed the public hearing.

Ms. Price said this was not an item where action was required to be taken; it was a hearing they were required to conduct.

Ms. Mallek asked if it would be possible for Dr. Pethia to use the list of unfunded projects they had and see if any of them jumped out at her as likely applicants because that would be putting the expertise where it could help them. She said if there is a list of all these different neighborhood infrastructure-type things, then there may be something they could leap on quickly that would help them meet that deadline.

Dr. Pethia said she would be happy to look at the list, but she could say that 51% of the

households served with CDBG funds must be low- and moderate-income (80% of AMI and below). She said it would take a little work to make sure that the households in those areas qualified, but she would be happy to take a look.

Ms. Price asked Dr. Pethia if that would be something like the sewer hookup systems that Ms. McKeel had mentioned.

Dr. Pethia said absolutely, and DHCD really prefers to do projects like those because they are easier to manage; with the federal funding, they do need to think about Davis-Bacon compliance and federal wage rates, and so they actually prefer projects like that, where it is one single infrastructure project that is get in/get out and is not a long-term compliance issue.

Ms. Price said they had had the public hearing to be available to receive information from the public and needed to set a second required public hearing, and staff had recommended they do this on August 4, 2021. Ms. Price confirmed from Mr. Kamptner that they did not have any other action necessary at that point.

Agenda Item No. 19. **Public Hearing: ZTA 201900008 Section 33-Zoning Text Amendments, Zoning Map Amendments, Special Use Permits and Special Exceptions.** To receive comments on a proposed ordinance amending Sec. 18-33.1 (Introduction) through Sec. 18-33.54 (Withdrawing an application) of Chapter 18 (Zoning) of the Albemarle County Code Section 18-33 establishes the procedures and requirements for Zoning Text Amendments (ZTAs), Zoning Map Amendments (ZMAs), Special Use Permits (SPs) and Special Exceptions (SEs). The proposed ordinance would reorganize submittal requirements, review procedures, and notification requirements for all Zoning Text Amendments, Zoning Map Amendments, Special Use Permits, and Special Exceptions, and would revise, clarify and standardize the text. Among other revisions, the primary proposed substantive changes would: (1) correct existing and previous errors in references within the ordinance (County Code § 18-33); (2) clarify the procedures to determine if any application is complete or incomplete (County Code § 18-33.4 and § 18-33.5); (3) add non-severability language to conditions associated with a special exception (County Code § 18-33.9); (4) allow for review of projects while in state of deferral (County Code § 18-33.11); (5) provide that once a deferred application is reactivated, the timeline for review is reset (County Code § 18-33.11); (6) allow for the collection of a new fee for a reactivated application (County Code § 18-33.11); and (7) provide that an application is deemed withdrawn if a deferral request is accepted and the project is not reactivated within six months (County Code § 18-33.11).

The Executive Summary forwarded to the Board states that the proposed ordinance would reorganize submittal requirements, review procedures, and notification requirements for all Zoning Text Amendments, Zoning Map Amendments, Special Use Permits, and Special Exceptions, and would revise, clarify and standardize the text.

One of the stated purposes of the proposed ordinance is to allow for the review of projects while in a state of deferral. The ordinance presented to the Planning Commission contained an error that did not accomplish this purpose. The mistake has been corrected.

The Planning Commission suggested additional language to incorporate equity into all considerations made during the review of Zoning Text Amendments, Zoning Map Amendments, Special Use Permits and Special Exceptions. The ordinance has been amended to incorporate these recommendations.

The Planning Commission stated concerns that concept plans submitted in support of rezonings do not have the same content requirement as application plans. The difference is due to a requirement contained in the Planned District regulations which sets out specific criteria for application plans required for all Planned Development applications. The level of detail in required concept plans can be varied to correspond to the complexity of the project. A simple rezoning may have a very limited concept plan, while a more complex rezoning may be required to submit a concept plan with the same level of information as an application plan.

Staff recommends that the Board adopt the attached ordinance to approve ZTA 201900008 Section 33 Zoning Text Amendments, Zoning Map Amendments, Special Use Permits and Special Exceptions.

Mr. Fritz (development process manager in the Community Development Department) said this was the public hearing to discuss the amendments to Section 33 of the Zoning Ordinance. He said this is the section that contains all the procedures and requirements for the Zoning Text Amendments, Zoning Map Amendments, Special Use Permits and Special Exceptions. He said the Planning Commission and Board held work sessions earlier in the year in January and February respectively, and the Planning Commission held a public hearing on April 6th and recommended approval of this Zoning Text Amendment.

Mr. Fritz said during the Planning Commission meeting, there were issues in the draft ordinance that were identified, and they have been corrected. He said the Planning Commission made a very good recommendation to better incorporate equity into all considerations, and that change has been made as well as the other minor changes.

Mr. Fritz said the Planning Commission stated some concerns about the difference between concept plans and application plans that are submitted in support of rezoning. He said the difference in these two types of plans is due to the fact that an application plan is a type of plan that is required for planned developments, and the planned development provisions set out very specific information that must be included in the application plans. He said the concept plans may have varied levels of development to correspond to the complexity of the proposal, so a concept plan may be required to have the same information as an application plan, or it may have minimal information. He said the Planning Commission discussed this and did not recommend any changes; he was just bringing this to the Board's attention.

Mr. Fritz said the proposed amendments correct some existing and previous errors in references within the ordinance; clarify procedures to determine if an application is complete or incomplete; add non-severability language to conditions associated with a special exception; allow for a review of projects while they are in a state of deferral; provide that once a deferred application is reactivated, the timeline for review is reset; allow for the collection of a new fee for a reactivated application; and provide that an application is deemed withdrawn if a deferral request is accepted and the project is not reactivated within six months.

Mr. Fritz said the Planning Commission in January and the Board in February changed the ordinance to allow the Planning Commission to defer an application at the request of an applicant, and that has been made, and that cultural and heritage resources be included as a type of study that may be required when submitting a Special Use Permit or Zoning Map Amendment application.

Mr. Fritz said to give some background, in 2018, the ordinance was amended; this amendment was made because of a desire to fix deficiencies in the ordinance and improve the process. He said those 2018 amendments have unfortunately not had the desired improvement; in fact, the administration of the ordinance has proven to be complex and resource-consuming. He said there was some support to repeal the 2018 amendment and revert to the prior ordinance; that has not been done in this case. He said the need to amend the ordinance in 2018 existed, and simply reverting to the ordinance prior to 2018 would still leave a need to amend the ordinance. He said what the Board had before them that evening attempted to correct the process issues created by the 2018 amendments and retain the improvements that the 2018 amendments had in them.

Mr. Fritz said the 2018 changes included reorganization, and the proposed amendment reorganizes the section on process from what was done in 2018; it does not restore the organization to the pre-2018 process but builds on the lessons learned. He said time limits for actions was a major issue in the 2018 amendment; that amendment created a 36-month time limit where all applications had to be acted on within 36 months. He said the process involved with this time limit is overly complex and has created an administrative burden. He said the proposed amendment removes the time limit and places a clear statement that the County is not obligated to accept a request for deferral.

Mr. Fritz said the proposed amendment clarifies the procedures for reactivating applications and review of applications when they are in a state of deferral. He said it also fixes some problems with procedure; for example, a currently deferred application is not to be reviewed, but the primary purpose of a deferral is to allow issues to be identified and addressed. He said the proposed amendments now clarify that the public hearing is deferred, not the review. He said the proposed ordinance provides that once a deferred application is reactivated, the timeline for review is reset. He said the current ordinance creates significant procedural difficulties because the timeline for deferred applications is simply not clear. He said the proposed ordinance allows for the collection of a new fee for a reactivated application, and this is important; a reactivated application may contain so much new information that it is essentially a new review. He said the proposed ordinance provides that an application is deemed withdrawn if a deferral request is accepted and the project is not reactivated within six months; this will allow the County to more easily administer the process and prevent applications from lingering.

Mr. Fritz said for submittal requirements, the 2018 amendments modified the submittal requirements and allowed the planning director to determine that some information may not be required in certain applications. He said the amendments the Board had before them that evening retained the submittal requirements and clarified the process for determining what information is required.

Mr. Fritz said the 2018 amendments allowed for electronic submittal, and that has been retained. He said notice to easement holders was a significant change with the 2018 amendments to notify certain easement holders when applications were made on properties with easements, and this has been retained. He said the 2018 amendment adopted revised procedures for the rejection of incomplete applications, but these amendments were inadequate. He said the proposed amendments clarify timelines and include a notification of the applicant when an application is rejected; that is not in the current ordinance. He said it clarifies the collection of fees and the establishment of a start date to calculate the time to review. He said the amendment before the Board that evening also contained some changes that were necessary to bring them into compliance with the state code; there had been some state code changes since 2018.

Mr. Fritz said the 2018 amendment added a provision to allow revocation of a Special Exception; the proposed amendments retain that provision. He said in addition, the proposed ordinance adds non-severability language to conditions associated with a Special Exception. He said this change will invalidate the Special Exception if any one condition is found to be unreasonable, invalid, void, or unlawful. He said it removes a reference to judicial review of denied applications that was added in the 2018; it was removed because it is a self-executing provision in the state code, so it does not change

anything. He said the 2018 amendment allowed the planning director to require additional community meetings, and this proposed amendment retains and strengthens this.

Mr. Fritz said another significant issue was identified with the 2018 amendments; the proposed ordinance corrects existing and previous errors in reference within the ordinance. He said one example was that the existing ordinance requires a Special Use Permit for historic taverns and inns be reviewed for factors in section 33.8, but when one goes to section 33.8, that discusses how to initiate a Zoning Text Amendment and has nothing to do with taverns and inns, so they have found a lot of internal inconsistencies in the ordinance and have hopefully fixed all of those. He said they spent a lot of time doing that.

Mr. Fritz said staff and the Planning Commission are recommending approval of this Zoning Text Amendment and paused for questions.

Ms. Mallek said this was a long time coming and great work. She said she was grateful for the notice to easement holders; that is important, but she is not sure they are quite there yet. She asked if they had the authority to hold up a building permit or something like that until the approval comes from the easement holder so as not to get halfway through the building process and then find out it does not meet the easement. She said she knew they could not get in the middle of things but does not know if they can bite around the edges.

Mr. Fritz said he did not know all the answer to that question but could certainly look into it and try to get some information back to Ms. Mallek. He said he knew that in the zoning ordinance when they do site plans, they look at the location of easements, and if they do not have the permission of the easement holder or if the easement interferes, site plan approval can be withheld, which then prevents obviously a building permit, but if it were a subdivision and they were doing a house, he does not know the answer to that question and would have to investigate further.

Ms. Mallek said over the years, many times there has been a sort of throw the County under the bus thing when certain agents have not done their work and yet blame the County staff because approvals take too long when it turns out they never handed it in to begin with. She asked if there was a step in there where the County notifies the owner of the property about when certain things are received so that it basically creates a check log so that this does not happen anymore. She said this has happened dozens of times in the last 10 years, and certain agents certainly have a bad reputation for doing it more than others, but if there is a way to put in a little email checklist to say either the application has not been received in a timely way, or at least if there were records that could very easily be shown to somebody to say it was never received. She said she hoped they could find a way that is simple and technological instead of a lot of time that would force these engineers and other people to know that their owners are going to be notified when things are submitted, and therefore they will not be able to play this game anymore.

Mr. Fritz said the ordinance is probably flexible enough he would look into it in terms of who they notify when they are corresponding on particular applications, and that is something they can certainly look into.

Mr. Kamptner said staff can always provide more information and more notice than what is standard in the ordinance, so when that kind of activity is going on, they can take the steps to inform the owner.

Mr. Fritz asked Mr. Kamptner if he had any additional information about the easements.

Mr. Kamptner said part of it would depend on the nature of the easement, and if they are talking about a building permit, once the applicant for the building permit is in compliance with all the laws and ordinances, then it becomes an administrative act; they would have to see if there are any circumstances. He asked Ms. Mallek if she had a particular type of easement she was thinking of, like a utility easement, for example.

Ms. Mallek said she was thinking more the broad open space easements were probably where they run into the problem the most or applications for different events, any number of opportunities like the Fauquier debacle a few years ago where they were trying to just maintain their easement, and it went through court over and over again. She said she is always trying to look for an easier prevent-the-problem solution if it is not burdensome to the staff.

Ms. LaPisto-Kirtley asked in actuality whether they do not have to put the notification in the ordinance that Ms. Mallek was talking about, and staff can do that.

Mr. Fritz said that sounded to him like a procedural thing, and they have done that in the past where they have notified the owner and the applicant, and sometimes it is just the applicant, so that is an internal procedure they can take care of; the ordinance is not preventing it.

Ms. Palmer said it was her understanding recently (the past year or year before that) that zoning started automatically going ahead and notifying the owner and the engineer. Ms. Palmer said for clarification because Ms. Mallek had asked a good question, with the VOF easements, it had recently come up, and Mr. Kamptner had explained that the building permits cannot be withheld.

Mr. Kamptner said the process is very circumscribed as to what the building official and what the

zoning officials are looking at, and so they cannot use that as a device to enforce easements that do not pertain to the County.

Ms. Palmer asked if it were an easement that the County held by the ACEA if they would then be able to do that.

Mr. Kamptner said they have the enforcement mechanism of the deed of easement itself; he would have to look at the current state of the language in the deeds, but certainly they have a lot more leverage in that circumstance as compared to the situation where they would be an outsider to the terms of the easement.

Ms. Palmer said that might be something that he would look into; given the problems they are having with the VOF easements, they are liable to have those similar problems with their own.

Ms. McKeel told Mr. Fritz it was much improved, and she found the Planning Commission minutes very interesting. She said she had a discussion with Ms. Filardo about this not too long ago, and they are now notifying the engineer and the owner of the property with the correspondence. Ms. McKeel asked for clarification where in the Planning Commission meeting, there was a long discussion about equity and obligation of the County. She asked Mr. Fritz to talk to her about that.

Mr. Fritz said the discussion was that the County is obligated to consider equity, and there was some question about whether or not the existing language that is already in the comprehensive plan and zoning ordinance was adequate and whether or not it was appropriate to put additional language in. He said he thought it was a very good conversation, and based on the conversation that they had, working with Mr. Herrick and the County Attorney's office, they were able to find a place to put a reference to equity because the state code has very specific parameters for the review of rezonings and special use permits, but they still wanted to get across the concept that equity is something they are looking at, and they found a place to put that in there (at the beginning section of section 33).

Ms. McKeel said she got down into the reading of the discussion at the Planning Commission level and just wanted to make sure that had been added.

Ms. Price told Mr. Fritz when she first was reviewing this, she was concerned about the factor unfavorable on the staff report about removing the requirement that an application must be acted on within 36 months or the project is deemed withdrawn because she knows they have had discussions in the past about things being approved and no action being taken on it. She said his explanation, however, as to the complexities of the processes and why removing those 36 months made sense clarified a lot for her, and she appreciates that. She said if she understands correctly, though, if a permit is sort of sitting around for more than six months, then County staff can basically cancel that permit out, and she wanted to make sure she understood that correctly because many of the projects that people are doing, particularly now given what is happening with the cost of materials, may be delayed, and so she just wanted to be careful to make sure they are not too quickly canceling permits and then requiring applicants to start over.

Mr. Fritz said they have multiple places in the ordinance in different sections where if one requests a deferral, their application is deemed withdrawn. He said it does not require any action by the County; the request is just deemed withdrawn if something is not done within six months. He said what this requires an applicant to do is basically check in every six months; they can come in and ask for another six-month deferral, and that request will be evaluated. He said if they determine the applicant is just trying to run the clock out on the neighbors, for example, they might say no, that it is time to move forward, or they would say yes, that it is perfectly fine where they are doing their traffic study and have all these other things going on. He said it is a much better way of managing these projects and keeping them from lingering.

Ms. Price analogized it was like renewing a library book.

Mr. Kamptner added that once something is approved, the concept of vested rights kicks in, and then the applicant has the ability to show that the regulations have changed, and they still are entitled to continue with the project that was approved.

Ms. Price confirmed there was no one signed up to speak and closed the public hearing.

Ms. Mallek asked if there was a new approval given whether there were two years where the permit is live, and they are to commence work. She said the legislature took a bunch of those and added five years to it, but she did not know if they were out of that extension period with the state.

Mr. Fritz said on rezonings, there is no time limit; they are good forever. He said on special use permits, the County can put a limit that they need to do something within a certain period of time or else the special use permit is no longer valid, but once they do that, then it goes on. He said he thought she was thinking of the extensions that were granted for site plans and subdivisions where the General Assembly extended those approvals.

Ms. McKeel remarked it was not just for subdivisions because an office park was being built on Hydraulic Road that was approved in 2004.

Mr. Fritz said it was site plans and subdivisions, and they did extend special use permits also.

Ms. McKeel said that has been a huge problem, so they do not want to be going there and do not want to allow that.

Ms. LaPisto-Kirtley **moved** that the Board adopt the attached Ordinance to approve ZTA 201900008 Section 33 Zoning Text Amendments, Zoning Map Amendments, Special Use Permits and Special Exceptions.

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

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

NAYS: None.

ABSENT: Mr. Gallaway.

