

December 12, 2012

VIRGINIA: At a regular meeting of the Board of Supervisors for Hanover County held in the Board Room of the Hanover County Administration Building on the 12th day of December, 2012, at 2:00 p.m.

Present: Mr. G.E. "Ed" Via, III, Chairman
Mr. W. Canova Peterson, Vice-Chairman
Mr. Sean M. Davis
Mr. Wayne T. Hazzard
Mrs. Angela Kelly-Wiecek
Mr. Aubrey M. Stanley
Mr. Cecil R. Harris, Jr., County Administrator
Mr. Sterling E. Rives, III County Attorney

Absent: Mr. Elton J. Wade, Sr.

Call to Order

The Chairman called the meeting to order at 2:00 p.m. Six Board Members were present.

Invocation

Mr. Via gave the invocation.

Pledge of Allegiance

Mr. Davis led the Pledge of Allegiance.

Approval of Board of Supervisors' Minutes – November 14, 2012

The Chairman asked if there were any additions or corrections to the minutes from November 14, 2012. Hearing none, entertained a motion for approval.

Mr. Davis made a motion to approve the Minutes from November 14, 2012, seconded by Mr. Hazzard.

	Vote:
G. E. "Ed" Via, III	Aye
W. Canova Peterson	Aye
Sean M. Davis	Aye
Wayne T. Hazzard	Aye
Angela Kelly-Wiecek	Aye
Aubrey M. Stanley	Aye
Elton J. Wade, Sr.	Absent

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Minutes Approved.

Consideration of Amendments to the Agenda

The Chairman asked if there were any agenda amendments. Hearing none, moved on to the next item.

Citizens' Time

The Chairman opened Citizens' Time and asked if anyone wished to address the Board of Supervisors for up to five minutes on any matter within the scope of the Board's authority that is not on the agenda for that meeting.

Mr. Rick Ryan, Cold Harbor, Minutes not clear related to the Consent Agenda Item for the Sheriff's Office Gas Masks/Ride Shields; Voter Fraud; Teachers Pensions

Seeing no one else come forward, the Chairman closed Citizens' Time.

Mr. Harris – Minutes – agenda sheets which identify the item and explaining what is going on with items. Offered to help Mr. Ryan if needed.

Consent Agenda

The Chairman entertained a motion for approval of the consent agenda.

On a motion by Mr. Stanley, seconded by Mr. Peterson, the Board approved the consent agenda.

	Vote:
G. E. "Ed" Via, III	Aye
W. Canova Peterson	Aye
Sean M. Davis	Aye
Wayne T. Hazzard	Aye
Angela Kelly-Wiecek	Aye
Aubrey M. Stanley	Aye
Elton J. Wade, Sr.	Absent

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Consent Agenda Approved.

Request for Extension of CUP-10-11, BP Winding Brook, LLC & Lewistown Commerce Center, LLC (South Anna Magisterial District) (Consent Agenda)

On a motion by Mr. Stanley, seconded by Mr. Peterson, the Board Approved the extension of Conditional Use Permit, CUP-10-11, until December 31, 2013, subject to the original conditions.

	Vote:
G. E. "Ed" Via, III	Aye
W. Canova Peterson	Aye
Sean M. Davis	Aye
Wayne T. Hazzard	Aye
Angela Kelly-Wiecek	Aye
Aubrey M. Stanley	Aye
Elton J. Wade, Sr.	Absent

Motion Approved.

Adoption of Proclamation – Eagle Scout -Chad Moyers Foltz, Ashland Magisterial District, Boy Scout Troop 505

On a motion by Mr. Via, seconded by Mr. Peterson, the Board adopted the proclamation.

PROCLAMATION

WHEREAS the Boy Scouts of America was incorporated by Mr. William D. Boyce on February 8, 1910; and

WHEREAS the Boy Scouts of America was founded to promote citizenship, training, personal development and fitness of individuals; and

WHEREAS Chad Moyers Foltz is a resident of the Ashland Magisterial District in Hanover County, Virginia, and a freshman at Atlee High School; and

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WHEREAS on the 29th day of March, 2012, Chad Moyers Foltz attained the rank of Eagle Scout, the highest award granted by the Boy Scouts of America; and

WHEREAS to achieve this high honor Chad Moyers Foltz carried out a community project at Christ Lutheran Church in Henrico County, Virginia, by removing and replacing old landscaping and refurbishing two (2) teak benches; and

WHEREAS Chad Moyers Foltz of Boy Scout Troop 505 which meets at New Highland Baptist Church has accomplished those high standards of commitment and has reached the long-sought goal of Eagle Scout; and

WHEREAS the Hanover County Board of Supervisors fully supports the programs of the Boy Scouts of America and recognizes the important service they provide to the youth of our Country.

NOW, THEREFORE, BE IT RESOLVED that the Hanover County Board of Supervisors hereby extends its congratulations to Chad Moyers Foltz and acknowledges the good fortune of the County to have such an outstanding young man as one of its citizens.

The members of the Board of Supervisors voted to adopt this Proclamation as follows:

	Vote:
G. E. "Ed" Via, III	Aye
W. Canova Peterson	Aye
Sean M. Davis	Aye
Wayne T. Hazzard	Aye
Angela Kelly-Wiecek	Aye
Aubrey M. Stanley	Aye
Elton J. Wade, Sr.	Absent

Proclamation Adopted.

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Adoption of Proclamation – Eagle Scout Andrew C. Harrell, Chickahominy Magisterial District Boy Scout Troop 544

On a motion by Mrs. Kelly-Wiecek, seconded by Mr. Peterson, the Board adopted the proclamation.

PROCLAMATION

WHEREAS the Boy Scouts of America was incorporated by Mr. William D. Boyce on February 8, 1910; and

WHEREAS the Boy Scouts of America was founded to promote citizenship, training, personal development and fitness of individuals; and

WHEREAS Andrew C. Harrell is a resident of the Chickahominy Magisterial District in Hanover County, Virginia, and a senior at Atlee High School; and

WHEREAS on the 10th day of September, 2012, Andrew C. Harrell attained the rank of Eagle Scout, the highest award granted by the Boy Scouts of America; and

WHEREAS to achieve this high honor Andrew C. Harrell carried out a community project by organizing a work crew to remove the extensive hedgerow that had overgrown the deteriorating split-rail entrance fence at Scotchtown in Hanover County, Virginia, and then cleared and disposed of the debris, graded the area and rebuilt over 300 feet of split-rail fence to enhance the entryway; and

WHEREAS Andrew C. Harrell of Boy Scout Troop 544 which meets at Shady Grove United Methodist Church has accomplished those high standards of commitment and has reached the long-sought goal of Eagle Scout; and

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WHEREAS the Hanover County Board of Supervisors fully supports the programs of the Boy Scouts of America and recognizes the important service they provide to the youth of our Country.

NOW, THEREFORE, BE IT RESOLVED that the Hanover County Board of Supervisors hereby extends its congratulations to Andrew C. Harrell and acknowledges the good fortune of the County to have such an outstanding young man as one of its citizens.

The members of the Board of Supervisors voted to adopt this Proclamation as follows:

	Vote:
G. E. "Ed" Via, III	Aye
W. Canova Peterson	Aye
Sean M. Davis	Aye
Wayne T. Hazzard	Aye
Angela Kelly-Wiecek	Aye
Aubrey M. Stanley	Aye
Elton J. Wade, Sr.	Absent

Proclamation Adopted.

Appointments

Approved as recommended.

	Vote:
G. E. "Ed" Via, III	Aye
W. Canova Peterson	Aye
Sean M. Davis	Aye
Wayne T. Hazzard	Aye
Angela Kelly-Wiecek	Aye
Aubrey M. Stanley	Aye
Elton J. Wade, Sr.	Absent

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DECEMBER 12 2012 CONSENT AGENDA APPOINTMENTS

COMMITTEE NAME	DISTRICT	FIRST NAME	LAST NAME	TERM BEGINS	TERM LENGTH	EXPIRATION	# OF MTGS HELD IN LAST 12 MOS	# OF MTGS ATTENDED IN LAST 12 MOS	BOARD RECOMMENDATION
Hanover County Council on Aging	Ashland	Madge	Carter	01/01/12	1 year	12/31/12	7	5	Mr. Via is recommending reappointment
Cannery Advisory Committee	Chickahominy	Sheila	Anderson	10/01/11	1 year	09/30/12	1	0	Mrs. Kelly-Wiecek is recommending Ms. Lisa Colligan
Hanover County Council on Aging	Mechanicsville	Jeanne	Bradley	01/25/12	1 year	12/31/12	7	5	Mr. Peterson is recommending reappointment
Roads Committee	Mechanicsville	Jerry	Hall	01/25/12	1 year	12/31/12	3	3	Mr. Peterson is recommending reappointment
Historical Commission	Hist.PoleGreen	Robert	Bluford, Jr.	01/01/11	2 years	12/31/12			Mr. Via is recommending reappointment
Roads Committee	VDOT Rep	Mike	Cade	01/25/12	1 Year	12/31/12	Fill Term		Mr. Via is recommending reappointment
Greater Richmond Partnership, Inc.	Staff Alternate	Rhu	Harris	01/25/12	1 year	12/31/12			Mr. Via is recommending reappointment

Presentation - International City/County Management Association (ICMA) - Voice of the People Award for Excellence - Pamunkey Regional Library & Sheriff 's Office

Tom Shepley came forward along with Mr. Via. Mr. Via then read and presented the award.

Colonel Hines; Major Woody; Lt. Kerri Fries came forward. Mr. Via then read and presented the award.

Workshop – Department of Public Works - Schedule and Necessity of Stormwater Actions – Mr. Flagg / Mr. Chris Pomeroy, President, AquaLaw

Board Sheet Background: Over time there have been a number of presentations and updates to

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the Hanover County Board of Supervisors on emerging stormwater management regulatory mandates on local governments. Many of these mandates are the direct result of goals established by the Chesapeake Bay Program; however, overall they are complex matters affecting a wide range of activities administered or mandated at the local level. These matters range from the application of new development standards for stormwater management on private projects to operational changes in municipal facilities relating to pollution prevention and good housekeeping measures for stormwater.

Staff will review a schedule of impending actions regarding the development of a new development stormwater management program. In addition, staff will present a schedule for a renewal Registration Statement for Small Municipal Separate Storm Sewer Systems (MS-4) Phase II General Permit. These impending actions must be undertaken by the County to comply with state and federal law. The actions represent a legal commitment by the County to comply with ongoing program and permit responsibilities. Some of these commitments are projected to require enormous expenditures over time for which a local revenue source will have to be identified or developed. Staff has reviewed options regarding sustainable funding mechanisms with the Board's Community Development Committee and will continue to refine a recommendation for ultimate consideration by the full board at a future meeting.

In addition to the staff presentation on the schedule, Christopher D. Pomeroy, Esq., President and co-founder of AquaLaw, will provide a presentation on the necessity of these stormwater actions. Mr. Pomeroy will provide an overview of the basis and evolution of the federal Clean Water Act relating to stormwater management and how it affects local governments. He is also expected to address elements of working successfully in the existing regulatory environment.

Mr. Flagg introduced Chris Pomeroy;

The Chairman asked Board Members if there were any questions. Mr. Peterson are the standards more stringent than the EPA from DCR. Mr. Pomeroy – no . Chesapeake Bay TMDL standards are based directly on the nutrient budgets handed down by EPA. There is state discretion on how to allocate those responsibilities by sector (Agriculture, Stormwater and

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Wastewater) and EPA did not detail all and there is state discretion that was exercised along the way. Stormwater design standards has a lot of state policy. State philosophy to meet requirements by federal government and except in a special case where Virginia wants to really do something for Virginia may be particulars where there is a slight deviation.

Mr. Flagg responded to Mr. Peterson's question with regard to local ordinances there are two areas that tend to be a little more stringent in and from past experience with local problems, lot grading plans for individual homes where historically we have had a lot of problems with people having water running under crawl spaces and from a flooding perspective making sure homes were up above the crest of roadways. There are two areas in our ordinance we locally put in to keep from having the historic kinds of problems like flooding houses and historic drainage problems otherwise we revert to the state minimum standards in every instance.

Mr. Hazzard we continue to talk about 5% and 35% and 60% reductions – where do we measure that. Mr. Pomeroy reality is the state needs to engage in a real discussion on how do we count. Mr. Hazzard we continue to hear we have to cut back, instead we are spending money in the county to pacify rules that may or may not benefit the bay. Mr. Pomeroy agree with the answer in general should be improvement but counting has been a particular problem in this program. Mrs. Kelly-Wiecek referred to slide 17 Virginia Cost Estimate for Bay TMDL 9.4 – 11.5 billion our portion of that. Remind us what the estimate is. Mr. Flagg based on current permit \$71M for the 15 year period. It could be if they expanded to unregulated lands it would go to \$241M under same criteria. We are trying to work smart to carve down the number.

Real Estate Assessment – 2013 Update –

Mr. Richard Paul, Acting Chief Assessor, came forward.

Board Sheet Background: The Assessor's Office will report on the calendar year 2013

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assessment of real estate. Annually, all areas of the county are reviewed to determine if sales trends warrant a change in assessments. As a result of this study, approximately 22,900 parcels in 47 areas (50% of the total parcels in the county) were changed. In late December, the Assessor's Office will mail notices of assessment changes and the review period will be January 2 through January 17, 2013. Any property owner may contact the Assessor's Office during that period to discuss their property assessment. The Board of Equalization is scheduled to meet later in the year during which time any property owner may apply to discuss their assessment. All Board of Equalization applications must be received by the Assessor's Office on or before March 15, 2013. The Board of Equalization hearing dates have not been finalized at this time.

3:10:15 PM Mr. Rives left the meeting.

3:12:36 PM Mr. Rives returned to the meeting.

2013 Assessment Overview

- This reassessment encompassed approximately 22,900 parcels.
- Forty-seven areas were changed for 2013.
- Total reassessment change was a negative (\$296,112,300) or 2.44% net decrease in tax base.
- Total new construction change was a positive \$107,608,400 or 0.89% net increase in tax base.
- Total growth was a positive \$5,132,000 or 0.04% net increase in tax base.
- Collectively, there is a 1.51% decrease in tax base.

Mr. Paul commended the Assessor's Office Staff and the departments that work together each year on the assessment.

Mr. Peterson the GIS map that shows the layers for neighborhoods – did we also reduce the number of neighbors to get a little bit of uniformity over this past year. Mr. Paul that is an ongoing process and we go through that every year to look at what neighborhoods can be combined and yes we did reduce it down. Mr. Davis advised the phone calls he received from

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citizens may not agree with Assessor's Office but the staff took the time to help me out and saw the basis for the decision. Mr. Davis advised he asked for the tab on the website and thanks for working with IT. Mr. Paul gave credit to Kevin Nelson, GIS. Mrs. Kelly Wiecek asked about the number of building permits 841 commercial and additions. Mr. Paul there are others that go through the books for example electrical permit that we would not value.

Cash Proffer Amendment Procedures and Fees – Mr. Rives and Mr. Maloney

Board Sheet Background: On November 14, 2012, the Cash Proffers and Capital Funding Committee (Proffer Committee) reported its recommendation to the Board of Supervisors. On November 28, 2012, the Board conducted a Cash Proffers and Capital Funding Workshop to discuss the recommendation after which the Board voted to eliminate cash proffers, both future and past. The Board directed staff to review the steps necessary to revise past approved zoning cases to eliminate cash proffers and to expedite those steps where possible.

Staff will report its findings to the Board with possible alternative procedures to eliminate cash proffers for prior approved cases. Staff requests Board direction regarding which procedure best suits the Board's goals.