ORDINANCE NO. 21-18(3)

AN ORDINANCE TO AMEND CHAPTER 18, ZONING, ARTICLE I, GENERAL PROVISIONS, AND ARTICLE IV, PROCEDURE, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 18, Zoning, Article I, General Provisions, and Article IV, Procedure, are hereby amended and reordained as follows:

By Amending:

Sec. 3.1 Definitions

By Repealing:

- Sec. 33.1 Introduction.
- Sec. 33.2 Initiating a zoning text amendment.
- Sec. 33.3 Work sessions, stakeholder meetings, community meetings, and other public engagement.
- Sec. 33.4 Public hearings; notice.
- Sec. 33.5 Recommendation by the Planning Commission.
- Sec. 33.6 Action by the Board of Supervisors.
- Sec. 33.7 Introduction.
- Sec. 33.8 Initiating a zoning map amendment.
- Sec. 33.9 Work sessions, stakeholder meetings, community meetings, and other public engagement.
- Sec. 33.10 Public hearings; notice.
- Sec. 33.11 Recommendation by the Planning Commission.
- Sec. 33.12 Action by the Board of Supervisors.
- Sec. 33.13 Introduction.
- Sec. 33.14 Pre-application meeting.
- Sec. 33.15 Application for a zoning map amendment.
- Sec. 33.16 Information submitted with application; all applications.
- Sec. 33.17 Information submitted with application; conventional districts.
- Sec. 33.18 Information submitted with application; planned development districts, including neighborhood model districts.
- Sec. 33.19 Information submitted with applications; neighborhood model districts.
- Sec. 33.20 Filing the application; determining completeness of the application; paying fees; resubmitting an application originally determined to be incomplete.
- Sec. 33.21 Studies identifying potential impacts of zoning map amendment.
- Sec. 33.22 Proffers.
- Sec. 33.23 Work sessions.
- Sec. 33.24 Community meetings.
- Sec. 33.25 Public hearings; notice.
- Sec. 33.26 Recommendation by the Planning Commission.
- Sec. 33.27 Action by the Board of Supervisors.
- Sec. 33.28 Effect of approval of zoning map amendment; effect of proffers once accepted.
- Sec. 33.29 Resubmitting a similar denied application within one year is prohibited.
- Sec. 33.30 Introduction.
- Sec. 33.31 Pre-application meeting.
- Sec. 33.32 Application for a special use permit.
- Sec. 33.33 Information the Director of Planning may require to be submitted with application.
- Sec. 33.34 Filing the application; determining completeness of the application; paying fees; resubmitting an application originally determined to be incomplete.
- Sec. 33.35 Studies identifying potential impacts of special use permit.
- Sec. 33.36 Work sessions.
- Sec. 33.37 Community meetings.
- Sec. 33.38 Public hearings; notice.
- Sec. 33.39 Recommendation by the Planning Commission.
- Sec. 33.40 Action by the Board of Supervisors.
- Sec. 33.41 Revoking a special use permit for noncompliance with conditions.
- Sec. 33.42 Resubmitting a similar denied application within one year is prohibited.
- Sec. 33.43 Introduction.

- Sec. 33.44 Application for a special exception.
- Sec. 33.45 Filing the application; determining completeness of the application; paying fees; resubmitting an application originally determined to be incomplete.
- Sec. 33.46 Studies identifying potential impacts of special exception.
- Sec. 33.47 Public hearings; when required; notice.
- Sec. 33.48 Recommendation by the Planning Commission when required.
- Sec. 33.49 Action by the Board of Supervisors.
- Sec. 33.50 Revoking a special exception for noncompliance with conditions.
- Sec. 33.51 Resubmitting a similar denied application within one year is prohibited.
- Sec. 33.52 Deferring action.
- Sec. 33.52 Requesting action after deferral.
- Sec. 33.54 Withdrawing an application.

By Adding:

- Sec. 33.1 Purpose and Intent.
- Sec. 33.2 Uniform Requirements for County Initiation of Zoning Text Amendments and Zoning Map Amendments.
- Sec. 33.3 Uniform Procedures for Zoning Text Amendments and County Initiated Zoning Map Amendments.
- Sec. 33.4 Uniform Requirements for Owner Initiation of Zoning Map Amendments and Special Use Permits.
- Sec. 33.5 Uniform Procedures for Special Exceptions.
- Sec. 33.6 Zoning Text Amendments and Zoning Map Amendments; Relevant Factors to be Considered; Effect of Approval.
- Sec. 33.7 Owner-Initiated Zoning Map Amendments; Authority to Accept Proffers.
- Sec. 33.8 Special Use Permits; Relevant Factors to be Considered; Conditions; Revocation.
- Sec. 33.9 Special Exceptions; Relevant Factors to be Considered; Conditions; Revocation
- Sec. 33.10 Public Notice.
- Sec. 33.11 Deferring Action and Withdrawing an Application.

Chapter 18. Zoning

Article I. General Provisions

Sec. 3.1 Definitions.

* * * * *

Resubmission. For the purposes of calculating fees, "resubmission" means the submittal of additional information for review by the County in response to review comments from the County. The review comments will clearly indicate if responses to the comment constitute a resubmission. The Agent may determine whether submission of items such as additional copies of information, recorded documents, photographs, minor amendments to previously submitted items or other information constitutes a resubmission.

* * * * *

[(§ 3.1: 20-3.1, 12-10-80, 7-1-81, 12-16-81, 2-10-82, 6-2-82, 1-1-83, 7-6-83, 11-7-84, 7-17-85, 3-5-86, 1-1-87, 6-10-87, 12-2-87, 7-20-88, 12-7-88, 11-1-89, 6-10-92, 7-8-92, 9-15-93, 8-10-94, 10-11-95, 11-15-95, 10-9-96, 12-10-97; § 18-3.1, Ord. 98-A(1), 8-5-98; Ord. 01-18(6), 10-3-01; Ord. 01-18(9), 10-17-01; Ord. 02-18(2), 2-6-02; Ord. 02-18(5), 7-3-02; Ord. 02-18(7), 10-9-02; Ord. 03-18(1), 2-5-03; Ord. 03-18(2), 3-19-03; Ord. 04-18(2), 10-13-04; 05-18(2), 2-2-05; Ord. 05-18(7), 6-8-05; Ord. 05-18(8), 7-13-05; Ord. 06-18(2), 12-13-06; Ord. 07-18(1), 7-11-07; Ord. 07-18(2), 10-3-07; Ord. 08-18(3), 6-11-08; Ord. 08-18(4), 6-11-08; Ord. 08-18(6), 11-12-08; Ord. 08-18(7), 11-12-08; Ord. 09-18(3), 7-1-09; Ord. 09-18(5), 7-1-09; 09-18(8), 8-5-09; Ord. 09-18(9), 10-14-09; Ord. 09-18(10), 12-2-09; Ord. 09-18(11), 12-10-09; Ord. 10-18(3), 5-5-10; Ord. 10-18(4), 5-5-10; Ord. 10-18(5), 5-12-10; Ord. 11-18(1), 1-12-11; Ord. 11-18(5), 6-1-11; Ord. 11-18(6), 6-1-11; Ord. 12-18(3), 6-6-12; Ord. 12-18(4), 7-11-12; Ord. 12-18(6), 10-3-12, effective 1-1-13; Ord. 12-18(7), 12-5-12, effective 4-1-13; Ord. 13-18(1), 4-3-13; Ord. 13-18(2), 4-3-13; Ord. 13-18(3), 5-8-13; Ord. 13-18(5), 9-11-13; Ord. 13-18(6), 11-13-13, effective 1-1-14; Ord. 13-18(7), 12-4-13, effective 1-1-14; Ord. 14-18(2), 3-5-14; Ord. 14-18(4), 11-12-14; Ord. 15-18(1), 2-11-15; Ord. 15-18(2), 4-8-15; Ord. 15-18(4), 6-3-15; Ord. 15-18(5), 7-8-15; Ord. 15-18(10), 12-9-15; Ord. 16-18(1), 3-2-16; Ord. 16-18(7), 12-14-16; Ord. 17-18(1), 1-18-17; Ord. 17-18(2), 6-14-17; Ord. 17-18(4), 8-9-17; Ord. 17-18(5), 10-11-17; Ord. 18-18(1), 1-10-18; Ord. 18-18(4), 10-3-18; Ord. 19-18(3), 6-5-19) (§ 4.15.03: 12-10-80; 7-8-92, § 4.15.03, Ord. 01-18(3), 5-9-01; Ord. 05-18(4), 3-16-05; Ord. 10-18(1), 1-13-10; Ord. 10-18(3), 5-5-10; Ord. 10-18(5), 5-12-10; Ord. 11-18(1), 1-12-11; Ord. 12-18(2), 3-14-12; Ord. 14-18(3), 6-4-14; Ord. 15-18(3), 5-6-15; § 4.15.3; Ord. 15-18(11), 12-9-15; Ord. 17-18(4), 8-9-17) (§ 4.17.3: Ord. 98-18(1), 8-12-98; Ord. 01-18(8), 10-17-01; Ord. 17-18(5), 10-11-17) (§ 4.18.2: Ord. 00-18(3), 6-14-00; Ord. 13-18(4), 9-4-13) (§ 10.3.3.1: § 20-10.3.3.1, 11-8-89; § 18-10.3.3.1, Ord. 98-A(1), 8-5-98; Ord. 01-18(6), 10-3-01) (§ 30.2.4: § 30.2.4, 12-10-80) (§ 30.3.5: § 30.3.02.1 (part), 12-10-80; 6-10-87; Ord. 05-18(1), 1-5-05, effective 2-5-05; § 30.3.5; Ord. 14-18(1), 3-5-14; Ord. 17-18(4), 8-9-17; § 3.1, Ord. 19-18(3), 6-5-19; Ord. 19-18(6), 8-7-19; Ord. 20-18(2), 9-2-20; Ord. 20-18(3), 9-16-20; Ord. 21-18(3), 6-2-21]

Article IV. Procedure

Sec. 33 Zoning Text Amendments, Zoning Map Amendments, Special Use Permits, and Special Exceptions

Sec. 33.1 Purpose and Intent.

The purpose and intent of section 33 is to establish the procedural and substantive requirements and criteria for considering and acting on zoning text amendments, zoning map amendments, special use permits (except for those delegated to the Board of Zoning Appeals), and special exceptions. These provisions are intended to support and promote the Comprehensive Plan, the purpose and intent of the Zoning Ordinance, and to promote equity in all decisions.

(§ 33.1, Ord. 21-18(3), 6-2-21)

State law reference – Va. Code §§ 15.2-2285, 15.2-2286(A)(3), (4), (7), 15.2-2303.

Sec. 33.2 Uniform Requirements for County Initiation of Zoning Text Amendments and Zoning Map Amendments.

The Board of Supervisors may amend, supplement, or change the zoning regulations, district boundaries, or classifications of property whenever the public necessity, convenience, general welfare, or good zoning practice requires, subject to the following initiation process:

- A. Initiation of a zoning text amendment.
 - 1. *By the Board of Supervisors.* The Board of Supervisors may initiate a zoning text amendment by adopting a resolution. Any County resident may request any Board member to ask the Board to initiate a zoning text amendment or may directly request the Board to initiate a zoning text amendment.
 - 2. *By the Commission.* The Commission may initiate a zoning text amendment by adopting either a motion or a resolution.
- B. Initiation of a County initiated zoning map amendment. Any proposed zoning map amendment is initiated: (i) by resolution of the Board of Supervisors; (ii) by motion or resolution of the Commission.

(§ 33.2, Ord. 21-18(3), 6-2-21)

State law reference – Va. Code §§ 15.2-2285, 15.2-2286(A) (4), (7), 15.2-2302.

Sec. 33.3 Uniform Procedures for Zoning Text Amendments and County Initiated Zoning Map Amendments.

Each zoning text amendment and each county-initiated zoning map amendment is subject to the following provisions:

- A. The Agent may schedule work sessions before the Board of Supervisors, the Commission, and the Architectural Review Board, if applicable. The Agent may also hold stakeholder meetings, community meetings, and other forms of public engagement, as the Agent determines to be appropriate or as directed by the Board of Supervisors or the Commission, to consider any proposed zoning text amendment or zoning map amendment.
- B. *Public hearings.* Before the Board of Supervisors acts on a zoning text amendment or a zoning map amendment, the Commission will hold at least one public hearing before making its recommendation to the Board on each application. The Board also will hold at least one public hearing before acting on a zoning text amendment or a zoning map amendment.
- C. Notice of the public hearing will be provided pursuant to section 33.10.
- D. Recommendation by the Planning Commission.

The Commission will act on a proposed zoning text amendment or zoning map amendment under the following provisions:

- 1. *Recommendation.* The Commission will recommend either approval as proposed, approval with recommended changes, or denial.
 - 2. *Factors to be considered.* In making its recommendation, the Commission will consider the factors listed in section 33.6(B).
- E. Action by the Board of Supervisors.

The Board of Supervisors will act on a proposed zoning text amendment or zoning map amendment under the following provisions:

- 1. *Action.* The Board may either adopt the proposed amendment, deny the proposed amendment, or refer the matter back to the Commission for further consideration and recommendation. The Board may not adopt a zoning map amendment allowing a more intensive use, or including more land, than was contained in the public notice without an additional public hearing after notice is provided pursuant to Virginia Code §§ 15.2-2204 and 15.2-2285 (C).

2. *Factors to be considered.* In acting on a zoning text amendment or zoning map amendment, the Board will consider the factors listed in section 33.6(B).

F. *Judicial review.* Any action contesting a decision of the Board of Supervisors under this section must comply with Virginia Code § 15.2-2285(F).

(§ 33.3, Ord. 21-18(3), 6-2-21)

State law reference – Va. Code §§ 15.2-2204, 15.2-2285, 15.2-2286(A)(4), (7).

Sec. 33.4 Uniform Requirements for Owner Initiation of Zoning Map Amendments and Special Use Permits.

The Board of Supervisors reserves the power to consider and approve or deny all applications for special use permits except where that power has been delegated to the Board of Zoning Appeals as provided in sections 4.15.7 or 34. The Board may approve special use permits for those use classifications identified in the district regulations allowing identified uses by special use permit.

The owner may initiate a zoning map amendment or special use permit application, subject to the following provisions:

- A. *Pre-application meeting.* Each prospective applicant (the “applicant”) must both complete and submit information on County-provided forms and attend a pre-application meeting (collectively, the “pre-application meeting”) before submitting an application, subject to the following provisions:
 1. *Submitting information.* The applicant must complete and submit information on County-provided forms before or during the pre-application meeting.
 2. *Purposes of a meeting.* The purposes of a pre-application meeting are to: (i) provide the applicant and the County a common understanding of the proposed project; (ii) broadly identify the Comprehensive Plan designation of the property; (iii) broadly identify issues generated by the project that should be addressed by the applicant; and (iv) notify the applicant of special studies or documentation and any other information that must be submitted in order for an application to be considered complete, including the form and the required content of any study or documentation. Information may be provided to the applicant during the pre-application meeting or in writing following the meeting.
 3. *Factors to consider in requiring meeting.* A pre-application meeting is required unless the Agent decides that the meeting would not achieve the purposes for the meeting upon considering the following factors: (i) whether the proposed use, the proposed density, the proposed scale and potential impacts, the proposed district, and other considerations the Agent determines relevant under sound zoning principles do not warrant a pre-application meeting; (ii) whether the supplemental information delineated in subsection (E) can be identified without the meeting; (iii) whether the application would be one of a recurring nature for which the required information and the issues raised are well-established for the proposed application; or (iv) whether the application raises any complex issues that create the need for the meeting.
- B. *Who may file an application.* An owner, a contract purchaser with the owner's consent, or the owner's authorized agent may file an application for a zoning map amendment or special use permit (collectively in this section, the “owner” or the “applicant”). In addition:
 1. *Amendments to existing proffers.* Proffers that have been accepted by the Board of Supervisors in conjunction with a zoning map amendment may be amended by a later zoning map amendment. An owner whose parcel is subject to proffers may apply to amend the proffers applicable solely to that owner's parcel. An application to amend proffers is subject to the procedures and requirements of this section, provided that the requirements of this subsection may be waived if (i) the proposed amendment solely pertains to proffers that do not affect conditions of use or density, and (ii) following consultation with the Agent, the applicant submits a request to the Clerk of the Board before submitting its application for a zoning map amendment:
 - a. *Waiving the requirement for public hearings.* The Board may waive the requirement for a public hearing by the Commission or by the Board, or both, and the associated notice requirements, as otherwise required by this section. If the Board waives the requirement for a public hearing by the Commission, it also may waive the requirement for a recommendation from the Commission.
 - b. *Waiving procedural requirements.* The Board may waive one or more of the procedural requirements of subsections (A) and/or (N) and/or of section 33.10.
 - c. *Waiving application requirements.* The Board may waive any supplemental information that may otherwise be required with an application under subsection (E) and determine the number of copies of the application that must be filed.

2. *Amendments to existing planned developments.* An owner within an existing planned development may apply for a zoning map amendment applicable solely to that owner's parcel if it would not result in or require: (i) a change in use, density, or intensity on any other parcel in the planned development; (ii) a change to any regulation in a code of development that would apply to any other parcel in the planned development; (iii) a change to any other owner's express obligation under a regulation in a code of development; or (iv) a change to the application plan that would apply to any other parcel in the planned development.
 3. *Application for a special use permit.* An eligible easement holder or an electric cooperative may file an application for a special use permit. An "eligible easement holder" is a holder of an easement for which the special use permit is sought for a use allowed by the deed of easement or equivalent instrument. For the purposes of this article, "electric cooperative" means (i) a utility consumer services cooperative formed under or subject to the Utility Consumer Services Cooperatives Act (Virginia Code § 56-231.15 *et seq.*) or (ii) a distribution cooperative formed under the former Distribution Cooperatives Act (Virginia Code § 56-209 *et seq.*)
- C. *Submitting an application.*
1. *Who must sign an application.* The application must be signed by the owner of each parcel that is subject to the proposed zoning map amendment or special use permit. In addition:
 - a. *Amendments to existing proffers.* The signatures of the owners of any other parcels subject to the same proffers are not required when an owner applies to amend the proffers applicable solely to its parcel.
 - b. *Amendments to existing planned developments.* The signatures of any other owners within an existing planned development are not required if the owner-applicant may apply for a zoning map amendment applicable solely its parcel as provided in subsection (B)(2).
 - c. *Application for a special use permit.* The application must be signed by the owner or the eligible easement holder of each parcel that is the subject of the special use permit, or by any duly authorized agent of an electric cooperative.
 - d. *Documentation regarding the authority to apply.* The Agent may require the applicant to submit documentation establishing ownership of, or the easement interest in, any parcel that is the subject of the application, the electric cooperative's signatory's authority, and the authority of each signatory to sign the application on behalf of an eligible applicant.
 2. *Application forms.* The Agent may establish appropriate application forms for zoning map amendments or special use permits.
 3. *Where to file.* The application must be filed in the Department of Community Development.
 4. *Number of copies to file.* For each class of application, the Agent may establish the number of collated copies of the application to be filed, may accept electronic applications for filing, or both.
 5. *When to file.* The Agent may establish application deadlines for each class of application
- D. *Information submitted with an application.* Each application must include all information required by this section, provided that on the owner's written request, the Agent may waive the requirement for certain information, depending on: (i) the nature or extent of the proposed zoning map amendment or special use permit; (ii) the proposed use; (iii) the proposed density; (iv) the proposed district; (v) whether the application is to establish or amend a planned development district, including a neighborhood model district; and (vi) other considerations the Agent determines relevant when applying sound zoning principles.
- E. The following information must be provided unless the Agent or Board of Supervisors determines that the information is not required:

	Conventional Rezoning	Special Use Permit	Planned Development Districts	Neighborhood Model District
A narrative of the project proposal, including its public need or benefit	X	X	X	X
A narrative of the proposed project's consistency with the comprehensive plan, including the land use plan and the master plan for the applicable development area	X	X	X	X
A narrative of the proposed project's impacts on public facilities and public infrastructure.	X	X	X	X
A narrative of the proposed project's impacts on environmental features.	X	X	X	X
One or more maps showing the proposed project's regional context and existing natural and manmade physical conditions	X	X	X	X
The most recently recorded plat of the parcel(s) composing the proposed project, or a boundary survey if a portion of one or more parcels compose the proposed project, both of which must include a metes and bounds description of the boundaries.	X	X	X	X
Documents that verify the identity of all record title owners of the parcel(s) composing the proposed project and documents identifying the authorized signatories of the application, the proffer statement, if applicable, and all other related documents.	X	X	X	X
The name, address, telephone number and e-mail address of a single contact person for communications between the County and the applicant.	X	X	X	X
For zoning map amendments or special use permits that propose new residential development or new residential uses as defined in and subject to Virginia Code § 15.2-2303.4, the Agent may require studies that identify the impacts of the project on public transportation facilities, public safety facilities, public school facilities, and public parks.	X	X	X	X
Other special studies or documentation, if applicable, and any other information identified as necessary by the County on the pre-application comment form. The pre-application comment form will specify the form and the required content of any study or documentation.	X	X	X	X

	Conventional Rezoning	Special Use Permit	Planned Development Districts	Neighborhood Model District
Studies identifying cultural, historical or archeological resources potentially impacted by the proposed use.	X	X	X	X
For zoning map amendments, a local traffic impact statement as required by Virginia Code § 15.2-2222.1 and 24 VAC 30-155-40.	X	X	X	X
If private streets are proposed, the applicant must submit a request for private streets compliant with section 14 234.	X	X	X	X
A conceptual plan showing, as applicable, the street network, including circulation within the project and connections to existing and proposed or planned streets within and outside of the project	X	X		
A conceptual plan showing, as applicable, typical cross-sections to show proportions, scale and streetscape/cross-sections/circulation	X	X		
A conceptual plan showing the general location of any pedestrian and bicycle facilities	X	X		
A conceptual plan showing any building envelopes	X	X		
A conceptual plan showing any parking envelopes	X	X		
A conceptual plan showing any public spaces and amenities	X	X		
A conceptual plan showing any areas to be designated as conservation and/or preservation areas	X	X		
A conceptual plan showing any conceptual stormwater detention facility locations	X	X		
A conceptual plan showing any conceptual grading.	X	X		
A narrative of any proffers proposed to address impacts from the proposed project	X		X	X
If the project is to amend an existing planned development district and the proposed amendment would affect less area than the entire district, the applicant must submit a map showing the entire existing planned development district and identifying any area to be added to or deleted from the district, or identifying the area to which the amended application plan, code of development, proffers or any special use permit or special exception would apply			X	X

	Conventional Rezoning	Special Use Permit	Planned Development Districts	Neighborhood Model District
An application plan showing, as applicable, the street network, including circulation within the project and connections to existing and proposed or planned streets within and outside of the project;			X	X
An application plan showing, as applicable, typical cross-sections to show proportions, scale and streetscape/cross-sections/circulation.			X	X
An application plan showing the general location of any pedestrian and bicycle facilities			X	X
An application plan showing any building envelopes			X	X
An application plan showing any parking envelopes			X	X
An application plan showing any public spaces and amenities			X	X
An application plan showing any areas to be designated as conservation and/or preservation areas;			X	X
An application plan showing any conceptual on-site stormwater detention facility locations			X	X
An application plan showing any conceptual grading			X	X
An application plan showing, as applicable, a use table delineating use types, the number of dwelling units, non-residential square footage, building stories and/or heights, build-to lines, setbacks and yards, and other features			X	X
An application plan showing, as applicable, topography, using the county's geographic information system or better topographical information, and the source of the topographical information, supplemented where necessary by spot elevations and areas of the site where there are existing steep slopes;			X	X
An application plan showing, as applicable, the general layout for water and sewer systems;			X	X

	Conventional Rezoning	Special Use Permit	Planned Development Districts	Neighborhood Model District
An application plan showing, as applicable, the location of central features or major elements within the project essential to the design of the project, such as major employment areas, parking areas and structures, civic areas, parks, open space, green spaces, amenities and recreation areas;			X	X
An application plan showing, as applicable, standards of development including proposed yards, open space characteristics, and any landscape or architectural characteristics related to scale, proportions, and massing at the edge of the district			X	X
An application plan showing, as applicable, a conceptual lot layout			X	X
An application plan showing, if the application is to establish a neighborhood model district, the location of any proposed green spaces and amenities as provided in section 20A.9.			X	X
A narrative as to the project's consistency with the neighborhood model principles				X
If any characteristics of the neighborhood model delineated in section 20A.1 are missing from an application, the applicant must justify why any characteristics cannot or should not be provided				X
A statement describing how the proposed district satisfies the intent of section 20A				X
A code of development satisfying the requirements of section 20A.5				X
A parking and loading needs study that demonstrates parking needs and requirements and includes strategies for dealing with these needs and requirements, including phasing plans, parking alternatives as provided in section 4.12.8, and transportation demand management strategies as provided in section 4.12.12; provided that the applicant may elect to submit the parking and loading needs study in conjunction with the preliminary site plan for the development if it determines that the uses that may occupy the buildings are not sufficiently known at the time of the zoning map amendment.				X

	Conventional Rezoning	Special Use Permit	Planned Development Districts	Neighborhood Model District
Strategies for establishing shared stormwater management facilities, off-site stormwater management facilities, and the proposed phasing of the establishment of stormwater management facilities				X

- F. *Payment of delinquent taxes.* The applicant must demonstrate that any taxes or other charges constituting a lien on the subject property have been paid; provided that the payment of such taxes or other charges is not required when the applicant for a special use permit is an easement holder.
- G. *Determining completeness of the application; rejecting incomplete applications.* An application that includes all required information is complete and will be accepted for review and decision. An application omitting any required information will be deemed incomplete and not be accepted.
1. *Timing of determination of completeness.* The Agent will determine the completeness of an application within ten (10) days after the first application deadline following receipt of the application.
 2. *Procedure if application is incomplete.* The Agent will inform an applicant by letter of the reasons why an application was rejected as incomplete. The letter will be sent by first class mail, be personally delivered, or (with an applicant's written consent) by fax or e-mail. The applicant has 90 days after the letter was sent or personally delivered to submit all of the

information identified in the letter. The Agent will review the information submitted to determine whether the application is complete as provided in this subsection. An incomplete application will be void if the applicant fails to submit all of the information identified in the letter within 90 days after the letter was sent or personally delivered. If the applicant fails to timely submit the information identified in the letter, the applicant may proceed only by filing a new application.

3. *Effect if timely determination not made.* If the Agent does not send or deliver a notice of an incomplete application within ten (10) days after the first application deadline following receipt of the application, the application will be deemed complete, provided that the Agent may require the applicant to later provide the omitted information within a period specified by the Agent, and further provided that the Agent may reject the application as provided herein if the applicant fails to timely provide the omitted information.

H. *When an application is determined to be complete; effect.*

1. When the Agent determines that the applicant has submitted all required information, the Agent will determine the application to be complete. On that date (or 10 days after the first application deadline following receipt of the application, if the Agent fails to make a timely determination on the completeness of the application), the application is deemed referred to the Commission for the purpose of calculating the time in which action must be taken pursuant to subsection (O), except as provided in subsection(H)(3).
2. *Notification of Applicant.* The Agent will notify the applicant by letter or by e-mail when the application has been determined to be complete.
 - a. *Notice to other owners of application for zoning map amendment to amend existing proffers.* Within ten (10) days after an application for a zoning map amendment seeking to amend existing proffers is determined to be complete, written notice of the proposed amendment will be provided to each owner subject to the same proffers, as required by Virginia Code §§ 15.2-2204(H) and 15.2-2302.
 - b. *Notice to owner of application for special use permit filed by easement holder or electric cooperative when application determined to be complete.* Within ten (10) days after an application for a special use permit filed by an easement holder is determined to be complete, written notice of the proposed special use permit will be provided to each owner of the property for which the special use permit is sought, as required by Virginia Code § 15.2-2204(H).
 - c. *Notice of completed applications to holders of open-space or conservation easements.* For zoning map amendments or special use permits pertaining to a parcel subject to an open-space easement or a conservation easement, the Agent will provide written notice within 10 days after the application is determined to be complete to each holder of the open-space easement, other than the County, or the conservation easement. The notice will be sent by first class mail. The notice will inform the recipient that the application has been filed and describe the nature of the application. An action on an application will not be invalidated solely because of a failure to timely mail this notice.
3. *Paying fees.* The applicant must pay the fees required by section 35.1 when the application is determined to be complete or if the Agent fails to make a timely determination on the completeness of the application. The application will not be reviewed, and any time by which action must be taken by the Commission or the Board of Supervisors does not begin, until the applicant pays the fees. An application is void if the applicant fails to pay the fees either (a) within 10 days of the notice that the application is determined to be complete or (b) within twenty (20) days after the first application deadline following receipt of the application, if the Agent fails to make a timely determination on the completeness of the application. The application is determined to be complete for the purpose of calculating the time in which action must be taken pursuant to subsection (O) only after the required fees have been paid.

I. *Resubmittal of application originally determined to be incomplete.* Within six (6) months of the sending of a notice of an incomplete application, as provided in subsection (G)(2), the applicant may resubmit the application with all of the information required by subsections (B)-(F) for a new determination of completeness under subsection (G).

J. *Work sessions.* For any application, the Agent may schedule work sessions before the Board of Supervisors, the Commission, and/or the Architectural Review Board, if applicable, as the Agent determines appropriate considering the nature of the approval requested, the acreage affected, the possible impacts that could result from an approved application, and any other factors deemed relevant upon applying sound zoning principles, subject to the following provisions:

1. *Purposes for a work session.* The purposes for a work session are to present the proposed project to the Board or the Commission with the Department of Community Development's analysis of the major issues, to seek direction from the Board or Commission on those issues, and to allow the Board or Commission to receive public comments.

2. *When applicant's consent required.* The applicant's consent to a work session is required if the work session would extend the time for action by the Commission or the Board beyond the deadlines in subsection (O).
- K. *Community meetings.* A community meeting will be held for each application, subject to the following provisions:
1. *Purposes for a meeting.* The purposes for a community meeting are to: (i) provide interested members of the public the opportunity to receive information about the proposed project, the applicable procedure, the policies of the comprehensive plan, other relevant policies, and regulations applicable to the proposed project; and (ii) to allow the public to ask questions about the proposed project.
 2. *Factors to consider in requiring meeting.* A community meeting will be held unless the Agent determines that the meeting would not achieve its purposes, considering the following factors: (i) whether the application would be unlikely to generate any public concerns because of the nature of the approval requested, the acreage affected, the proposed density, the proposed scale, and the potential impacts; (ii) any other factors deemed relevant upon applying sound zoning principles; and (iii) whether the applicant has already held one or more community meetings regarding the application so as to make a community meeting unnecessary.
 3. *Guidelines.* The Agent may establish written guidelines about which applications should have community meetings, and when and how to conduct community meetings, including (but not limited to): how and to whom notice should be provided for community meetings, which notice may include posting signs at the site before the meeting, who should schedule and lead the meeting, the format of the meeting, and how the issues identified at the meeting should be documented.
 4. *When applicant's consent required.* The applicant's consent to a community meeting is required if the community meeting would extend the time for action by the Commission or the Board beyond the deadlines in subsection (O).
 5. *Holding in conjunction with a citizen advisory committee meeting.* A community meeting may be held during a citizen advisory committee meeting.
 6. *When community meeting is to be held.* A community meeting will be held prior to the first public hearing on the application for a zoning map amendment.
 7. *Additional community meetings.* The Agent may require that an additional community meeting be held prior to a public hearing if a deferral has been requested and a project is resubmitted that is substantially different than the original project.
- M. *Public hearings.* Before the Board of Supervisors acts on a zoning map amendment or a special use permit, the Commission will hold at least one public hearing before making its recommendation to the Board on each application. The Board will hold at least one public hearing before approving an application.
- N. Notice of the public hearing will be provided pursuant to section 33.10.
- O. *Time for decision.* Action on each application is subject to the following provisions:
1. *By the planning Commission.* The Commission will act on each application within ninety (90) days of the first meeting of the Commission after it was referred to the Commission, according to the schedule established and administered by the Agent. The failure of the Commission to make a recommendation on the application within the ninety (90) day period will be deemed a recommendation of approval unless the applicant requests or consents to an extension of that period.
 2. *By the Board of Supervisors.* The Board of Supervisors will act on each application within a reasonable period not to exceed twelve (12) months following the first meeting of the Commission after it was referred to the Commission, according to the schedule established and administered by the Agent, unless the applicant requests or consents to an extension of that period.
 3. *Tolling.* The period for action by the Commission or the Board of Supervisors is tolled during any time(s) when the applicant has requested that the review of the application be suspended, or that the public hearings or action thereon be deferred or continued.
 4. *Referral.* The Board of Supervisors may refer an application to the Commission after the Commission has made a recommendation or the application has been deemed recommended for approval, provided that further action by the Commission and action by the Board of Supervisors is within twelve (12) months following the first meeting of the Commission after it was referred to the Commission, according to the schedule established and administered by the Agent, unless the applicant requests or consents to an extension of that period.

- P. *Recommendation by Commission.* The Commission will recommend either approval of the application as proposed, approval subject to changes prior to action by the Board of Supervisors, or disapproval. Alternatively, the Commission may defer a pending application pursuant to section 33.11. For any application for a zoning map amendment, the Commission's recommendation also should include its recommendations on any proposed proffers and, for any application to establish or amend a planned development district, its recommendations on the application plan, the standards of development, the code of development, and any special exception(s) requested by the applicant under section 8.2. For any application for a special use permit, the Commission's recommendation should include its recommendations on any proposed conditions.
- Q. *Action by the Board of Supervisors.* The Board of Supervisors may either approve or deny the application or may defer action to allow for changes prior to final action. In approving an application for a zoning map amendment, the Board may accept any proposed proffers as provided in section 33.7. In approving an application for a special use permit, the Board may impose conditions as provided in section 33.8.
- R. *Intensification of use classification prohibited without additional notice and hearing.* No land may be zoned to a more intensive use classification than was contained in the public notice without an additional public hearing after notice is provided as required by Virginia Code §§ 15.2-2204 and 15.2-2285(C).
- S. *Resubmittal of similar denied application.* An applicant may not submit an application that is substantially the same as a denied application within one (1) year of its denial.
- T. *Judicial review.* Any action contesting a decision of the Board of Supervisors under this section must comply with Virginia Code § 15.2-2285(F).

(§ 33.4, Ord. 21-18(3), 6-2-21)

State law reference – Va. Code §§ 15.2-2204, 15.2-2285, 15.2-2286(A)(3), (4), (7), (B).