Mr. Rives advised that he and Mr. Maloney would be discussing the process for amending cash proffers that have been part of previously approved rezoning requests where the cash proffer has been accepted by the Board pursuant to a rezoning request but where those cash proffers in whole or in part have not yet been paid because there has not been development or a certificate of occupancy for the residential structures. This is pursuant to the Board's direction at the last meeting of the Board. We have found and the Board will find there are complicated issues here, some of them are legal and some are administrative issues and we want to work our way through those. We think it is important to give you some of the legal background. The statutory and County Code provisions that are applicable here particularly because there has been some confusion in the community about the import of the impact of the Board's decision last

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week and what remains to be done. Mr. Rives did a quick review of County ordinance procedures:

Hanover County Code, Article 9, § 6A

Establishment of Cash Proffers at the Time of Rezoning

- *(j) “Applications for the amendment or deletion of proffered conditions previously accepted by the board of supervisors shall be considered through the same process as any other request for a zoning map amendment.”*
- *Process includes:*
 - *Posting notice on property with a sign stating there is a pending application*
 - *Mail notice and advertisement to adjoining property owners; public hearing before Planning Commission*
 - *Mail notice and advertisement to adjoining property owners; public hearing before Board of Supervisors*

Virginia Code § 15.2-1427

F. “In counties, except as otherwise authorized by law, no ordinance shall be passed until after descriptive notice of an intention to propose the ordinance has been published for once a week for two successive weeks prior to its passage”

Virginia Code § 15.2-2285

Adoption of zoning ordinance and map and amendments thereto

B. “No zoning ordinance shall be amended or re-enacted unless the governing body has referred the proposed amendment or reenactment to the local planning commission for its recommendations”

Mr. Rives clarified that when any rezoning request is approved that is a change to the official zoning map of the County and that is done by ordinance and when the Board approves a rezoning request that is an ordinance and any proffers that are made pursuant to the request are part of the ordinance that is approved by the Board so amending the proffers is amending an ordinance.

C. “Before approving or adopting any zoning ordinance or amendment thereof, the governing body shall hold at least one public hearing thereon, pursuant to public notice as required by §15.2-2204”

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Mr. Rives advised that Mr. Peterson noted earlier today that he had not included a copy of 2204, that section simply specifies how you will advertise that public hearing and that includes mailing to adjoining property owners and posting the notice in the newspaper once a week for two consecutive weeks prior to the public hearing.

Virginia Code § 15.2-2297

Conditions as part of a rezoning or amendment to zoning map

A. Once proffered and accepted as part of an amendment to the zoning ordinance, the conditions shall continue in effect until a subsequent amendment changes the zoning on the property covered by the conditions . . .

Virginia Code § 15.2-2302

Mr. Rives advised this was largely rewritten in 2009 and then amended again earlier this year. This has to do with amendments to proffers and this applies specifically to the types of cases that we are talking about here. Paragraph A was written for the purpose of addressing the complicated situation that Hanover and other counties have experienced over the years where you have a parcel of land, take an imaginary 100 acres which gets rezoned pursuant to proffers. Let's say one of the proffers is that it will be buffered by a board on board fence around the whole subdivision and then the developer after getting the zoning subdivides the property and sells off 25-50 of the 100 lots that eventually will be going there and at that point the developer and/or the residents decide that they don't want a board on board fence going around it they want a landscape buffer instead of the fence buffer and they want to amend the proffers so that they can do that instead. The challenge has always been that once you have sold off 25-50 lots you are amending the proffers that apply to all of the property that is not developed and that which has been developed and technically to amend those proffers you would have to get all the property owners to sign. That means all of the owners of the 50 lots that have already been sold. Experience has told us and common sense would

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tell anyone that is often not easy particularly where some properties may be rental and the owners are out of town or the mortgage is on it and they can't sign proffer amendments. Eventually the General Assembly at the request of the Homebuilders Association put in this provision to allow proffer amendments where you don't have to get all of the owners of existing lots to sign the proffer amendment, the application for the proffer amendment) but you just give them notice and that is what paragraph A says.

Virginia Code § 15.2-2302
Amendments and variations of conditions

A. "Subject to any applicable public notice or hearing requirement of subsection B but notwithstanding any other provision of law, any landowner subject to conditions proffered . . . may apply to the governing body for amendments . . . to such proffered conditions provided only that written notice of such application be provided in the manner prescribed by subsection H of § 15. 2-2204 to any landowner subject to such existing proffered conditions"

Virginia Code § 15.2-2302
Amendments and variations of conditions (Continued)

B. There shall be no such amendment or variation of any conditions proffered . . . until after a public hearing before the governing body advertised pursuant to the provisions of § 15.2-2204.

Mr. Rives clarified this is the newspaper ad and notice to adjoining property owners, not the ones subject to the proffers but adjoining property owners.

However, where an amendment to such proffered conditions is requested pursuant to subsection A, and where such amendment does not affect conditions of use or density, a local governing body may waive the requirement for a public hearing (i) under this section and (ii) under any other statute, ordinance, or proffer requiring a public hearing prior to amendment of such proffered conditions.

Mr. Rives advised there are two other localities thinking about amending cash proffer requirements and those local government attorneys and Mr. Rives have been talking about this a lot and trying to figure out what the section means. Among the questions that come to mind when you read this: If you refer to an individual case 100 acre subdivision described earlier. When exactly does the board decide when it will waive the requirement for a public

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hearing? Does the applicant have to come to the board twice (Board process and whether to approve the amendment). This is how it appears but we think that there may be a way for the board to adopt a policy that would govern this waiver. The second question is what does the phrase conditions of use mean. Where such amendment does not affect conditions of use. Technically any proffer is a condition of use and is what the word conditions / proffered conditions as used in state code means but if you read it that way this section would never be applicable. It must mean something other than simply a condition of use but that is what a proffer is a proffer is a condition on which you get your zoning and it governs hours of operation, number of lots, setbacks, buffers, style of housing, all of these different things. It must have a more narrow meaning in this context because otherwise it would never be applicable and the interpretation that Mr. Rives suggests is that it must mean land use categories of use so switching residential to commercial or adding a use that is not permitted under the original proffers would affect a condition of use. It is not very well stated but that is the only way we could interpret it that makes sense. A local governing body may waive the requirement for a public hearing and the question is what does that mean exactly. Note that the process that we have earlier discussed involves posting advertisement, referral to the planning commission, advertisement again, public hearing before the planning commission, advertisement again and public hearing before the board. The statute does not say that the board may waive all of those things. It says that it may waive a public hearing, does that mean both hearings. Does it mean you can waive the referral to the planning commission, does it mean you can waive posting the notice in the paper or mailing letters to adjoining property owners. The answer is you can't tell from reading the statute. The Attorney General's Opinions that interpret this state code and offer advice on how to read it and you

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find there are none that interpret this section. You look for case law and there is none of that either. You revert to the rules of statutory construction and first there is the Dillon Rule which says that local governing bodies can't do anything unless state code says expressly that you can do it. There is the second rule of statutory construction that says where a statute creates an exception to a generally applicable rule that exception is to be narrowly construed. Both of those rules would suggest that you can really only waive the public hearing. That does not really make sense either because what is the purpose of advertising an ordinance if you are not going to have a public hearing. Mr. Rives suggested this is a dilemma to which there is no certain answer. Mr. Rives has talked with a representative of the Virginia Association of Counties who was in the committee meetings where this legislation was discussed in 09 and 2012. Both bills were proposed by the Home Builders Association and in their presentations the VACo representative felt that clearly what they intended was that the board could waive all of those things. Whether that is the effect of this language or not is still an open question. In Virginia there is no process by which courts consider legislative history as happens with federal legislation because there are no minutes, legislative record of committee hearings when courts interpret legislative language such as this they look at the language and other code sections and interpret it. Mr. Rives advised this is uncertain.