Sec. 33.5 Uniform Procedures for Special Exceptions.

This section establishes the regulations and safeguards for filing, reviewing, and acting on applications for special exceptions.

Each application for a special exception is subject to the following provisions:

- A. *Power to grant special exceptions is reserved by the Board of Supervisors.* The Board of Supervisors reserves the power to consider and approve or deny all applications for special exceptions.
- B. *Matters eligible for a special exception.* The Board may approve special exceptions to waive, modify, vary, or substitute any requirement of this chapter that is expressly authorized to be waived, modified, varied, or substituted.
- C. *Variations and exceptions distinguished.* A special exception is not required for any matter that may be varied or excepted under section 32 or chapter 14, or for developing and constructing residential dwellings at the use, height, and density permitted by right in the applicable district as provided by Virginia Code § 15.2-2288.1.
- D. *Application.* Each application for a special exception must be made as provided by the applicable section of this chapter authorizing the waiver, modification, variation or substitution, and must include both the information required by that section and any studies that the Agent may require identifying the nature and extent of potential impacts resulting from the proposed special exception.
- E. *Submitting an application.*
 - 1. *Who must sign an application* The application may be filed only (a) by the owner, the contract purchaser with the owner's consent, or the owner's agent for the purpose of the special exception, or (b) by the easement holder of an easement where the waiver, modification, or variation for which the special exception is sought pertains to a use allowed by the deed of easement or equivalent instrument..
 - 2. *Documentation regarding the authority to apply.* The Agent may require the applicant to submit documentation establishing ownership of, or the easement interest in, any parcel that is the subject of the application.
 - 3. *Application forms.* The Agent may establish appropriate application forms for special exceptions.
 - 4. *Where to file.* The application must be filed in the Department of Community Development.
 - 5. *Number of copies to file.* The Agent may establish the number of collated copies of the application to be filed, may accept electronic applications for filing, or both.
 - 6. *When to file.* The Agent may establish application deadlines for special exception applications.

- F. *Payment of delinquent taxes.* The applicant must demonstrate that any taxes or other charges constituting a lien on the subject property have been paid; provided that the payment of such taxes or other charges is not required when the applicant for a special exception is an easement holder.
- G. *Determining completeness of the application; rejecting incomplete applications.* An application that includes all required information will be determined to be complete and be accepted for review and decision. An application omitting any required information will be deemed incomplete and will not be accepted.
1. *Timing of determination of completeness.* The Agent will determine the completeness of an application within ten (10) days after the first application deadline following receipt of the application.
 2. *Procedure if application is incomplete.* The Agent will inform the applicant by letter explaining the reasons why the application was rejected as being incomplete. The letter will be sent by first class mail, be personally delivered or, if consented to by the applicant in writing, by fax or e-mail. If an application is incomplete, the applicant may submit all of the information identified in the letter within 90 days after the letter was sent or personally delivered. The Agent will review the information submitted to determine whether the application is complete as provided in this subsection. An incomplete application is void if the applicant fails to submit all of the information identified in the letter within 90 days after the letter was sent or personally delivered. If the applicant fails to timely submit the information identified in the letter, the applicant may proceed only by filing a new application.
 3. *Effect if timely determination not made.* If the Agent does not send or deliver a notice of an incomplete application within ten (10) days after the first application deadline following receipt of the application, the application will be deemed complete, provided that the Agent may require the applicant to later provide the omitted information within a period specified by the Agent, and further provided that the Agent may reject the application as provided herein if the applicant fails to timely provide the omitted information.
- E. *When an application is determined to be complete; effect.*
1. When the Agent determines that the applicant has submitted all required information, the Agent will determine the application to be complete. On that date (or 10 days after the first application deadline following receipt of the application, if the Agent fails to make a timely determination on the completeness of the application), the application is deemed referred to the Commission for the purpose of calculating the time in which action must be taken pursuant to subsection (G), except as provided in subsection (D)(3).
 2. *Notification of Applicant.* The Agent will notify the applicant by letter or by e-mail when the application has been determined to be complete.
 - a. *Notice to owner of application for special exception filed by easement holder when application determined to be complete.* Within ten (10) days after an application for a special exception filed by an easement holder is determined to be complete, written notice of the proposed special exception will be provided to each owner of the property for which the special exception is sought as required by Virginia Code § 15.2-2204(H).
 - b. *Notice of completed applications to holders of open-space or conservation easements.* For special exception applications pertaining to a parcel subject to an open-space easement or a conservation easement, the Agent will provide written notice within 10 days after the application is determined to be complete to each holder of the open-space easement, other than the County, or the conservation easement. The notice will be sent by first class mail. The notice will inform the recipient that the application has been filed and describe the nature of the application. An action on an application will not be invalidated solely because of a failure to timely mail this notice.
 3. *Paying fees.* The applicant must pay the fees required by section 35.1 when the application is determined to be complete or if the Agent fails to make a timely determination on the completeness of the application. The application will not be reviewed, and any time by which action must be taken by the Commission or the Board of Supervisors will not begin, until the applicant pays the fees. An application is void if the applicant fails to pay the fees either (a) within 10 days of the notice that the application is determined to be complete or (b) within twenty (20) days after the first application deadline following receipt of the application, if the Agent fails to make a timely determination on the completeness of the application. The application is determined to be complete for the purpose of calculating the time in which action must be taken pursuant to subsection (G) only after the required fees have been paid.
- F. Public hearings on an application for a special exception are subject to the following provisions:
1. *When public hearings are required.* The Commission and the Board of Supervisors will each hold at least one public hearing on any application for a special exception that would increase

by greater than 50 percent the bulk or height of an existing or proposed building within one-half mile of an adjoining locality.

2. *When the Board of Supervisors may elect to have the Commission make a recommendation on the application and to hold one or more public hearings.* When public hearings are not required under subsection (E)(1), the Board may elect, either by policy or for an individual application, to have the Commission first make a recommendation on the application for a special exception and for either the Commission or itself to hold one or more public hearings.
- G. Notice of the public hearing will be as provided in section 33.10.
- H. *Time for decision.* Each application for a special exception will be acted on by the Board of Supervisors within ninety (90) days following the first meeting of the Commission after it was referred to the Commission, according to the schedule established and administered by the Agent, or concurrently with a zoning map amendment, special use permit, or site plan appeal, whichever is longer.
- I. The Commission will act on an application for a special exception under the following provisions:
1. *When a Commission recommendation is required.* The Commission is required to act on an application for a special exception only if (a) a public hearing on the application is required by subsection (E)(1) or (b) the Board of Supervisors elects to have the Commission consider the application under subsection (E)(2).
 2. *Recommendation.* The Commission will recommend either approval of the application as proposed, approval of the application with changes to be made prior to action on the application by the Board, or denial of the application. Alternatively, the Commission may defer a pending application pursuant to section 33.11.
 3. *Factors to be considered.* In making its recommendation, the Commission will consider the factors, standards, criteria, and findings, however denominated, in the applicable sections of this chapter.
 4. *Conditions.* The Commission's recommendation should include its recommendations on any proposed conditions.
 5. *Time for a recommendation.* The Commission will make its recommendation on the application within 45 days after the application is determined to be complete. The failure of the Commission to make a recommendation on the matter within that period will be deemed a recommendation of approval. The 45-day period may be extended if the applicant requests a deferral pursuant to section 33.11.
- J. *Action.* The Board may either approve the application, deny the application, defer action to allow for changes prior to final action, or refer the application to the Commission for further consideration and recommendation within the time for an action provided in subsection (G).
- K. *Resubmittal of similar denied application.* An applicant may not submit an application that is substantially the same as a denied application within one (1) year of its denial.
- L. *Judicial review.* Any action contesting a decision of the Board of Supervisors under this section must comply with Virginia Code § 15.2-2285(F).

(§ 33.5, Ord. 21-18(3), 6-2-21)

State law reference – Va. Code § 15.2-2286(A)(3), 15.2-2288.1.

Sec. 33.6 Zoning Text Amendments and Zoning Map Amendments; Relevant Factors to be Considered; Effect of Approval.

A zoning text amendment or a zoning map amendment is subject to the following provisions:

- A. *Basis to act.* The Board of Supervisors may amend, supplement, or change the zoning regulations, district boundaries, or classifications of property whenever the public necessity, convenience, general welfare, or good zoning practice requires. The Commission will consider these bases when making a recommendation on an application.
- B. *Factors to be considered when acting.* The Commission and the Board of Supervisors will reasonably consider the following factors when reviewing and acting upon zoning text amendments and zoning map amendments: (i) the existing use and character of property; (ii) the comprehensive plan; (iii) the suitability of property for various uses; (iv) the trends of growth or change; (v) the current and future requirements of the community as to land for various purposes as determined by population and economic studies and other studies; (vi) the transportation requirements of the community; (vii) the requirements for airports, housing, schools, parks, playgrounds, recreation areas and other public services; (viii) the conservation of natural resources; (ix) the preservation of flood plains; (x) the protection of life and property from impounding structure failures; (xi) the

preservation of agricultural and forestal land; (xii) the conservation of properties and their values; (xiii) the encouragement of the most appropriate use of land throughout the county; and (xiv) equity.

1. *Additional factors to be considered when acting on applications to establish planned development district.* In addition to the other factors relevant to the consideration of a zoning map amendment, the Commission and the Board of Supervisors will consider the following factors when reviewing an application to establish a planned development district: (i) whether the proposed planned development satisfies the purpose and intent of the planned development district; (ii) whether the area proposed to be rezoned is appropriate for a planned development under the comprehensive plan; and (iii) the relation of the proposed planned development to major roads, utilities, public facilities and services.
 2. *Additional factors to be considered when acting on applications to amend existing planned development district.* In addition to the other factors relevant to the consideration of a zoning map amendment, including those in subsections (B) and (B)(1), the Commission and the Board of Supervisors will consider the following factors when reviewing an application to amend an existing planned development district: (i) whether the proposed amendment reduces, maintains or enhances the elements of a planned development set forth in section 8.3; and (ii) the extent to which the proposed amendment impacts the other parcels within the planned development district.
- C. *Effect of approval.* The Board of Supervisors' approval of a zoning map amendment constitutes acceptance of any proffers and (for any application to establish or amend a planned development district) approval of the application plan, all standards of development, the code of development, and any waivers or modifications approved by special exception as provided under section 8.2. The district designation, any accepted proffers, an approved application plan, standards of development, a code of development, and any special exception(s) are all included among the zoning regulations applicable to the property subject to a zoning map amendment.

(§ 33.6, Ord. 21-18(3), 6-2-21)

State law reference – Va. Code §§ 15.2-2284, 15.2-2285, 15.2-2286(A)(7).

Sec. 33.7 Owner-Initiated Zoning Map Amendments; Authority to Accept Proffers.

The Board of Supervisors may accept proffers pursuant to Virginia Code §§ 15.2-2303 and 15.2-2303.4 in conjunction with zoning map amendments, subject to the following provisions:

- A. *Purpose.* Proffers are reasonable conditions proposed by the applicant governing the use of parcels being rezoned. Unless expressly provided otherwise in the approved proffers, proffer conditions are in addition to the regulations in this chapter that apply to the district.
- B. *Form.* Proffers must be in writing and in a form approved by the County Attorney. The Agent may provide a proffer statement form.
- C. *Proffers addressing impacts from new residential development uses.* For zoning map amendments that propose new residential development or new residential uses as defined in and subject to Virginia Code § 15.2-2303.4 , any proposed proffers addressing the impacts resulting from the new residential development or new residential uses must comply with Virginia Code § 15.2-2303.4 .
- D. *Time to submit.* The applicant must submit proffers by the following deadlines:
 1. *Before the Commission's public hearing.* Proposed proffers, regardless of whether they are signed by the owners of all parcels subject to the zoning map amendment, must be submitted to the Department of Community Development at least 14 days before the Commission's public hearing on the zoning map amendment.
 2. *Before the Board of Supervisors' public hearing.* Proposed proffers, signed by the owners of all parcels subject to the zoning map amendment, must be submitted to the Department of Community Development before the Board's public hearing on the zoning map amendment. The Agent may establish written guidelines that require signed proffers to be submitted a reasonable time prior to the public hearing to allow for review by County officers and employees and by the public.
 3. *Amendments to proposed proffers after the public hearing has begun.* The Board may accept, in its sole discretion, amended proffers after a public hearing on the zoning map amendment has begun if the Board concludes that the amended proffers do not materially affect the overall proposal. If amended proffers are submitted after the public hearing is closed, the Board may accept, in its sole discretion, the amended proffers after holding another public hearing.
- E. *Effect of proffers once accepted.* The Board of Supervisors' adoption of a zoning map amendment constitutes (i) acceptance of the proffers and (ii) for any application to establish or amend a planned development district, approval of the application plan, all standards of development, and the code of development. In addition:

1. *Become part of zoning regulations.* The district designation, the accepted proffers, the approved application plan, the standards of development, and the code of development are all among the zoning regulations applicable to the property subject to a zoning map amendment.
 2. *Effect of proffers once accepted.* Once accepted by the Board in conjunction with an adopted zoning map amendment, the proffers continue in effect until a subsequent zoning map amendment (other than a comprehensive implementation of a new or substantially revised zoning ordinance) changes the zoning of the property subject to the proffers.
- F. *Subsequent amendments to proffers.* Once accepted by the Board of Supervisors in conjunction with an approved zoning map amendment, proffers may be amended by an owner-initiated zoning map amendment

(§ 33.7, Ord. 21-18(3), 6-2-21)

State law reference – Va. Code §§ 15.2-2296, 15.2-2302, 15.2-2303.

Sec. 33.8 Special Use Permits; Relevant Factors to be Considered; Conditions; Revocation.

Special use permits are subject to the following provisions:

- A. *Factors to be considered when acting.* The Commission and the Board of Supervisors will consider the following factors when reviewing and acting on an application for a special use permit:
1. *No substantial detriment.* Whether the proposed special use will be a substantial detriment to adjacent parcels.
 2. *Character of the nearby area is unchanged.* Whether the character of the adjacent parcels and the nearby area will be changed by the proposed special use.
 3. *Harmony.* Whether the proposed special use will be in harmony with the purpose and intent of this chapter, with the uses permitted by right in the district, with the applicable provisions of section 5, and with the public health, safety, and general welfare (including equity).
 4. *Consistency with the Comprehensive Plan.* Whether the proposed special use will be consistent with the Comprehensive Plan.
- B. *Conditions.* The Commission may recommend, and the Board of Supervisors may impose, conditions upon the special use to address impacts arising from the use, in order to protect the public health, safety or welfare. The conditions may pertain (but are not limited) to:
1. The prevention or minimization of smoke, dust, noise, traffic congestion, flood and/or other hazardous, deleterious or otherwise undesirable substances or conditions.
 2. The provision of adequate police and fire protection.
 3. The provision of adequate improvements pertaining to transportation, water, sewage, drainage, recreation, landscaping and/or screening or buffering.
 4. The establishment of special requirements relating to building setbacks, front, side and rear yards, off-street parking, ingress and egress, hours of operation, outside storage of materials, duration and intensity of use, building heights, and other particular aspects of occupancy or use.
 5. The period by which the use must begin or the construction of any structure required for the use must commence.
 6. The materials and methods of construction or specific design features, provided such a condition for residential uses complies with subsection (C).
- C. *Conditions related to residential uses.* Any conditions imposed in connection with residential special use permits should: (i) be consistent with the objective of providing affordable housing if the applicant proposes affordable housing; and (ii) consider the impact of the conditions on the affordability of housing where the conditions specify the materials and methods of construction or specific design features.
- D. *Conditions deemed essential and non-severable.* Except as the Board of Supervisors may specify in a particular case, any condition imposed on a special use will be deemed essential and non-severable from the permit itself, and the invalidation of any condition will invalidate the entire special use permit.
- E. *Revocation for non-compliance with conditions.* A special use permit may be revoked by the Board of Supervisors after a public hearing if the Board determines that there has not been compliance with the conditions of the permit. Notice of the public hearing will be provided pursuant to section 33.10.

(§ 33.8, Ord. 21-18(3), 6-2-21)

State law reference – Va. Code §§ 15.2-2286(A)(3), 15.2-2309(7).

Sec. 33.9 Special Exceptions; Relevant Factors to be Considered; Conditions; Revocation

Special exceptions are subject to the following provisions:

- A. *Factors to be considered when acting.* In acting upon a special exception, the Board of Supervisors will consider the factors, standards, criteria, and findings, however denominated, in the applicable sections of this chapter. The Board is not required to make specific findings in support of its decision.
- B. *Conditions.* In approving a special exception, the Board of Supervisors may impose reasonable conditions to address any possible impacts of the special exception. Except as the Board may specify in a particular case, any condition imposed on a special exception will be deemed essential and non-severable from the special exception itself, and the invalidation of any condition will invalidate the entire special exception.
- C. The Board of Supervisors may revoke a special exception if the Board determines, after a public hearing, that the permittee or any successor has not complied with any conditions of the special exception. Notice of the public hearing will be provided pursuant to section 33.10.

(§ 33.9, Ord. 21-18(3), 6-2-21)

State law reference – Va. Code § 15.2-2286(A)(3).

Sec. 33.10 Public Notice.