Virginia Code § 15.2-2302

Amendments and variations of conditions (Continued)

- *Authority for local governing body to waive public hearing requirement under specified conditions does not expressly change requirements for public notice and referral to planning commission.*
- *If Board decides to waive public hearing requirement for some categories of cases or for all cases, it must determine what public notice is appropriate and whether to refer these cases to Planning Commission.*
- *If public hearings are waived, County Attorney recommends no less public notice than is specified in § 15.2-1427 (publication) and §15.22302A (letter to other owners).*

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Process for Board Waiver of Public Hearings

- *Case by case determination or creation of one or more categories of cases for which public hearings are waived?*
- *Possible categories for waiver of public hearings*
 - *Cases where the total number of remaining undeveloped lots is less than a specified number (e.g. less than 50 lots remaining).*
 - *Cases where no specific public improvements proximate to and necessitated by development were identified during original rezoning, unless constructed by developer*
 - *All cases in which elimination or reduction of cash proffers is requested*

Options for consideration of requests for elimination or reduction of cash proffers:

Public Hearing Options

1. *Standard process with separate public hearings before Planning Commission and Board of Supervisors*
2. *Combined public hearings before Planning Commission and Board of Supervisors*
3. *Waiver of public hearings for some categories of cases or for all cases*

Options for consideration of requests for elimination or reduction of cash proffers:

(Continued)

Process Options

1. *Expedite cases based on number of remaining undeveloped lots (e.g., 25 lots, 50 lots)*
2. *Expedite cases if no specific and proximate public facility improvements were identified during rezoning or if improvements have been constructed by developer*
3. *Bundle expedited cases for advertisement and for Planning Commission (if applicable) and Board agendas*

Questions Presented

1. *Waive public hearing for some or all cash proffer amendment requests?*
2. *If public hearing waiver for some, but not all, for what categories of cases should it be waived?*
3. *If public hearings are waived for some or all cases, does waiver also include:*
 - *Posting?*
 - *Mail to adjoining owners?*
 - *Planning Commission?*
 - *Advertisement in newspaper?*
4. *If public hearings are not waived, will Board hold joint public hearings with Planning Commission?*
5. *Does Board want certain cases, such as those involving 50 or fewer remaining lots and no specifically identified public facility impacts to be given first priority?*
6. *Does Board anticipate that cash proffer amendments will be retroactive to a certain date (e.g. December 12, 2012)?*

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Mr. Rives clarified typically any ordinance or ordinance amendment approved by the Board unless otherwise specified is effective on the date that the amendment is adopted or at some later date if that is what is specified in the enactment clause of the ordinance. We did research on the question of whether an ordinance specifically a proffer amendment could be retroactive in its impact. If for example a case comes to you in May seeking to reduce or eliminate proffers that were previously made. Could the board amend the proffer in May or eliminate the proffer in May and have that elimination be retroactive back to today's date for example or November 28, 2012, the day of the last board meeting. After some debate and consideration and not being able to find any authority on point Mr. Rives concluded that the Board does have that authority and can if there is a rational basis for doing so and given this legislative process there is that the board can make that amendment to the proffers retroactive back to today's date or November 28, 2012 the day of the last board meeting. After some debate and consideration and not being able to find any authority specifically on point Mr. Rives has concluded that the Board does have that authority and can if there is a rational basis for doing so, and given this legislative process there is that the board can make that amendment to the proffers retroactive to a specific date.

- 7. If cash proffer amendments may be retroactive, should staff begin accepting bonds or other surety in lieu of payment of cash proffers?*

3:45:07 PM Mrs. Kelly-Wiecek– left the meeting.

3:46:41 PM Mrs. Kelly-Wiecek returned to the meeting.

Mr. Maloney came forward and advised that Mr. Rives provided a broad overview of some of the legal considerations and he has begun to address some of the procedural

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considerations and Mr. Maloney's presentation will provide further guidance on the procedural issues. Mr. Maloney advised he would provide a brief history of the current zoning ordinance amendment processes to provide the board and the citizens present a perspective on the timeframes and processes that we are going to be sharing with you for your consideration.

Introduction

- Through the Customer Service Initiative (CSI), the Planning Department has developed two timelines for processing zoning actions – either conditional use permit or a rezoning requests – a change in the zoning map
 - The shorter of the two timelines (Routine Process 3-4 months) is used when there are relatively few issues and potential impacts arising from the proposed rezoning and there is no significant community interest in the proposal
 - The longer process (Complex Process 5-6 months) is used when there are significant potential impacts arising from the proposal which need detailed examination and evaluation (i.e. traffic and environmental impacts) and when the community expresses significant interest in the proposal
 - Staff has identified several alternative processes for Board consideration recognizing the Board is interested in considering alternatives to the standard processes established through the CSI review

Factors to be Considered for All Amendment Processes

- Although there may be relatively little detailed professional analysis, significant staff resources will be devoted to processing applications in an expedited timeframe
 - Applications must be reviewed for accuracy
 - Ownership
 - Proffer status (paid vs. unpaid)
 - Notification letters need to be prepared and mailed to adjacent property owners
 - Process dependent
 - Legal notices *may* need to be prepared
 - Involves lead time to meet legal deadlines

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Alternative Processes identified for the Board to consider:

Routine Process (3 months) - Alternative 1

- Application submitted the first Monday of the month
- Advertise the case for the following month's PC meeting (third Thursday of the month)
- Advertise for the 2nd Board meeting (fourth Wednesday of the month) for the month following the PC meeting

Combined Public Hearing Process (approx. 5 weeks) – Alternative 2

- Application submitted the first Monday of the month
- Advertise for a Joint Planning Commission and Board of Supervisors Meeting the first week of the following month
 - Includes normal advertising requirements per 15.2-2204
 - Legal notice published in newspaper
 - Adjacent property owners sent notice via certified mail
- The Planning Commission and Board of Supervisors hear the case simultaneously
 - Commission must make recommendation after which the Board may take an action on the request

Mr. Maloney advised the Planning Commission always has the opportunity to defer a case and the expectation in a vast majority of these cases the Commission would take an action that evening which means the Board could immediately follow with the final action but under state code the commission has 100 days to decide a zoning case and depending on public input as a body they could decide to defer up to 100 days after that case is advertised and is a function of the Planning Commission and if we are going to involve the Planning Commission in a public hearing process we have to respect that is their prerogative – 100 days to consider a case from the time it appears on their agenda.

Alternative Processes (continued)

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Non-Public Hearing Process per (approx. 4 weeks) – Alternative 3

- Application submitted the first Monday of the month
- Present application to Planning Commission the third Thursday of the month
 - Assumes Board determines Planning Commission involvement is necessary
- Present case to Board for action 4th Wednesday of the month

Mr. Maloney advised from a processing standpoint it would very challenging for the staff to receive an application the first Monday of the month and get it on your second week board meeting. That would be a very challenging time frame.

Non-Public Hearing Application Procedural Recommendations

- Because 15.2-2302 only requires that property owners subject to the proffer being amended be notified, staff recommends that the applicant notify those property owners as part of the application requirements
 - Typically County undertakes notification
 - Due to compressed schedule and limited staff resources, applicant would undertake this effort and provide appropriate evidence as part of application process

Board Expectations

- Staff is seeking direction from the Board as to its expectation regarding application of the cash proffer amendment policy and procedures
- Not all residential development has the same immediate and long-term impact upon community facilities and roads
- 31 approved projects/recorded subdivisions with 50 or more residential lots totaling approximately 3600 approved lots
- Approximately 3350 of the lots do not have building permits issued
- Larger projects (50 or more lots available for development) *may* have impacts to the road network

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- Each single family detached dwelling produces approximately 9.5 weekday vehicle trips
- AM Peak weekday trips = .75 per dwelling
- PM Peak weekday trips = 1.01 per dwelling
- 50 home single family detached residential subdivision would generate the following:
 - 475 weekday trips
 - 38 AM Peak trips
 - 51 PM Peak trips

Mrs. Kelly-Wiecek asked if it would be an additional meeting the first week of the month for both. Mr. Maloney – yes.