Notice of public hearings. The following notice of public hearings will be provided:

- A. For zoning text amendments, the following notice will be provided:
 1. The Department of Community Development will provide notice of public hearings before the Commission and the Board pursuant to Virginia Code § 15.2-2204 .
 2. *Notice of public hearings, imposing or increasing fees.* The Department of Community Development will provide notice of public hearings before the Commission and the Board of Supervisors pursuant to Virginia Code §§ 15.2-107 and 15.2-2204 if the proposed zoning text amendment would impose or increase fees under this chapter.
- B. For zoning map amendments and special use permits, the following notice will be provided:
 1. *Published and mailed notice.* Notice of the public hearing before the Commission and the Board of Supervisors on an application will be provided in all cases as required by Virginia Code § 15.2-2204; for zoning map amendments, as also provided by Virginia Code § 15.2-2285(C). For zoning map amendments seeking to amend an existing planned development district, written notice also will be provided to the owner of each parcel within the planned development district, and the substance of that notice will be as required by Virginia Code § 15.2-2204(B), paragraph 1, regardless of the number of parcels affected.
 2. *Posted notice.* Notice of the public hearing before the Commission and the Board of Supervisors on each application will be posted, subject to the following provisions:
 - a. *When sign will be posted.* The sign will be posted at least twenty-one (21) days before the Commission's public hearing on the application and will remain posted until either the Board of Supervisors has acted on the application or the application has been withdrawn.
 - b. *Where sign to be located.* The sign is to be erected within ten (10) feet of each boundary line of the parcel(s) that abuts a street and should be clearly visible from the street. If more than one street abuts the parcel(s), then either: (i) a sign will be erected in the same manner as above for each abutting street; or (ii) if the area of the parcel(s) to be used if the application was granted is confined to a particular portion of the parcel(s), a sign will be erected in the same manner as above for the abutting street that is in closest proximity to, or would be impacted by, the proposed use. A sign need not be posted along Interstate 64 or along any abutting street if the sign would not be visible from that street. If no street abuts the parcel(s), then signs are to be erected in the same manner as above on at least two boundaries of the parcel(s) abutting land not owned by the applicant in locations that are most conspicuous to the public. The filing of the application is deemed to grant consent to the Zoning Administrator to enter the parcel(s) to erect the signs.
 - c. *Content of sign.* Each sign will state that the parcel(s) is subject to a public hearing and explain how to obtain additional information about the public hearing.
 - d. *Maintaining the sign.* The applicant must diligently protect each sign from vandalism and theft, maintain each sign in an erect position in its posted location, and ensure that each sign remains legible. The failure of an applicant to comply with these responsibilities may

be cause for the Commission or the Board of Supervisors to defer action on an application until there is reasonable compliance with this subsection.

- e. *Ownership of sign*; violation for removing or tampering with sign. Each sign is the property of the County. It is unlawful for any person to remove or tamper with any sign, provided that the applicant, the County or the County's employees or authorized agents may perform required maintenance.
- f. *Effect of failure to comply*. If any notice sign is not posted as specified in subsection (B)(2):
 - 1. *Prior to action by Board*. The Board of Supervisors may defer action on an application if it finds that the failure to comply with subsection (B)(2) materially deprived the public of reasonable notice of the public hearing.
 - 2. *Action is not invalid*. Neither the Commission's recommendation nor the Board's approval of a zoning map amendment or special use permit will be invalidated solely because of a failure to post notice as specified in subsection (B)(2).
- C. Notice for revocation of a special use permit or special exception will be provided pursuant to Virginia Code § 15.2-2204, provided that written notice to the owners, their agents, or the occupants of abutting parcels and parcels immediately across the street from the parcel(s) subject to a special use permit may be given by first-class mail rather than by registered or certified mail.
- D. The following notice of special exceptions will be provided:
 - 1. When public hearings are required under section 33.5(E)(1), the Department of Community Development will provide notice of those public hearings pursuant to Virginia Code § 15.2-2204 .
 - 2. For all other public hearings, public notice will be given as provided in the applicable sections of this chapter.
- E. A party's actual notice of, or active participation in, proceedings requiring written notice waives the right of that party to challenge the validity of the proceeding due to an alleged failure to receive the required written notice.

(§ 33.10, Ord. 21-18(3), 6-2-21)

State law reference – Va. Code §§ 15.2-107, 15.2-2204, 15.2-2285, 15.2-2286.

Sec. 33.11 Deferring Action and Withdrawing an Application.

After submitting an application but before action by the Board of Supervisors, an applicant for a zoning map amendment, special use permit, or special exception may request a deferral or withdraw an application, subject to the following provisions.

- A. *To whom the request is to be sent*.
 - 1. The written request must be sent to the Agent. If the application is pending before the Board of Supervisors at the time the request is received, the Agent will immediately inform the Clerk of the Board of the request.
 - 2. Notwithstanding subsection (A)(1), the applicant may make a request for deferral directly to the Planning Commission during a public hearing on the application.
- B. *When the request must be received*. The request must be received by the Agent or the Clerk before action by the Board of Supervisors
- C. *Effect of timely receipt of request to defer or withdraw*. The County is not obligated to accept a request for deferral. If the County accepts a request for deferral: (i) neither the Commission nor the Board will act on the application, and (ii) all time periods for review will be tolled. The Agent will determine whether to accept a request for deferral submitted pursuant to subsection (A)(1). The Planning Commission will determine whether to accept a request for deferral submitted pursuant to subsection (A)(2). If the application is withdrawn the application will not be further processed or reviewed by County staff,
- D. *Limitations on deferral*. No application may be in a state of deferral after 32 months from when the application was deemed complete under section 33.4(O), provided that the Agent may extend the time for action beyond the end of the deferral period if there are extenuating circumstances that include (but are not limited to): inclement weather, civil emergencies, or errors in providing public notice as required by State law.
- E. *Reactivating a deferred application*. An applicant may reactivate an application by submitting new information or by requesting that the application be scheduled for public review.
- F. *Effect of reactivating an application*.

1. The Agent may determine the appropriate procedure to review a reactivated application. The procedure to review may not exceed the procedure for a new application and may require a new submittal fee.
 2. All time periods for action in section 33.4(O) will be calculated from the reactivation of an application and not from its original submittal.
- G. *Resubmitting a similar withdrawn application within one year prohibited.* An applicant may not submit an application that is substantially the same as a withdrawn application for the same parcel(s) within one year of the withdrawal without authorization by the Board of Supervisors.
- H. *When an application is deemed withdrawn.* An application is deemed voluntarily withdrawn if a request for deferral is accepted pursuant to this section and the applicant fails to reactivate the application either:
1. within six months of the request for deferral, or
 2. within 32 months from the time the application was determined or deemed complete.

(§ 33.11, Ord. 21-18(3), 6-2-21)

State law reference – Va. Code § 15.2-2286.

Agenda Item No. 18. **Public Hearing: Virginia Community Development Block Grant.**

Ms. Price noted that a vote was not taken for Agenda Item 18 to authorize the Clerk to set the second Public Hearing.

Ms. LaPisto-Kirtley **moved** to authorize the Clerk to schedule the second required public hearing to review and approve the submission of any proposed applications to the DHCD for August 4, 2021. Ms. Mallek **seconded** the motion.

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

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

NAYS: None.

ABSENT: Mr. Gallaway.

Agenda Item No. 20. **Public Hearing to Consider Easements Adjacent to 999 Rio Road East.**

To consider granting a water and sewer line easement and a temporary construction easement to the Albemarle County Service Authority and Windmill Ventures LLC, across an emergency access strip owned by the County (Parcel 062F0-00-00-000E2). This easement is for a water and sewer line to service the adjacent 999 Rio Road East property.

The Executive Summary forwarded to the Board states that the developer of 999 Rio Road East has approached County staff to request a water and sewer line easement across the adjacent County-owned Parcel 062F0-00-00-000E2, which serves as an emergency access between Rio Road East and Shepherds Ridge Road. The developer has requested water and sewer service to 999 Rio Road East to allow development consistent with the Neighborhood Model District (NMD) density that the Board approved for that property on March 4, 2020.

Virginia Code § 15.2-1800 requires that the Board hold a public hearing prior to conveyance of almost any interest in County-owned real property. Staff has reviewed and approved the proposed deed of easement (Attachment A). The developer of 999 Rio Road East has submitted a plat depicting the exact location and dimensions of the requested easement (Attachment B).

The proposed deed would grant both a temporary construction easement to the developer (for construction) and a permanent water and sewer easement to the Albemarle County Service Authority (ACSA) for maintenance. The deed would require the restoration of any damage(s) to County property and ensure that the County's emergency access continues to take priority.

The County would receive the estimated fair market value for the easement. However, given both the limited size and scope of the requested easement, that value (\$4.05) is minimal.

Staff recommends that, after holding the public hearing, the Board adopt the attached resolution (Attachment C) to approve the proposed easements and to authorize the County Executive to sign the deed of easement and any other related documents on behalf of the County after those documents have been approved in substance and form by the County Attorney.

Mr. Herrick, Deputy County Attorney, said he had a couple of proposed easements for the Board's consideration that evening. He said that Ms. Nicole Scro was present and was the developer on this project. Mr. Herrick said the developer of 999 Rio Road East was requesting a water and sewer

easement across the adjacent County-owned emergency access to the east. He demonstrated a map that showed the general location of this project and the County's strip; it is a 50-foot access strip, the purpose of which is to provide alternate means of ingress and egress to the development off Shepherds Ridge Road. He said the County subdivision ordinance has a requirement that if a certain number of properties are served on a road, there has to be alternate means of ingress and egress, and that is the purpose that is served by the strip he demonstrated. He said 999 Rio Road East is privately owned property adjacent and was the subject of a fairly recent rezoning.

Mr. Herrick demonstrated another map that showed in more detail the nature of the County's property and said again the County owns a 50-foot strip. Mr. Herrick said the timeline is that the County in the year 2016 acquired a 50-foot emergency access strip to service what was then new development along Shepherds Ridge Road. He said in March of the past year just before the outbreak of the pandemic, the Board approved the rezoning of the 999 Rio Road East property, which is immediately to the west of the County strip, and it approved that rezoning to neighborhood model district. He said County staff was recently approached by the developer about acquiring that water and sewer easement across the County access strip to service the new development. He said conveyance of this easement does require a public hearing, and the developer has expressed urgency in proceeding in that a certain grant may be at issue as well.

Mr. Herrick said County staff has worked with both the developer and the ACSA to ensure that the County's emergency access easement remains first and foremost; there are protections in the proposed deed that ensure that the County's easement has first priority and does not prohibit the County from building improvements to solidify the emergency access. He said at the end of the public hearing, County staff was recommending that the Board adopt the resolution attached to the staff report to authorize the conveyance of the proposed easement.

Ms. Mallek asked if there was standard language so if somebody has to tear everything up to fix something in the sewer that they are required to put it all back to as was.

Mr. Herrick said that was correct. He said this was based on the ACSA's standard easement, which he had seen before. He said they worked with the ACSA to ensure that that standard language was modified to protect the County even more, and the ACSA was agreeable to that.

Ms. Price confirmed there were no public comments and closed the public hearing.

Ms. McKeel **moved** that the Board adopt the attached resolution (Attachment C) to approve the proposed easements and to authorize the County Executive to sign the deed of easement and any other related documents on behalf of the County after those documents have been approved in substance and form by the County Attorney.

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

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

NAYS: None.

ABSENT: Mr. Gallaway.

**RESOLUTION APPROVING DEED OF EASEMENT
BETWEEN THE COUNTY OF ALBEMARLE, WINDMILL VENTURES LLC,
AND THE ALBEMARLE COUNTY SERVICE AUTHORITY (ACSA) FOR SERVICE TO 999 RIO
ROAD EAST**

WHEREAS, the County of Albemarle owns an emergency access (Parcel 062F0-00-00-000E2) adjacent to 999 Rio Road East; and

WHEREAS, an easement across this County-owned property is necessary for the Albemarle County Service Authority (ACSA) to extend water and sewer service to the neighborhood model development at 999 Rio Road East.

NOW, THEREFORE, BE IT RESOLVED that the Albemarle County Board of Supervisors hereby approves the granting of a temporary construction easement to Windmill Ventures LLC, and a permanent water and sewer line easement to the Albemarle County Service Authority, and authorizes the County Executive to sign, in a form approved by the County Attorney, a Deed of Easement and any other related documents for easements across Parcel 062F0-00-00-000E2 in order to provide water and sewer service to 999 Rio Road East.

202100012376.001

VIRGINIA LAND RECORD COVER SHEET

Commonwealth of Virginia VA. CODE §§ 17.1-223, -227.1, -249

FORM A – COVER SHEET CONTENT

Instrument Date: 6/4/2021

Instrument Type: DE

Number of Parcels: 1 Number of Pages: 10

[] City [X] County ALBEMARLE
CIRCUIT COURT

Tax Exempt? VIRGINIA/FEDERAL CODE SECTION

[] Grantor:

[] Grantee:

Business/Name

1 X Grantor: COUNTY OF ALBEMARLE, VIRGINIA

Grantor:

1 X Grantee: WINDMILL VENTURES, LLC

2 X Grantee: ALBEMARLE COUNTY SERVICE AUTHORITY

Grantee Address

Name: WINDMILL VENTURES, LLC

Address:

City: State: VA Zip Code:

Consideration: \$0.00 Existing Debt: \$0.00 Actual Value/Assumed: \$0.00

PRIOR INSTRUMENT UNDER § 58.1-803(D):

Original Principal: \$0.00 Fair Market Value Increase: \$0.00

Original Book No.: Original Page No.: Original Instrument No.:

Prior Recording At: [] City [] County Percentage In This Jurisdiction: 100%

Book Number: Page Number: Instrument Number:

Parcel Identification Number/Tax Map Number: 62F-E2

Short Property Description: SEE INSTRUMENT.

Current Property Address:

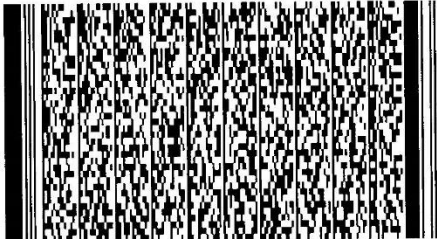
City: N/A State: VA Zip Code: N/A

Instrument Prepared By: NICOLE M. SCRO, ESQ. Recording Paid By: NICOLE M. SCRO, ESQ.

Recording Returned To: NICOLE M. SCRO, ESQ.

Address: 912 EAST HIGH STREET

City: CHARLOTTESVILLE State: VA Zip Code: 22902



RECORDED IN
ALBEMARLE COUNTY, VA
JON R. ZUG
CLERK OF CIRCUIT COURT
FILED Jul 14, 2021
AT 03:21 pm
BOOK 05575
START PAGE 0231
END PAGE 0242
INST # 202100012376
TOTAL NUM PAGES 12

MEB

(Area Above Reserved For Deed Stamp Only)

202100012376.002

Prepared by and upon recordation return to:
Nicole M. Scro, Esq. (VSB #90239)
912 East High Street
Charlottesville, VA 22902

Albemarle County Tax Map Parcel ID No.: 62F-E2

This deed is exempt from taxation under Virginia Code § 58.1-811(A)(3).

DEED OF EASEMENT
(for Water and Sanitary Sewer)

THIS DEED OF EASEMENT is made as of this 4th day of June, 2021
by and between the **COUNTY OF ALBEMARLE, VIRGINIA**, a political subdivision of the
Commonwealth of Virginia ("County"), the Grantor for indexing purposes, **WINDMILL**
VENTURES, LLC, a Virginia limited liability company, its successors and/or assigns ("First
Grantee" whether one or more), and the **ALBEMARLE COUNTY SERVICE AUTHORITY**, a
political subdivision of the Commonwealth of Virginia ("Service Authority" or "Second
Grantee"), whose address is 168 Spotnap Road, Charlottesville, Virginia 22911.

WITNESS:

WHEREAS, the County is the owner of that certain real property located in Albemarle
County, Virginia defined as the Property (hereinafter, the "Property") in that certain Deed of
Dedication from Bondstone Ventures, LLC, a Virginia limited liability company, successor by
virtue of change of name and by conversion of entity to Robert Hauser Homes, Inc., to the
County, dated October 3, 2016, and recorded in the Clerk's Office of the Circuit Court of
Albemarle County, Virginia in Deed Book 4830, page 20; and

WHEREAS, the First Grantee is the owner of that certain parcel located adjacent to the
Property, designated on County tax maps as parcel 61-154B, and having an address of 999 Rio
Road East (the "999 Rio Property"); and

WHEREAS, for the purposes of redeveloping the 999 Rio Property, the First Grantee,
its successors and/or assigns, desires to construct and install a water and sanitary sewer line to be
dedicated to the Service Authority across a portion of the Property; and

202100012376.003

WHEREAS, the Service Authority is willing to accept such water line(s) and sanitary sewer line(s), after the same have been constructed in a lawful manner to its specifications, but not before; and

WHEREAS, the County desires to convey a temporary construction, landscaping and grading easement to the First Grantee, its successors and/or assigns, for the construction and installation of such water and sanitary sewer line(s) on such portion of the Property that is within the area shown and designated as "New Variable Width ACSA Water & Sewer Easement" (the "Easement Area") on Exhibit A attached hereto and incorporated herein (the "Easement Plat"); and

WHEREAS, it is the desire and intent of the County to dedicate, grant and convey all rights, title and interest in all ditches, pipes and other improvements and appurtenances within the Easement Area established for the purpose of the water and sanitary sewer line(s) (hereinafter collectively referred to as the "Improvements," whether referring to existing Improvements or those to be established in the future by the Service Authority), excluding building connection lines, to the Service Authority, which is to be accepted by it in accordance with the usual and customary practices of the Service Authority.