Mr. Rives – Proffer Amend Considerations – one of the things staff considered when looking at the alternatives for how to address this is the different types of scenarios in which rezoning cases have been approved over the years. For example you could have an AR-6 development in Beaverdam District 3-4 lots and there is no localized; immediate road impact to that and that is a pretty easy case. You also have maybe larger rezoning's where there are localized and proximate nearby impacts that are immediately attributable to that rezoning request but where the developer has proffered to go ahead and widen that road or build the turning lane or do the intersection improvement. The third category is where you have sort of larger impacts from the rezoning and the developer has proffered to do those off-site improvements but will get a credit against its cash proffer for the cost of those improvements because they serve not only that development but the larger populous as well. We have a few cases where there were major road improvements that were identified that would be needed as a direct result of the development but the developer preferred that the county undertake the process of building those road improvements and used the cash proffer money that the developer would pay as the lots are

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built out to fund those and an example of that is the Providence rezoning approved by the Board in May of 2012 where the developer will build 160 lots and there were specific road improvements that were identified both by the developer's engineer and by the County's engineer and by the Virginia Department of Transportation they eventually came to agreement on what needed to be built to address the impacts of that development. Initially the staff presentation was that the developer had to proffer to build those and was the Staff's position before the planning commission. The planning commission recommended denial unless that was done. In subsequent discussions with the developer the staff revised its position and agreed that the County could undertake those road improvements but that it would do so at the cost of \$1.5M. The county would undertake to do that using the cash proffers that were to be paid by the developer as those houses came up for occupancy. Mr. Rives advised he was illustrating there are a wide range of circumstances from the small AR-6 to the Providence and other developments that might be similar to that. Mrs. Kelly-Wiecek Providence instance the money cash proffers from individual homes or additional \$1.6M cash proffer for road improvements specifically. Mr. Rives no add cash proffers, it is the \$19,000 per home and as the 160 houses are built out proffer going towards that road and sufficient to enable the County to put those improvements into its road construction plans. Mrs. Kelly-Wiecek in a scenario like this with the Providence situation we are going to require a new hearing or standard process would it be within board's ability, authority we will not charge you per house but you have to build 1.6 million road. Mr. Rives could be a position that would be taken. In lieu of having the generalized proffer which is what a cash policy has called for in the past that specific and immediate impacts would be addressed by developer in that and similar cases.

Mr. Maloney –

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Proffer Amendment Considerations

- Board may wish to consider differentiating between projects which are expected to have immediate impacts to roads and public facilities from those that are not expected to have such impacts
 - For instance, projects with fewer than 50 lots available for construction will have relatively little immediate impact
 - Board may wish to consider a process whereby such applications would go through a relatively short and streamlined amendment process
 - The Routine Process
 - The Joint Public Hearing Process
 - The Non-Public Hearing process
- Projects with 50 or more residential lots available for construction would be subject to an amendment process whereby impacts to public facilities and roads would be specifically evaluated to determine impacts arising from the project
 - Many of these cases would likely fall within the complex case timing of 5-6 months due to more intensive analysis

Summary

- Staff has presented three alternative processes for Board consideration
 - The Routine Process – Alternative 1
 - The Joint Public Hearing Process – Alternative 2
 - The Non-Public Hearing process – Alternative 3
- The Board has also been provided options for considering an alternative process for residential developments that may have more immediate impacts to public facilities and roads
 - i.e. projects with 50 or more residential lots available for construction
 - Staff is seeking direction as to which process the Board desires to follow
 - Staff is also seeking direction regarding an alternative process for projects with greater immediate impacts to roads and community facilities

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Next Steps

- There is a question as to the Board's expectations for those dwellings that are subject to a cash proffer and are currently under construction
 - The cash proffer for those units is due prior to issuance of the Certificate of Occupancy
 - The proffers need to be amended before the cash proffer obligation can be reduced or eliminated
 - Barring any additional direction from the Board of Supervisors, the builder currently has two options
 - Pay the cash proffer at the time the CO is issued; or,
 - Delay CO issuance until the proffer is amended
- If it is the Board's desire to eliminate the cash proffer for any dwelling being issued a CO after November 28, 2012, the staff would recommend the following process which is responsive to both the cash proffer obligation currently in place and the Board's desire to provide the desired cash proffer relief

Cash Proffer Performance Bond

- At the time a CO is requested the builder/owner would enter into a performance agreement with the County and post a bond equal to the amount of the cash proffer obligation
- Following the execution of the performance agreement and posting of the bond, the owner/builder could file a zoning amendment for the cash proffer elimination or reduction
- If approved by the Board, the owner/builder would have fulfilled their obligation under the performance agreement and the cash bond would be released accordingly
- If the request is denied, the owner/builder would be required to pay the cash proffer, and upon payment the performance agreement would be fulfilled and the bond released

Mr. Peterson – negotiations, larger subdivision vs. smaller 1 house generates same # of trips per day not sure how you break out into different groups. Negotiate with everybody or nobody. Mr. Maloney this is a request for guidance from the board and not a staff

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recommendation. Mr. Peterson you advised if you used this approach you would need more time for analysis, hasn't analysis been done on all projects prior. Mr. Maloney yes but in picking Rutland it was approved in 2004/05 and analysis is dated for the number of improvements and outcome is proffered project is not same as it was 7 years ago as road infrastructure was not in place and we need to reevaluate. Will we start from scratch – probably not as we will have base numbers but there will be level of update to traffic study and get VDOT concurrence within 3 months is not likely. Mr. Peterson if nothing has changed then why reanalysis. Mr. Maloney analysis was based on a road network in existence at the time of development and again using Rutland example. There have been improvements to Atlee Road 301 intersection that were not in place when initial analysis was prepared and the level of impact today is less significant than it was at the time the property was zoned without those improvements in place. The level of infrastructure determines in part the level of impact. Mr. Rives spoke about impact to Woodside Lane/Providence Church Road / Route 54 intersection – again no improvements in place and we understand what needs to be put in place there may be 10 lot AR-6 subdivision on a rural secondary road that will not have immediate impact on service levels or capacities of those roads and it is case by case and is what makes this a little challenging and no one formula that is going to work 100% for 100% of the cases. There are differences in the amount of immediate impact development may have on facilities – particularly roads. Transportation is immediately felt in the community. Mr. Peterson alternative processes slide #1 – 3 mo process. Would the 7 week period be enough time to reduce to 2 months rather than 3 months? Mr. Maloney Planning Commission uses that week for comp plan discussion – can discuss with commission. The second Thursday to fourth Wednesday board meeting in same month would require double advertisement. If the commission decides to defer then we have advertised a public hearing that

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may or may not occur. Can we do it – yes? Mr. Peterson differentiate between cases where they ask nothing more than reduction from one proffer vs. where there are additional considerations and need for more time. Case such as where proffer on one single lot – consent agenda – and Mr. Peterson stated he would not have a problem differentiating based on those two points. Does have a problem differentiating on the size of the development 3 lots vs. 300 lots Mrs. Kelly-Wiecek asked Mr. Peterson to reiterate. Mr. Peterson if the application had only one single request to omit cash proffer vs. application which had additional things they were asking to amend. Mrs. Kelly-Wiecek – roads or play areas. Mr. Peterson the one with more would have other considerations. Mr. Peterson – amendments waiver public hearings uncertain as to what is meant have you contacted attorney general’s office. Mr. Rives have not talked to the AG Office looked to see if there had been opinions. Can request opinion of AG but it will take time. Mr. Peterson would like Mr. Rives’ official opinion. Mr. Rives – it is uncertain what this says and he has discussed with 5 other attorneys and we all have come to different conclusions and among the 6 there are 9 opinions. Staff’s preference is to take the conservative / safe approach and is one Hanover has taken in all these matters are to assure that there is public notice required by law and opportunity for public input. Staff’s preference to follow that process the County has always used to amend proffers and to expedite as much as possible. Staff preference to take easier cases first and whether it defines fewer lots or fewer necessitated improvements and can work with the board on joint public hearings board/pc and recommendation to use the same process used in the past. Mrs. Kelly-Wiecek – timing question- Alternative 1 and Mr. Rives advised yes depending on the timing. Mr. Stanley – knows that the vote was taken at the last meeting and respect reasoning for what was done and agree with that and know the majority rules and not here to debate proffers because he was never really a proponent of those things or

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any fees on individuals. That being said Mr. Stanley does have questions - Corridor from Route 54 to Ashland has been exciting over last several years and when East Ashland started Bob Attick wanted it approved and Mr. Stanley spoke against it at the Town meeting because road issues were not addressed. Went through 43 meetings and all those processes and had 30-40 individuals at community meetings people opposed to any development and we finally talked to those who were opposed to East Ashland and assured them with developers agreement that proffer money would help with the roads. The economy took a turn and changed all of that but hopefully at some point in time it will work. Hickory Hill came along later 270 lots and again that group was good to work with and every one had to put up something to make it work. Then when Providence came along we proposed mixed use as we needed economic development in that area and HH Hunt due to their quality and along with that came residents and they requested that the County needed to do improvements on 54 and it was negotiated with the County Administrator/Mr. Stanley and the Developer and others to use proffered money and everyone was in agreement. Mr. Stanley stated his question is that proffers have gone away who is holding the bag, VDOT no money. Hanover no money development built with no roads in place. When you dance somebody has to pay the fiddler. We need some answers. I am getting questions from those individuals as I convinced hundreds of people to not come out and oppose those things because I thought we had it worked out. Now this puts him in an awkward position. We need help in those areas. In the future somebody has to put money up and there won't be any monies right? Mr. Maloney a strict adherence to a no cash proffer policy moving forward we will not have that revenue source. Mr. Davis stated he understands what Mr. Stanley is saying and he knows that Mr. Stanley opposed \$19,503 future proffers but supported getting rid of the proffers that will pay for this. The other item is there are still things that need to be done to

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a road or playground green space now we can focus it on 54 we can still make it part of conditions and zonings. Mr. Maloney – as he understands board action it was to eliminate cash proffer policy which negotiated cash payments used to offset capital costs associated with public roads and other infrastructure and Mr. Maloney stated he did not interpret that we don't continue to look at impacts to those public facilities and we don't continue to negotiate appropriate improvements. Challenges are using the example of roads the challenge is often the improvements require acquisition of offsite right of way that the developer does not control and the question is we can negotiate all the transportation improvements but if the applicant can't acquire necessary right of way that becomes a challenge for the developer and the project. Mr. Maloney advised he does not think any of our intent is to unduly or artificially hamstring the developer. Mr. Peterson stated you have interpreted what this Board directed – we only eliminated the cash proffer policy, we never intended in any way not to deal with every project and its actual impacts and we do expect that to be worked out jointly with anybody going forward. Mr. Hazzard is there another subdivision built on the road near Providence and did they pay cash proffers. Mr. Stanley before cash proffer policy. Mr. Hazzard asked so their impact on that intersection is not addressed. Mr. Stanley stated correct in essence. Mr. Davis – advised that Mr. Harris asked for clarification. Mr. Davis advised the intent was not to eliminate negotiations for impacts within the community. Mr. Stanley we negotiated that and the project would not have been done if the developer had to do it. Mr. Hazzard would not have been done because of cash proffer and build the intersection. Mr. Stanley stated that was not the case. Mr. Harris there are two things we are wrestling with it is fairly clear going forward we will do negotiations Mr. Davis mentioned. Part of what is in question is the subdivisions that have outstanding proffers and Ms. Kelly-Wiecek has a Sheet with the number of subdivisions with

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more than 25 lots – there are 37 subdivisions in our database with more than 25 lots with cash proffers and as part of what we try to get arms around as these 37 subdivisions come back through is it the Board's intent that we have the same negotiations with the 37 on the books and that is what staff needs clarification on. The ones that already have been through the system that have to come back through the system. Not sure everyone is hearing or saying the exact same thing and is why we want to put a point on it so that the Developers who are in the audience and Staff need to know the intention. Whatever the process is we all need to come to the table with the same understanding of the ground rules we are negotiating not negotiating whatever the terms and direction of the Board are. Mrs. Kelly-Wiecek reviewed the spreadsheet has 37 subdivision 4,050 total proffered lots / available lot balance of 3759 for a total receivable of \$47M+ and wanted everyone to understand magnitude of the funds we are talking about. Mr. Harris we have done away with formula are we supposed to negotiate anything relative to transportation or any other individual impact on the zonings that have been approved. Mrs. Kelly-Wiecek stated she have never received so many emails and explained theories and process and looking at \$47M and still can't understand. Point is \$47M and think carefully and clearly and think about the impact that will be. If you have 4-5 different answers from attorneys consulted and received various answers and if we went with non-conservative or non-judicious way could we be sued? Mr. Rives advised the County can always be sued the statute says we can waive public hearing... no reference to planning commission and argument that when General Assembly authorized the board to waive the public hearing it authorized board to waive other notices. To follow the process and go through the public hearing process does not allow time to get through the process and the impact of additional month may be mitigated by bonding and result would be there would be no question for legal/procedural flaw. We prefer the safe

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course and looking for a way to minimize impact on home building community through bonding the proffers and by bundling cases. Mrs. Kelly-Wiecek advised it troubles her greatly to look at the issue and making decisions that will make us inefficient and non transparent and welcome other discussion. Mr. Maloney – to answer Mr. Peterson/ Mr. Stanley’s concerns – this is more of an operational policy 500 threshold would say what do we need to do. Arbitrary based on past evaluations and practices no magic in any one number. Mr. Peterson – we all know what the past was and we are today cleaning up this little mess and transition. Mrs. Kelly-Wiecek objects to little mess. Mr. Peterson medium mess. We have been talking here today primarily about roads not the \$47M as we captured way more than that in the reserve for capital improvements that we set up at our last meeting as well. Important for everyone to realize you can apply now and don’t wait to apply for amendments. This was a Board decision to do away with cash proffer policy and amendments and to come up with a way to expedite the process. Simplest process would be Alternate 1 with some variations is probably the way to go on this. The real question in the room that he is hearing is do we negotiate with current applicants over making adjustments between the cash proffers we counted on before and based on needs of different developments. Mr. Peterson stated he firmly believes if we negotiate with anybody then we negotiate with everybody. Mr. Peterson noted the motion did not require any additional proffers or renegotiate contract we will accept additional proffers. There are developers in our community who are very highly reputable and do a lot of good work and would hope that they cooperate with us. Mr. Hazzard to address Mrs. Kelly-Wiecek’s issue Rutland is a good example of subdivision that was put in place in 04 and there are no road proffers. Mr. Harris they have it in sections. Mr. Hazzard stated it says out of 120 lots you have 113 remaining and no road proffers in that and point is do we suddenly add road proffers back in if that is the issue. Does