NOW, THEREFORE, in consideration of the premises and the sum of TEN DOLLARS (\$10.00), cash in hand paid, and other good and valuable consideration, the receipt of which is hereby acknowledged, the County does hereby GRANT and CONVEY unto the First Grantee, its successors and assigns, a temporary right-of-way and construction easement, over, under and across the Easement Area (the "Temporary Construction Easement"), to construct, install, maintain, repair, replace and extend water and sanitary sewer lines, consisting of pipes and appurtenances thereto. This temporary construction easement and temporary right of way shall expire upon the completion of the construction and acceptance of the water and sanitary sewer line(s) into the Service Authority's system.

FURTHERMORE, for and in consideration of the premises and the sum of TEN DOLLARS (\$10.00), cash in hand paid, and other good and valuable consideration, the receipt of which is hereby acknowledge, the County does hereby GRANT and CONVEY unto the Second

202100012376.004

Grantee, its successors and assigns, perpetual rights-of-way and easements to construct, install, maintain, repair, replace and extend the water and sanitary sewer line(s) consisting of pipes and appurtenances thereto on, over, under and across the Easement Area (the "Water and Sewer Easement" and together with the Temporary Construction Easement, the "Easements"); PROVIDED, HOWEVER, that (i) all such water and sewer line facilities shall be installed underground except for such above-ground meter boxes, manholes and other accessories typically installed above-ground, and (ii) it is expressly understood and agreed that the Service Authority shall not be deemed to have accepted the conveyance set forth herein until such time as the same have been evidenced by the affirmative acceptance thereof in accordance with the usual and customary practices of the Service Authority.

Reference is made to the Easement Plat for the exact location and dimensions of the Easement Area as they cross the Property.

The Temporary Construction Easement conveyed herein shall terminate upon the completion of water and sanitary sewer facilities as evidenced by the release of any bond associated with such improvements. Grantor shall have the right to review and approve any material changes to the approved Plans, such review and approval shall not be unreasonably withheld or delayed. Prior to commencement of any construction activities, the First Grantee shall provide Grantor with a construction schedule and at least five (5) days prior notice of the commencement of construction. Construction activities shall be limited to the hours of 7:30 a.m. to 5:00 p.m., Monday through Friday, completed in a diligent manner, and all areas of active construction shall be kept in neat and clean condition.

Upon request, the First Grantee, and/or its successors and assigns, shall promptly execute documentation of dedication that may be required by the Service Authority on the Service Authority's standard agreement form for dedication and as may be required for recordation among the land records. Said Service Authority forms provide, in part, that the Grantor gives permission to Service Authority, including its authorized agents and employees, to have access and to enter upon the property to inspect the water and sewer facilities whenever the Service Authority deems necessary. All landowner obligations in such agreement shall become the obligations of the First Grantee. The Service Authority Dedication Agreement will provide that the Grantor is not obligated under the Agreement, except to provide the permitted and required access matters stated therein.

202100012376.005

Prior to acceptance of the utilities by the Service Authority, the First Grantee agrees to indemnify, defend and hold Grantor harmless from any liability, liens, loss or damage, including damages or injury to any person or to real or personal property, together with reasonable attorney's fees and related costs and expenses, arising out of, or resulting from the exercise of the easement rights granted herein, including any entry upon the Property by First Grantee, its agents, employees, contractors, guests or invitees, arising in connection with the construction activities within the Easement Area. This indemnification shall not cover the conduct of Grantor, its subcontractors, employees, agents, guests or invitees on the property in or around the easement area. Prior to utility acceptance by Service Authority, the First Grantee, its successors and assigns, shall maintain in full force and effect liability insurance, in commercially reasonable amounts, covering damage to property and persons arising out of the exercise of the rights granted by these Easements until the same is turned over to the Service Authority. First Grantee shall have Grantor named as a certificate holder/additional insured on the First Grantee's policy or insurance prior to the commencement of any construction activity within the Easement Area.

The County, First Grantee and Second Grantee, their successors or assigns, agree that trees, shrubs, fences, buildings, overhangs or other improvements or obstructions shall not be placed within the Easement Area, provided that any and all improvements associated with the Grantor's emergency access may be installed, repaired, and maintained.

As a part of these Easements, the First Grantee and Second Grantee shall have the right to enter upon the Easement Area for the purpose of constructing, installing, maintaining, repairing, replacing and extending water and sewer lines and appurtenances thereto, and the right to ingress and egress thereto as reasonably necessary. If the First Grantee and Second Grantee are unable to reasonably exercise the right of ingress and egress over the Easement Area, the First Grantee and Second Grantee shall have the right of ingress and egress over the Property adjacent to the Easement Area.

Whenever it is necessary to excavate earth within the Easement Area, the First Grantee and Second Grantee agree to backfill such excavation in a proper and workmanlike manner so as to restore surface conditions as nearly as practical to the same condition existing prior to the excavation. In the event that any damage results from said access, the First Grantee and Second Grantee agree to correct and repair such damage in a proper and workmanlike manner, including the restoration of any such damaged or disturbed grass or paved surfaces. Notwithstanding

202100012376.006

anything herein to the contrary, the Service Authority shall not be held responsible for restoring permeable pavers in the future, as applicable, if excavation over the water and sanitary sewer is required. Restoration of pavers shall be the responsibility of the First Grantee.

The Easements shall include the right of the First Grantee and Second Grantee to cut any trees, brush, shrubbery, remove obstructions and take other similar action reasonably necessary to provide economical and safe water and sewer installation, operation and maintenance, provided that the First Grantee and Second Grantee may not remove any improvements associated with the Grantor's emergency access. The Service Authority shall have no responsibility to the County or the First Grantee, their successors or assigns, to replace or reimburse the cost of said trees, brush, shrubbery or obstructions (other than improvements associated with the Grantor's emergency access) if cut, removed or otherwise damaged.

The facilities constructed within the Easement Area shall be the property of the Service Authority which shall have the right to inspect, rebuild, remove, repair, improve and make such changes, alterations and connections to or extensions of its facilities within the Easement Area as are consistent with the purposes expressed herein.

The Easements are exclusive easements. Neither the County nor any person acting under the County's express or implied consent shall modify, alter, reconstruct, interfere with, disturb or otherwise change in any way the Easement Area or any Improvement located within the Easement Area; and further such persons shall not erect any building, fence, retaining wall or other structure within the Easement Area, provided that any and all improvements associated with the Grantor's emergency access may be installed, repaired, and maintained.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

202100012376.007

WITNESS the following duly authorized signatures and seals:

THE COUNTY OF ALBEMARLE, VIRGINIA,
a political subdivision of the Commonwealth of
Virginia

By: 

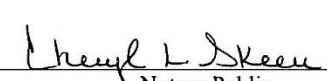
Printed Name: Jeffrey B. Richardson

Title: County Executive

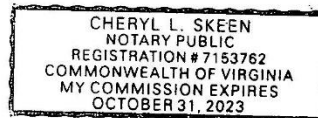
COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF Charlottesville, to-wit:

The foregoing instrument was acknowledged before me this 4th day of June,
2021 by Jeffrey B. Richardson as County Executive of the County of Albemarle, Virginia,
a political subdivision of the Commonwealth, on its behalf.

My commission expires: Oct. 31, 2023.


Notary Public

Notary Registration No.: 7153762



[SIGNATURE PAGES CONTINUE ON THE FOLLOWING PAGE]

202100012376.008

WINDMILL VENTURES, LLC,
a Virginia limited liability company

By Elizabeth Shan Harker
Printed Name: Elizabeth Shan Harker
Title: manager

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF Albemarle, to-wit:

The foregoing instrument was acknowledged before me this 12 day of May,
2021 by Elizabeth Shan Harker, as manager of Windmill Ventures, LLC, a
Virginia limited liability company, on its behalf.

My commission expires: 9/30/23.

John L. Bishop
Notary Public

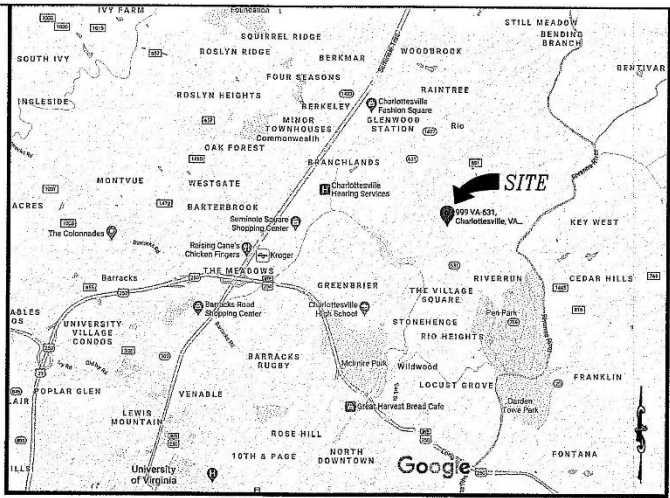
Notary Registration No.: 324578



202100012376.009

EXHIBIT A

the Easement Plat
[attached]



VICINITY MAP
SCALE: 1"=2000'

STATEMENT OF CONSENT

THE PLATTING OR DEDICATION OF THE FOLLOWING DESCRIBED LAND AT TAX MAP 62F, PARCEL E2 IS WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRE OF THE UNDERSIGNED OWNERS, PROPRIETORS AND TRUSTEES, IF ANY.

[Signature]
COUNTY OF ALBEMARLE
401 MCINTIRE RD
CHARLOTTESVILLE VA, 22902

7/9/21
DATE

APPROVED FOR RECORDATION

[Signature]
Agent for the Board of Supervisors

7/13/2021
Date

COMMONWEALTH OF VIRGINIA -
CITY/COUNTY OF: Charlottesville
TO WIT: THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED
BEFORE ME THIS 9th DAY OF July, 2021.

[Signature]
SIGNATURE OF NOTARY PUBLIC

REG. NO.: 7153763

MY COMMISSION EXPIRES: Oct 31, 2023

CHERYL L. SKEEN
NOTARY PUBLIC
REGISTRATION # 7153762
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES
OCTOBER 31, 2023

NOTES:

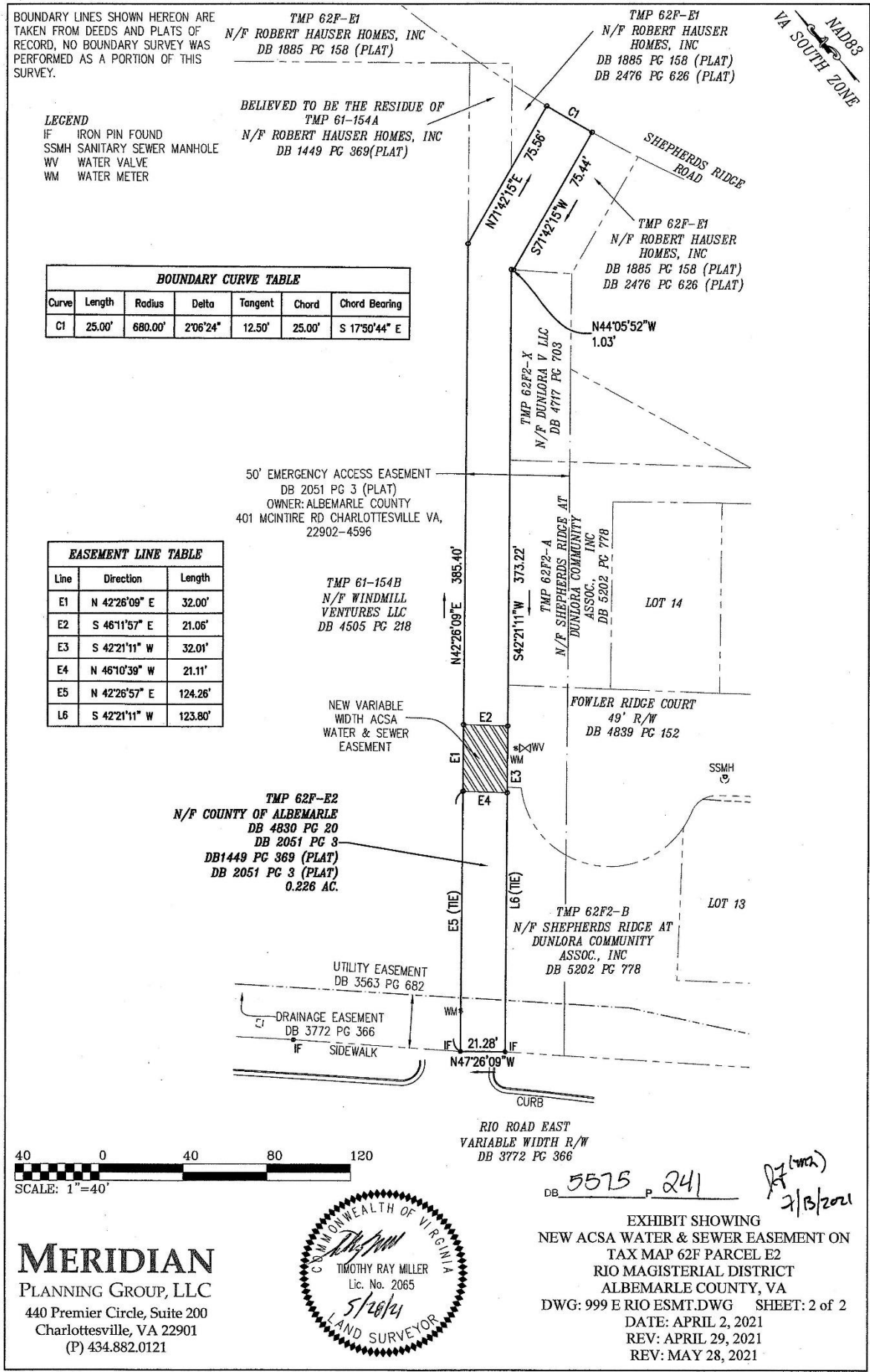
1. THIS PLAT HAS BEEN PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT AND DOES NOT THEREFORE NECESSARILY INDICATE ALL ENCUMBRANCES ON THE PROPERTY SHOWN HEREON.
2. THIS PLAT HAS BEEN PREPARED FROM AN ACTUAL FIELD SURVEY DONE AS PER THE DATE OF THIS PLAT USING MONUMENTS FOUND TO EXIST AT THE TIME OF THIS SURVEY AND FROM DEEDS AND PLATS OF RECORD. NO BOUNDARY SURVEY WAS PERFORMED AS A PORTION OF THIS PROJECT.
3. THERE WERE NO PLACES OF HUMAN BURIAL OBSERVED WHILE CONDUCTING THE FIELD SURVEY.
4. THE AREA SHOWN HEREON IS LOCATED IN ZONE "X" AREA DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOOD PLAIN AS SHOWN ON FEMA MAP NO 51003C0279D, EFFECTIVE DATE FEBRUARY 4, 2005. THIS DETERMINATION HAS BEEN MADE BY GRAPHIC METHODS, NO ELEVATION STUDY HAS BEEN PERFORMED AS A PORTION OF THIS PROJECT.
5. THE PROPERTY IS ZONED R4 RESIDENTIAL.
6. THE PROPERTY IS LOCATED IN THE MEADOWCREEK WATER SUPPLY WATERSHED AND THE UPPER RIVANNA RIVER WATER SUPPLY WATERSHED, AND IS NOT IN AN AGRICULTURAL/FORESTAL DISTRICT.
7. THE SUBJECT PROPERTY IS IN THE ENTRANCE CORRIDOR AND AIRPORT IMPACT AREA ZONING DISTRICTS.
8. OWNER OF RECORD: COUNTY OF ALBEMARLE
9. SOURCE OF TITLE: DB 4830 PG 20
10. ACSA WATER & SEWER EASEMENTS ARE TO BE CENTERED ON THE AS-BUILT LOCATION.
11. OWNERS NAME: COUNTY OF ALBEMARLE, 401 MCINTIRE RD, CHARLOTTESVILLE VA, 22902

MERIDIAN
PLANNING GROUP, LLC
440 Premier Circle, Suite 200
Charlottesville, VA 22901
(P) 434.882.0121



DB 5575 P 240

EXHIBIT SHOWING
NEW ACSA WATER & SEWER EASEMENT ON
TAX MAP 62F PARCEL E2
RIO MAGISTERIAL DISTRICT
ALBEMARLE COUNTY, VA
DWG: 999 E RIO ESMT.DWG SHEET: 1 of 2
DATE: APRIL 2, 2021
REV: APRIL 29, 2021
REV: MAY 28, 2021



202100012376.012

INSTRUMENT # 202100012376
RECORDED ALBEMARLE CO CIRCUIT COURT CLERK'S OFFICE
Jul 14, 2021 AT 03:21 pm
JON R. ZUG, CLERK by MEB
BOOK 05575 PAGE 0231 - 00242

Agenda Item No. 21. **Public Hearing to Consider Easement under Boulders Road.** To consider granting an easement to the United States of America under Boulders Road (Parcel 03200-00-00-005C3), which is owned by the County. The easement is for cables and related facilities under Boulders Road.