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this mean we found a little loop hole and we might add some back in. Mr. Maloney stated again the staff is not trying to create loop holes but to get the board's direction and trying to avoid that question and trying to provide the citizens and developers a clear path forward and clear expectations. Mr. Peterson do we negotiate or not with everybody that has outstanding proffers. Mr. Rives – Staff's position would be not to negotiate with everyone as every circumstance is different and every case and Rutland the developer built a number of road improvements pursuant and might be a case where there is nothing to negotiate for. If you have a 3-4 lot AR-6 subdivision nothing to negotiate as far as a road improvement or widening but the Providence would be different type of circumstance and significant impact on roads example: Giles Farm and others where county is building road improvements that are expensive using cash proffers previously collected. That fund will be depleted and if there are no proffers going forward not replenished. The question is do we look at those rezoning's and say as we used to in the past if a traffic light was needed we want you to pay ¼ of traffic light and next three pay their share. Staff proposal to treat case by case and take easy ones first. Mrs. Kelly-Wiecek when Rutland was approved in 2004/05 we had not approved Cool Spring West and Giles Farm and Atlee Station Road extended now in place they all work in concert with each other and there are changes to the whole area. When looking at the example of AR-6 rural subdivision – 6 homes that is different than 600 homes in Chickahominy in same immediate area on 2-3 roads and is reason to look at these slightly differently and sensitive to staff needing direction. This is a complex issue. Mr. Maloney based on discussion to put it in context we have gotten direction moving forward to negotiate impacts and will use criteria we have used all along to negotiate impacts particularly on transportation side. We have eliminated the cash proffer for projects moving forward and some group of projects currently between the zoning phase and build out

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phase. Where ever that continuum is but for that universe of projects is it the boards desire to apply the same criteria as we are going to apply for projects that come into the process-zoning request today or are we judging by different set of criteria – one effective today moving forward and one for this group in this interim period. Mr. Peterson are we also renegeing on contract based on agreements changing rules after the fact. Mr. Maloney we are changing the rules. Mr. Rives there would be a change in the conditions only if they came in to apply. Somebody might say we have a pretty good deal because the cash proffer that is proposed for elimination pays for a whole lot more than roads but what we are primarily talking about today is roads. If somebody has Providence for example a \$19,000 cash proffer and \$8,000 of that is for roads they come in to amend proffer and might opt to delete all of that except for \$8000 for roads and stick with the deal that negotiated on the roads. Mr. Davis one proffer left, pass it on to the customer or say like that deal and would like to apply for amendment and talk further. They initiate the talk back to us. Mr. Rives clarified that is the way it has to be it has to come from the applicant and not the board. The action the board has taken is to remove the policy that was in place. They called for a generalized calculation of cash proffers based on a calculated impact. Mr. Davis we can then talk about infrastructure if they initiate it through a zoning amendment. Mr. Rives suggested we revert to list of questions presented to focus in more.

Mr. Harris recommended the Board take Item IX. Presentation from Human Services and move to the next board meeting Human Services Update. Mrs. Kelly-Wiecek made a motion to move Item IX from the agenda, seconded by Hazzard.

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	Vote:
G. E. "Ed" Via, III	Aye
W. Canova Peterson	Aye
Sean M. Davis	Aye
Wayne T. Hazzard	Aye
Angela Kelly-Wiecek	Aye
Aubrey M. Stanley	Aye
Elton J. Wade, Sr.	Absent

Motion Approved.

MOTIONS: VIII. CASH PROFFER AMENDMENT PROCEDURES AND FEES

Mr. Davis left the dais at 4:54:50 PM

Mr. Rives in reviewing questions presented, advised all the questions relate to the waiver of public hearing and if you waive public hearing do you do it for some cases, do you do it for all. Do you also eliminate the requirement for posting mail to adjoining owners, planning commission advertisement for paper? If it is the inclination of the board to follow the staff's recommended Alternative 1. Then all of these questions are resolved and that is that we would go forward, we would take the safe course, follow the traditional process but do it as quickly as possible. If I understood that discussion correctly I think all of these questions are answered.

Mr. Peterson advised he understood it that way. Mr. Rives if that is the consensus of the Board. The Chairman asked for consensus (noting Mr. Davis was not present for discussion/Mr. Wade – Absent from the meeting).

Questions Presented

1. *Waive public hearing for some or all cash proffer amendment requests?*
2. *If public hearing waiver for some, but not all, for what categories of cases should it be waived?*
3. *If public hearings are waived for some or all cases, does waiver also include:*
 - a. *Posting?*
 - b. *Mail to adjoining owners?*
 - c. *Planning Commission?*
 - d. *Advertisement in newspaper?*

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Consensus board agrees with questions 1-3 – consensus received – Davis not present.

Mr. Rives then began review of question 4.

4. *If public hearings are not waived, will Board hold joint public hearings with Planning Commission?*

Mr. Rives advised the next question is does the Board desire to hold joint public hearings with the planning commission or would it prefer just to do these sequentially. The difference in time is not great but it is an option.

Joint public hearings 4. – Mr. Hazzard advised he would not think you want to do them joint now that we have decided because there could be impacts that could delay and would worry about that. Mr. Via advised he agrees with that. Mr. Rives is that Consensus.

Mrs. Kelly-Wiecek that is a consensus no joint public hearings.

Mr. Rives advised he thinks that is a wise decision it is complicated when you hold a joint public hearing and particularly if we are going to do it for large numbers of cases but it is an option we wanted to present to the board. Mr. Via stated the Board would end up doing nothing else. Mr. Harris stated that is a question at some point that we will have to deal with procedurally even though it is not a joint meeting we may want to have an additional meeting in some months depending on how many filings we have to expedite the process. We have a normal agenda that can handle a certain amount of public hearings and so forth and the direction the Board has given us in the past again to meter that within our confines of the CSI Process with numbers like 20-30 new zoning requests potentially to come in that is going to involve a different level of workload and rather than try to prejudge that tonight we would be well served to try to work with board in coming year to make sure we do this as fast as possible and consider having additional meetings to help the development community through this as quick as possible. Mr. Peterson advised he agrees with Mr. Harris but would also like to suggest for everybody's

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sake that any expedited processes that we are working on have a sunset at the end of 2013. After that everything is back to normal process if you have not applied by then your back on the regular road. Mr. Via stated that is a good idea. Mr. Maloney advised that is understood but he does have a question related to the expedited process as Mr. Peterson described earlier in the discussion suggested holding a special Planning Commission meeting perhaps the second Thursday of the month which is a viable option and then taking it to the board essentially two weeks later. Mr. Peterson stated if he said second he did not mean second and was talking about the Planning Commission regular meeting. Mr. Maloney confirmed the third Thursday. Mr. Peterson further stated the next board meeting immediately after the regular meeting. Double advertising was discussed and Mr. Maloney advised he misunderstood what they are saying and under that scenario does not believe in a majority of cases we would have to double advertise. Think we would have enough time between the third Thursday of the month and the second Wednesday of the following month to follow the advertising sequentially. Mr. Peterson advised he was talking about doing this the same month. Mr. Maloney advised if it is the fourth Wednesday of the month then yes we would have to double advertise and wanted to clarify that point. Mr. Peterson advised he was not talking about an additional planning commission meeting and Mr. Maloney stated we are on the same page.

4:58:25 PM Mr. Davis returned.

Item 5. Was skipped and acted on later below.

5. *Does Board want certain cases, such as those involving 50 or fewer remaining lots and no specifically identified public facility impacts to be given first priority?*
6. *Does Board anticipate that cash proffer amendments will be retroactive to a certain date (e.g. December 12, 2012)?*

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Mr. Rives reviewed item 6. If it is the Board's anticipation that cash proffer amendments will be retroactive to a certain date example today or November 28, 2012 and that sounds like what the majority of the Board has in mind. That is a decision you would make when each case comes before you. Because when you amend the ordinance to amend / delete / or reduce the cash proffer you would have an effective date. Presumably you would choose the same date for each of them but your actual vote on that date would be when a case comes before you. If we know now that is the plan then the Board could direct the staff to begin accepting bonds or some other form of surety in lieu of requiring cash proffer payments to get certificates of occupancies. Mr. Peterson stated he was confused by having a retroactive date as we had a date that we made the motion which was November 28, 2012. That was the date we revoked the cash proffer policy. The amendments happen when they happen and until they happen they are still in effect and do not understand the retroactive date unless you are dealing with something I do not think this board ever intended was to repay proffers that had already been paid. That was never intended or never included. Mr. Maloney reviewed an example of what they are trying to get direction on and perhaps not create challenges for the builder/developer. The Board took an action to eliminate cash proffers 11/28/12 (Mr. Rives clarified - eliminate the policy) and initiate process for amending. The builder will have to amend cash proffer to be relieved of their obligation to pay any or all of it. They may be in a position; they are ready for a Certificate of Occupancy (CO) and to convey the property within next week or two. That is delayed by 2 months or so until they amend the proffer. Is it your decision as a Board is it your intent to have that happen or provide a mechanism - they can complete their business and based on a future outcome either fulfill cash proffer obligation or be relieved of that obligation. Mr. Peterson stated he needs advice on this can - assuming everything is complete all the construction is right