The Executive Summary forwarded to the Board states that at its meeting on April 10, 2013, the Board authorized the County to grant 10-foot-wide easements within Boulders Road, then a public right-of-way owned by the County (TMP 003200-00-00005C3), to CenturyLink, in the locations shown on the attached deed and plat (Attachment A). The deed of easement allows CenturyLink to install and maintain underground cables and related facilities or structures within the easement area to serve the National Ground Intelligence Center (NGIC). The deed also grants CenturyLink the right of ingress and egress to the easement area.

Recently, the U.S. Army has approached County staff, requesting that the U.S. hold the cable easement under Boulders Road.

Virginia Code § 15.2-1800 requires that the Board hold a public hearing prior to conveyance of any interest in County-owned real property. The U.S. Army has drafted a proposed lease of this easement to the U.S. (Attachment B). County staff is agreeable to the terms of the proposed lease, subject to the Board's review and approval.

Under the proposed lease, the County would realize \$2,242 per year in rental revenue.

Staff recommends that, after holding the public hearing, the Board adopt the attached resolution (Attachment C) to approve the requested lease and to authorize the County Executive to sign both a lease of the proposed easement and any other related documents on behalf of the County, after those documents have been approved in substance and form by the County Attorney.

Mr. Herrick said there was a request by the U.S. Army for the County to convey a cable easement under Boulders Road, which is adjacent to the National Ground Intelligence Center. He demonstrated a map to provide the general context of the location of Boulders Road and the property that was conveyed to the County a number of years ago. He said there were other defense-related properties also off of Boulders Road that are served by Boulders Road. Mr. Herrick demonstrated a map of the conveyance by the County of a prior easement under Boulders Road and pointed out the bed of Boulders Road and an area of a prior telecommunications easement.

Mr. Herrick said the chronology was that in the year 2009, the Boulders Road was conveyed to the County via the plat that he had just shared with the Board. He said in 2013, the County conveyed a cable easement under Boulders Road to CenturyLink. He said within the last year, they had been approached by the U.S. Army about conveying a separate easement to the U.S. Army for its own underground cable easement. He said conveyance of this easement again requires a public hearing because it is considered the disposal of County property, again which requires a public hearing, and the U.S. Army has expressed urgency in proceeding on this easement as well.

Mr. Herrick said County staff was recommending the adoption of the attached resolution that would authorize a lease of this easement, and if approved, the parties would continue to work towards a permanent easement. He said they had been in discussions with the U.S. Army representatives for some time, and again, their desire is for a permanent easement; at this point, they do not have a full agreement for a permanent easement but do have agreement in principle should the Board approve of a lease of an easement for a year, and that would probably allow enough time to come with a more permanent solution for a permanent easement.

Ms. Price confirmed that no one was signed up for public comments and closed the public hearing.

Ms. LaPisto-Kirtley **moved** that the Board adopt the attached resolution (Attachment C) to approve the requested lease and to authorize the County Executive to sign both a lease of the proposed easement and any other related documents on behalf of the County, after those documents have been approved in substance and form by the County Attorney.

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

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

NAYS: None.

ABSENT: Mr. Gallaway.

**RESOLUTION APPROVING LEASE OF EASEMENT FROM THE COUNTY OF
ALBEMARLE TO THE UNITED STATES OF AMERICA FOR SERVICE TO
THE NATIONAL GROUND INTELLIGENCE CENTER (NGIC)**

WHEREAS, the federal government has requested an easement under the Boulders Road public right-of-way to maintain telecommunications service to the National Ground Intelligence Center.

NOW, THEREFORE, BE IT RESOLVED that the Albemarle County Board of Supervisors hereby approves the leasing of an easement to the United States of America, and authorizes the County Executive to sign, in a form approved by the County Attorney, a lease and any other related documents for an easement under or across Boulders Road in order to provide and/or maintain telecommunications service to the National Ground Intelligence Center.

Lease No. DACA-31-5-21-302

LAND LEASE

For

COUNTY-OWNED PROPERTY

BETWEEN

The COUNTY OF ALBEMARLE

AND

THE UNITED STATES OF AMERICA

AUTHORITY: This lease is being acquired under the authority of Title 10 United States Code Section 2661.

I. This **LEASE**, made and entered into this 10th day of June in the year of 2021.

by: County of Albemarle

Address: 401 McIntire Road, Charlottesville, Virginia 22902

and whose interest in the property is that of the owner, hereinafter called the **Lessor**, and the UNITED STATES OF AMERICA, hereinafter called the **Lessee**.

In consideration for **RENT** the parties promise and agree as follows:

2. **PROPERTY:** The Lessor leases to the Lessee a below-grade portion of the Boulders Road Right of Way, identified in the local land records as Parcel ID No. 03200-00-00-005C3, for the purpose of maintaining a system of fiber communication conduits and appurtenances, herein after referred to as "the system", as they are currently situated, further described in Schedule A. Lessee will maintain surface rights as necessary to maintain the system.

3. **LEASE TERM:** The Lessee shall have the right to have and to hold the said premises, or any portion thereof, for a period of one (1) year period beginning upon the date of executing of this lease. This lease may be renewed for one (1) additional one (1) year period, for a total of two (2) one (1) year periods, provided that the Lessee gives the Lessor a thirty (30) day written notice to renew, and provided further, that the renewal of this lease is subject to adequate appropriations being made available year to year for the payment of rentals.

4. **PROMPT PAYMENT:** The Lessee will make payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or an electronic funds transfer is made. All days referred to in this clause are calendar days, unless otherwise specified.

a. When the date for commencement of rent falls on the 15th day of the month or earlier, the initial rental payment under this contract shall become due on the first workday of the month following the month in which the commencement of the rent is effective.

b. When the date for commencement of rent falls after the 15th day of the month, the initial rental payment under this contract shall become due on the first workday of the second month following the month in which the commencement of the rent is effective.

5. **RENTAL:** The Lessee shall pay the Owner rent at the following rate: **Two Thousand Two Hundred Forty-Two Dollars (\$2,242.00)** per year in arrears on or about the first date of the first month after completion of the rental period. Rent for a lesser period shall be prorated. Rent payments shall be made by Check, payable to the Lessor, by USACE Baltimore District, RSFO, PO Box 548, Annapolis Junction, MD 20701-0548.

6. **OWNERSHIP:** The Lessor warrants that it is the rightful and legal owner of the property, subject to all easements and encumbrances of record, and has the legal right to enter into this lease. If the title of the Lessor shall fail, or it be discovered that the Lessor did not have authority to lease to the property, the lease shall terminate. To the extent permitted by law, the Lessor, the Lessor's heirs, executors, administrators, successors, or assigns agree to indemnify the Lessee by reason of such failure and to refund all rentals paid.

7. **TERMINATION:**

a. The Lessee may terminate this lease at any time in whole or in part, by giving thirty (30) days notice in writing to the Lessor and no rental shall be due for payment after the effective date of termination. Said notice shall be the day after the date of mailing, or hand delivery.

b. Termination in whole or in part shall be effective upon written notice, however, the parties may enter into a supplemental agreement to resolve certain issues arising from the tenancy and its termination, in whole or in part.

c. The Lessor has no termination rights.

8. **ALTERATIONS/RESTORATION/RELEASE OF LIABILITY:**

All installations placed in said right-of-way by the lessee shall remain the property of the lessee and may be removed therefrom by the lessee at any time. The construction, operation, and maintenance, renewal, and removal of the said installation shall be accomplished by the Lessee at its sole cost and expense and in such a manner as will at times enable the lessor to use the surface of the right-of-way. The Lessor may, upon not less than 30 days' written notice to the Lessee, and before termination of the lease, require restoration of the leased premises, subject to exceptions to restoration stated below of all alterations. In this event, prior to the expiration or termination of this lease, or prior to relinquishment of possession, whichever first occurs, the Lessee shall, at its sole election, either (1) restore the premises to the same condition as that existing at the time of entering into the lease or; (2) make appropriate settlement to the Lessor representing either the diminution in the fair market value of the property due to the failure to restore, or the actual cost of restoration, whichever is the lesser amount. The Lessee

shall not restore the premises, either physically or by payment in lieu thereof, for damages as a result of reasonable and ordinary wear and tear, the elements or circumstances over which the Lessee has no control, or for alterations, or damage thereto, which the Lessee installed at its expense or the Lessor installed and was reimbursed by the Lessee through payment thereof. Should a mutually acceptable settlement be made hereunder, the parties shall enter into a Supplemental Agreement at the termination of the lease hereto effectuating such settlement.

9. **PROPERTY INVENTORY:** As of the starting date of this lease, a joint inventory and condition report of all personal property of the Lessor included in this lease, and also a joint physical survey and inspection report of the real property shall be made, said reports to reflect the then present condition, and to be signed on behalf of the parties.

10. **TAXES:** The Lessor accepts full and sole responsibility for the payment of all taxes and other charges of a public nature which may arise in connection with this lease or which may be assessed against the property. This includes registration of the lease and payment of related charges.

11. **NOTICE:** Any notice under the terms of this lease shall be in writing signed by a duly authorized representative of the party giving such notice, and if given by the Lessee shall be addressed to the Lessor at:

County Executive
County of Albemarle
401 McIntire Road
Charlottesville, Virginia 22902

and if given by the Lessor shall be addressed to the Lessee at:

Commander, U.S. Army Engineer District, Baltimore
P.O. Box 548
Annapolis Junction, Maryland 20701-0548
ATTN: CENAB-RS-R

12. **LESSOR'S SUCCESSORS:** The terms and provisions of this lease and the conditions shall bind the Lessor, and the Lessor's heirs, executors, administrators, successors, and assigns.

13. **COVENANT AGAINST CONTINGENT FEES:** The Lessor warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or a contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessor for the purpose of securing business. For breach or violation of this warranty the Lessee shall have the right to annul this lease without liability or in its discretion to deduct from the lease price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

14. **OFFICIALS NOT TO BENEFIT:** No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this lease or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this lease if made with a corporation for its general benefit.

15. GRATUITIES:

a. The Lessee may, by written notice to the Lessor, terminate the right of the Lessor to proceed under this lease if it is found, after notice and hearing, by the Secretary of the Army or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Lessor, or any agent or representative of the Lessor, to any officer, or employee of the Lessee with a view toward securing a lease or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing, of such lease; provided, that the existence of facts upon which the Secretary of the Army or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

b. In the event this lease is terminated as provided in paragraph (a) hereof, the Lessee shall be entitled (i) to pursue the same remedies against the Lessor as it could pursue in the event of a breach of the lease by the Lessor, and (ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary of the Army or his duly authorized representative) which shall be not less than three nor more than ten times the costs incurred by the Lessor in providing any such gratuities to an such officer or employee.

c. The rights and remedies of the Lessee provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this lease.

16. EXAMINATION OF RECORDS: The Lessor agrees that any duly authorized representatives shall have the right until the expiration of three (3) years after final payment of the agreed rental, have access to and the right to examine any directly pertinent books, documents, papers and records of the Lessor involving transactions related to this lease.

17. MODIFICATION: No Change or modification of this lease shall be effective unless it is in writing and signed by both parties to this lease.

18. DISPUTES:

a. This lease is subject to the Contract Disputes Act of 1978 (41 USC 601-613).

b. Except as provided in the Contract Disputes Act ("Act"), all disputes arising under or relating to this lease shall be resolved under this clause.

c. "Claim" as used in this clause, means a written demand or written assertion by one of the leasing parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under a lease, unlike a claim relating to that lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Lessor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph (d) (2) below. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

- d. (1) A claim by the Lessor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the Lessee against the Lessor shall be subject to a written decision by the Contracting Officer.
- (2) For Lessor claims exceeding \$100,000, the Lessor shall submit with the claim a certification that:
- (i) The claim is made in good faith;
 - (ii) Supporting data are accurate and complete to the best of the Lessor's knowledge and belief; and
 - (iii) The amount requested accurately reflects the contract adjustment for which the Lessor believes the Lessee is liable.
- (3) (i) If the Lessor is an individual, the certification shall be executed by that individual.
- (ii) If the Lessor is not an individual, the certification shall be executed by:
- (A) A senior company official in charge at the Lessor's plant or location involved; or
 - (B) An officer or general partner of the Lessor having overall responsibility for the conduct of the Lessor's affairs.
- e. For Lessor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Lessor, render a decision within 60 days of the request. For Lessor certified claims over \$100,000, the Contractor Officer must, within 60 days, decide the claim or notify the Lessor of the date by which the decision will be made.
- f. The Contracting Officer's decision shall be final unless the Lessor appeals or files a suit as provided in the Act.
- g. At the time a claim by the Lessor is submitted to the Contracting Officer or a claim by the Lessee is presented to the Lessor, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternative dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certification described in paragraph (d)(2) of this clause, and executed in accordance with paragraph (d)(3) of this clause.
- h. The Lessee shall pay interest on the amount found due and unpaid from: (1) the date the Contracting Officer receives the claim (properly certified is required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6 month period as fixed by the Treasury Secretary during the pendency of the claim.
- i. The Lessor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.
19. **SEVERABILITY:** If any provision of this lease or the application thereof to any person, or if any circumstance is held invalid for any reason, such invalidity shall not affect the other provisions, or any other application of this lease which can be given effect without the invalid provision or application, and to this end, all the provisions of this lease are hereby declared to be severable.

20. **ANTI-DEFICIENCY ACT:** Any expenditure by the United States of federal funds under this Lease is subject to the lawful availability of such funds for the purposes described in this Lease. Nothing in this Lease will require a violation of the Anti-Deficiency Act (31 U.S.C. 1341(a)(1)(A)), or any other law or regulation relating to appropriated funds of the United States, nor shall this Lease require a violation of any law or regulation relating to the leasing of real property by the United States.

21. **COUNTERPARTS:** If this Lease shall be executed in two or more counterpart originals, each counterpart original shall be for all purposes considered an original of this Agreement.

22. **NO WAIVER:** No failure by either party to insist upon the strict performance of any provision of this lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rent or other performance by either party during the continuance of any such breach shall constitute a waiver of any such breach of such provision.

23. **INTEGRATED AGREEMENT:** This Lease, upon execution, contains the entire agreement of the parties and no prior written or oral agreement, express or implied, shall be admissible to contradict the provisions of the Lease.

24. **ASSIGNMENT OF CLAIMS:** Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), if this lease provides for payments aggregating \$1,000 or more, claims for moneys due or to become due the Lessor from the Lessee under this contract may be assigned to a bank, trust company, or other financial institution, including any Federal lending agency, and may thereafter be further assigned or reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Notwithstanding any provisions of this contract, payments to an assignee of any moneys due or to become due under this contract shall not, to the extent provided in said Act, as amended, be subject to reduction or set-off.

IN WITNESS WHEREOF, the parties have subscribed their names as of the date first above written.

Witnesses:

COUNTY OF ALBEMARLE, LESSOR:



JEFFREY B. RICHARDSON
County Executive
Albemarle County

Witnesses:

THE UNITED STATES OF AMERICA, LESSEE:

GRAHAM.STANLE
Y.H.1249739509

STAN H. GRAHAM
Chief, IIES Branch
Real Estate Contracting Officer
Real Estate Division
Baltimore District
U.S. Army Corps of Engineers

Digitally signed by
GRAHAM.STANLEY.H.1249739509
Date: 2021.06.10 13:32:52 -04'00'

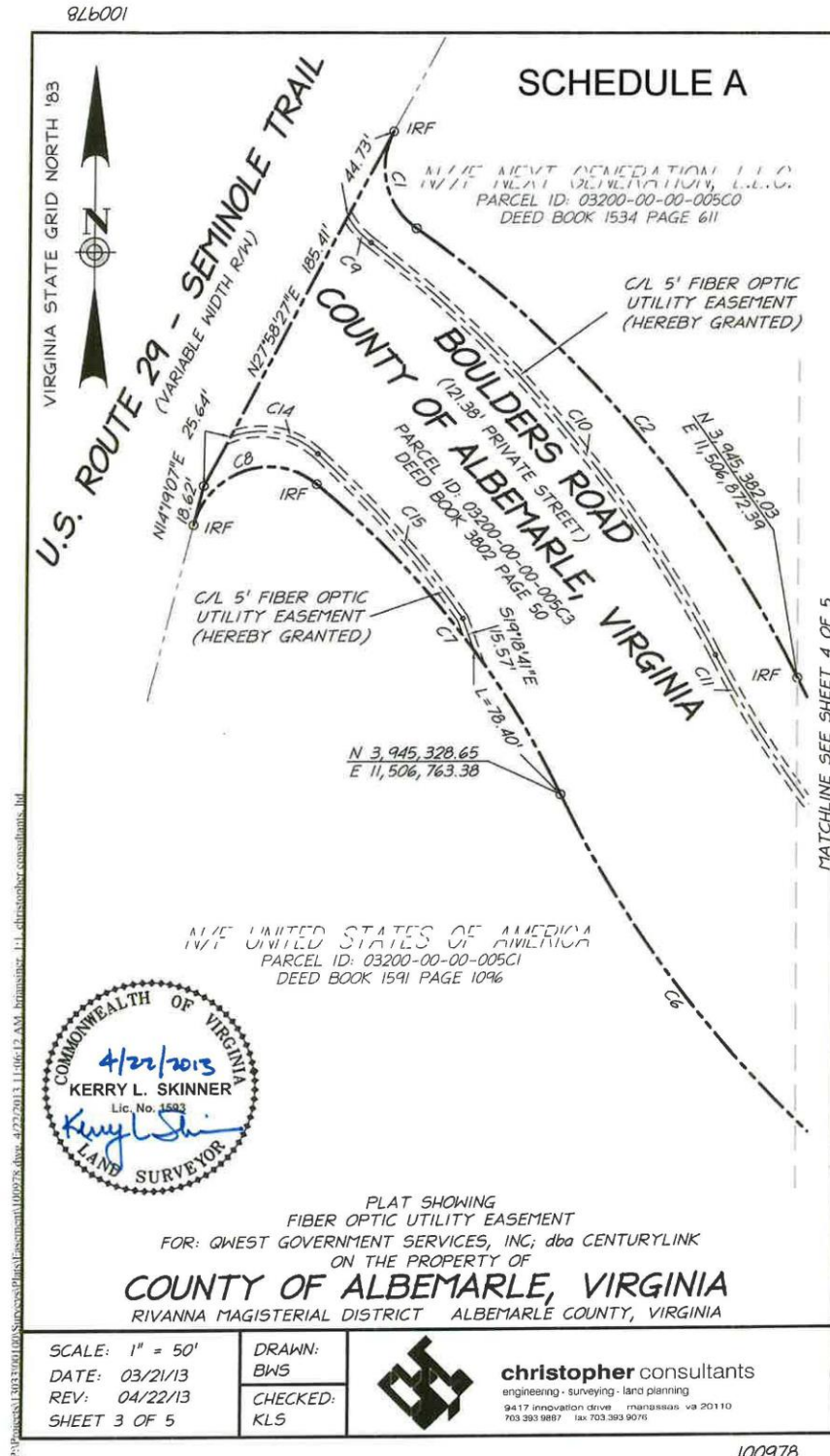
CERTIFICATE

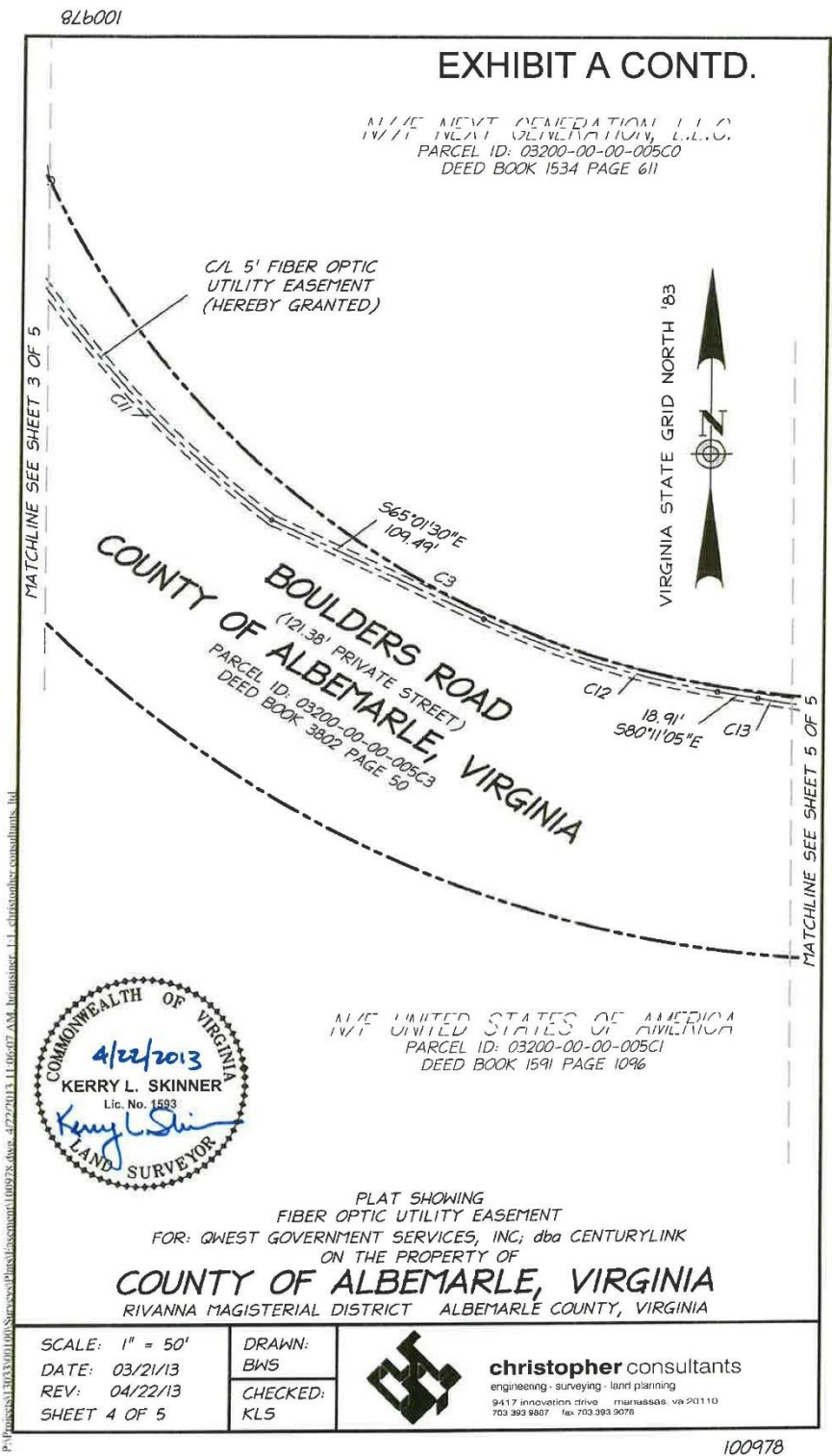
I, Claudette Dargatzis certify that I am the Clerk of the County of Albemarle; that Jeffrey B. Richardson, who signed the foregoing instrument on behalf of the County was then County Executive of the County. I further certify that the said officer was acting within the scope of the powers delegated to this officer by the governing body of the County in executing said instrument.

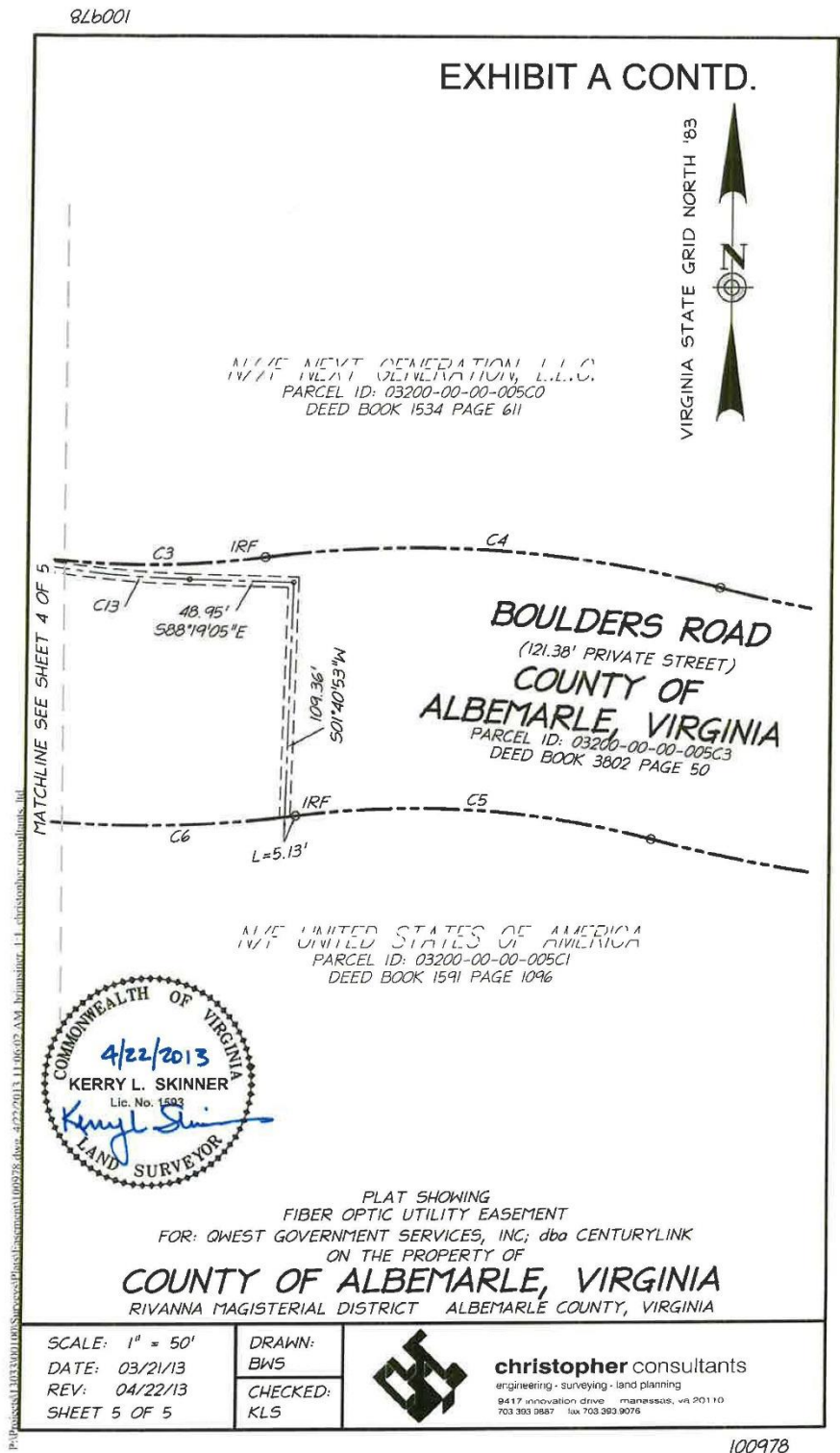
Date June 22, 2021
Claudette Dargatzis

Secretary or other appropriate officer
(Excluding the officer executing the instrument)

{Seal}







Agenda Item No. 23. From the County Executive: Report on Matters Not Listed on the Agenda.

Mr. Richardson said he did want to come back to the Board and address an issue that occurred on February 3rd at the Board's regular Board meeting. He said at that February 3rd virtual meeting of the Board of Supervisors, an individual spoke during Matters from the Public and made allegations about Ms. Price. He said the speaker was found not to be commenting about matters pending before the Board and so the speaker's microphone was cut, and the Board moved on to its business.

Mr. Richardson said Albemarle County Police Department engaged afterward in an investigation; the cybercrimes unit was able to locate the address that accessed the virtual Board meeting in California. He said Albemarle County Police Department worked with local law enforcement to identify the individual, and they did receive a confession. He said this individual had access to over 100 public meetings across the country over the past several months, disrupting the meeting and making baseless accusations of criminal activity randomly against elected officials.

Mr. Richardson said they talk a lot about how the work of the past year has shifted in so much response to this pandemic; over the past several years, the increase in cybercrimes has required public safety agencies to learn new skills, new technologies, new investigative approaches to meet the challenge of criminal activity that happens every day online. He said this individual zoom bombed 100 localities across the country, but it was their own Albemarle County Police Department that was able to locate the individual and prevent him from doing this to other people in the future. Mr. Richardson

sincerely thanked the investigation's division of the Albemarle County Police Department for their work to definitively clear this accusation and to prevent further harm from occurring in public meetings across the nation. He said they were very lucky to have a police department that values learning so that they can deliver high-quality public service every single day for the residents of this County.

Mr. Richardson said he was very proud of staff for the responsiveness as outlined. He said they do have some very important news, and he would go to Deputy County Executive Mr. Doug Walker to make the Board aware of an announcement that had just occurred with one very special longstanding staff member.

Mr. Walker said there are these times when one is called upon to give information that is not necessarily going to come across as well as it might under some circumstances. He said it is right for them to see it as good news, but it is going to come to some as sad news also, and that is to acknowledge that after 38 years of service, all to Albemarle County starting with the day after she graduated from the University of Virginia, their own Ms. Amelia McCulley has announced her intentions to retire effective January 1, 2022. He said she has given all her adult life to this County. He said there would be plenty of opportunity for the Board and others to share with her and her colleagues all that she has meant to the Board and to the Community. He said he wanted to make sure they heard that as quickly as possible. He said they are both saddened, but it is also good, and they want to make sure they celebrate her as she finishes up strong for the County over the next 6+ months and transitions to the next stage in her life and career.

Agenda Item No. 22. From the Board: Committee Reports and Matters Not Listed on the Agenda.

Ms. Mallek said she wanted to update the Board that more information would be coming later but that there was mention earlier in the day about the Three Notch Trail, and the reason that she wanted to provide some more information in a couple of weeks was that the circumstances around all of this seemed to be changing fairly rapidly. She said number one, the state has put \$10 million into the year's budget for trail construction; hopefully, this will benefit the Old Mills Trail too as it moves forward, but in the getting ready to be ready for future allocations, there is the possibility that some extra resources of staff may or may not be available from the MPO. She said they will find that out more at the end of June and be able to talk about this more on the 16th when Mr. Gallaway would be there as well to be able to rough this out. She said she just wanted to alert the Board that there will be more information trickling in, and they will decide later if there is any next step that goes along with it. She said it takes years and years and decades to do these things, and that is why maybe making a first step may be indicated.

Ms. McKeel said she wanted to thank Albemarle County Police Department for being tenacious and working that case, and it not only helped the community to find out what had been happening, but it probably helped enormous other people in stopping someone from that kind of behavior.

Ms. Price said Ms. McCulley's retirement was a loss for the County, a loss because of her expertise and her dedicated years of service; her entire professional career focused on this community and helping the people. She said it is a loss also in terms of diversity and inclusion and senior staff. She said no one is irreplaceable, but sometimes it is extremely difficult to move past a person and a change like that. She said she is happy for her, and she has earned it, but it is a blow to the County to lose someone of that caliber.

Ms. Price said because she was the target of that event on February 3rd, she thought it appropriate to thank Chief Lantz, the entire Albemarle County Police Department, and senior detective Wells who led the investigation into it. She said the work they did (not because she was the target of it but because it was wrong for someone to do that, and then to find out that this had been done approximately 100 or more times) really brings life to the message, "If you see something, say something," and because of Albemarle County law enforcement taking action on this, they have been able to protect a lot of communities around the country in bringing a stop to that.

Ms. Price said she is of course personally gratified to have her name cleared officially through that investigation. She thanked the Board and County staff for the support given her that night and throughout. She thanked the Commonwealth Attorney's office and thanked Albemarle County Police Department for the work that they did (beyond her personally) and what it has done officially for the country. She said that was a tremendous impact.

Agenda Item No. 13. **Closed Meeting.**

At 7:51 p.m., Ms. LaPisto-Kirtley **moved** that the Board go into Closed Meeting pursuant to Section 2.2-3711(A) of the Code of Virginia:

- Under Subsection (1), to discuss and consider appointments to the Albemarle Broadband Authority, the Piedmont Virginia Community College Board, and four advisory committees.

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

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

ABSENT: Mr. Gallaway.

Agenda Item No. 14. **Certify Closed Meeting.**

At 7:59 p.m., Ms. LaPisto-Kirtley **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: Ms. LaPisto-Kirtley, Ms. Mallek, Ms. McKeel, Ms. Palmer, and Ms. Price
NAYS: None.
ABSENT: Mr. Gallaway.

Agenda Item No. 15. Boards and Commissions:
a. Vacancies and Appointments.

Ms. LaPisto-Kirtley **moved** that the individuals named be appointed to the respective committees:

- **Appoint**, Mr. Andrew Baxter to the 5th and Avon Community Advisory Committee with said term to expire September 30, 2022.
- **Reappoint**, Mr. Waldo Jaquith, Mr. William Walsh, Mr. Bill Fritz, and Mr. Trevor Henry to the Albemarle Broadband Authority with said terms to expire June 7, 2025.
- **Reappoint**, Mr. Carter Montague, Mr. K. Edward Lay, and Ms. Betsy Baten to the Historic Preservation Committee with said terms to expire June 4, 2024.
- **Appoint**, Mr. Daniel Gidick to the Historic Preservation Committee with said term to expire June 4, 2024.
- **Reappoint**, Ms. Ida Lee Wootten, Mr. Michael Spatz, Ms. Stephanie Lowenhaupt, and Mr. Anthony Arsali to the Pantops Community Advisory Committee with said terms to expire June 30, 2023.
- **Appoint**, Mr. Charles Dassance to the Piedmont Virginia Community College Board with said term to expire June 30, 2025.
- **Reappointed**, Ms. Dottie Martin to the Village of Rivanna Community Advisory Committee with said term to expire March 31, 2023.

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

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

Agenda Item No. 24. Adjourn to June 16, 2021, 3:30 p.m., electronic meeting pursuant to Ordinance No. 20-A(16).

At 7:58 p.m. the Board adjourned its meeting to June 16, 2021 at 3:30 p.m., which would be an electronic meeting held pursuant to Ordinance No. 20-A(16); An Ordinance to Ensure the Continuity of Government During the Covid-19 Disaster. Information on how to participate in the meeting will be posted on the Albemarle County website Board of Supervisors home page.

Chair

Approved by Board
Date: 4/19/2023
Initials: CKB