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and Mr. Bartell's Office (Building Inspector's Office) has approved everything and the only thing that is missing is the payment of the cash proffer. Can we issue a temporary CO? Mr. Maloney – stated there is a challenge with that and may defer to Mr. Rives. Mr. Maloney advised the zoning follows the property it follows the owner so if I am issued a temporary co and I have not paid a proffer until I get through this process and I am the builder and not to say anybody would do this but if I am the builder and I transfer the house the proffer has not been paid, the zoning amendment is filed now it is the property owner who is obligated to come up with that cash payment when presumably that proffer was actually negotiated as part of the sales price. The builder is out of it so the advantage of the bonding process is the entity whether it is the contract purchaser, the builder, the developer, the entity that enters into the performance agreement and posts the bond is given that bond back. We know who that money goes to. Now if the builder applies for co pays the proffer and the Board says we will let you amend zoning then we give refund to whom: property owner, do we give it to the builder. We can't track and that is the advantage of performance agreement it is very clear. Whoever enters into the agreement is refunded the surety or is obligated to pay the proffer as the case may be. Mr. Rives or some reduced amount of proffer and Mr. Maloney advised that is correct. Mr. Rives stated the other scenario is that the zoning ordinance specifies the conditions under which temporary co's can be issued and it is for landscaping and those types of things and can't imagine there is a provision in there that addresses cash proffers. We think that there is a mechanism that provides the most relief to the home builders and the most certainty to the buyers. Again for example based on the discussions we have had here today there might be a lot that comes in for a CO next week on which a previously proffered cash proffer amount of \$18,000 is due before the CO can be issued. The staff cannot waive that because it is an ordinance requirement however we could

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bond it instead of requiring payment and then once that case for amending the proffer goes forward and is decided two or three months from now. If that \$18,000 proffer has been cut down to a \$3,000 proffer to address some immediate road impacts then we know what to do with it and we do not have to go chasing whoever bought the home for that \$3,000 proffer. Mr. Peterson if you have a situation where you will start over with the renegotiation of the process with any of them I am not too sure I would be willing to put up a bond w/o having some assurance of reasonable outcome. On the other hand if we were to take the approach that when we passed this thing we are not demanding anything of any of the applicants regardless of size other than their cooperation as much as possible. Then they would probably be comfortable putting up such a bond. I don't know too many people that would be willing to put up a bond on guesswork. Mr. Rives our thought is that it puts a homebuilder in a far preferable position rather than writing a check for \$10-\$19K to simply bond ultimate payment of that amount or whatever the amount is down the road if the proffer is not amended. It should be far less costly. If they choose to they can make it a cash bond. Mr. Peterson stated that assumes that the builder was not reducing the price to cover that proffer not being there. If he has done that then he still has to go back to pay it again then that is a whole different ball game. Mr. Rives stated that is a separate question. Mr. Hazzard to address Mr. Peterson's question – this is more of a short term, the ones already built and ready to go now and therefore already be sold it is only a few where bond will be an issue. Mr. Peterson advised he can go along with that just trying to paint the picture as he sees it. Mr. Rives advised if there is risk involved we think it is reducing the sales price not in putting up the bond in lieu of actual payment of the cash proffer. Mr. Via asked if staff had consensus on this. Mr. Rives advised yes however he would like a vote on Item 7.

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7. *If cash proffer amendments may be retroactive, should staff begin accepting bonds or other surety in lieu of payment of cash proffers?*

Mr. Rives reviewed to direct the staff to begin accepting bonds or other surety in lieu of payment of cash proffers while these cases are pending. Mr. Peterson stated he can go along with that. Mr. Hazzard made a motion to direct the staff to begin accepting bonds or other surety in lieu of payment of cash proffers while these cases are pending, seconded by Mr. Peterson.

	Vote:
G. E. "Ed" Via, III	Aye
W. Canova Peterson	Aye
Sean M. Davis	Aye
Wayne T. Hazzard	Aye
Angela Kelly-Wiecek	Aye
Aubrey M. Stanley	Aye
Elton J. Wade, Sr.	Absent

Approved.

5. Does Board want certain cases, such as those involving 50 or fewer remaining lots and no specifically identified public facility impacts to be given first priority?

5. Mr. Rives began review does the board want certain cases, such as those involving 50 or fewer remaining lots and no specifically identified public facility impacts to be given first priority. Expedite those cases and get the easier ones out of the way and then so we can give relief to those homebuilders and developers and concentrate on the other ones. Mr. Peterson do we have to revisit vote from last meeting to do that. Mr. Rives stated this is consistent with the motions made and the second. Mr. Rives then reviewed this would be consistent with the goal of trying to find a way to move through these cases expeditiously and efficiently. Mr. Peterson then asked Mr. Rives to read the motion from the 11/28/12 meeting. Mr. Rives reviewed the motion from 11/28/12 to be: Mr. Peterson moved that the Board accept the cash proffer and capital funding committees' recommendations to eliminate the balance of receivable cash proffers

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provided that the parties responsible make proper applications to amend those zoning cases to delete the cash proffer condition. Mr. Peterson added a sentence to the motion that we instruct the County Attorney to work with the Planning Director to develop a means of expediting applications to remove the proffer condition from existing zoning cases and bring back to the Board for approval. Mr. Rives advised our intent is that this prioritization be a means of expediting the cases. Mr. Harris advised in simplified terms we will be having those conversations / negotiations for all. Mr. Peterson stated all as far as he is concerned. Mr. Harris all correct. Mrs. Kelly-Wiecek stated for all but we would be doing those involving 50 or fewer first as they apply. Mr. Harris clarified as they file and that is the key when they file. Mr. Peterson if you have discussion then have them with everybody – treat everyone the same. Mr. Maloney advised he understands. The Chairman advised Board Consensus on that. Mr. Rives clarified that can be direction to staff as that is not a change in existing policy. Mr. Rives then asked if there are remaining questions that the Board needs to address.

Mr. Peterson asked if you feel you have direction. Mr. Maloney – yes from planning perspective.

Mr. Harris reviewed that Mr. Peterson would bring up one more issue.

Reconsider the motion to advertise the public hearing for Jan 9th on the motor vehicle fee,
Mr. Peterson stated at our last meeting we had a motion to have a public hearing on the other portion of the proffer committee's recommendation on the vehicle license fee and since that time we learned that basically when the vehicle license was originally done away with it was a \$28.00 fee and the committee as well as members of the Board thought that was a tax break for the citizens we were just reducing the amount of that tax break by going to \$10.00 instead of the \$28.00 and have since learned that never really happened that it was a zero sum move that the

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\$28.00 was gone but it was added back in personal property side and being the case a number of us felt it actually becomes a tax increase that was never the intent of anybody. In talking to the staff about that the staff has been looking over the last couple of weeks - seeing other alternative ways of approaching this without having to have that vehicle license fee to allow them to continue with that I would like to rescind the motion to have public hearing so the staff can proceed to do that without adding the fee. Mr. Rives in order to comply with Roberts Rules of Order that would require two motions: 1) motion to reconsider the motion to advertise the public hearing for Jan 9th on the motor vehicle fee. Once that is made, seconded and approved then that motion is back on the table and someone may make a motion to not have the public hearing...

Mr. Peterson motion to reconsider the motion to advertise the public hearing for Jan 9th on the motor vehicle fee, seconded by Mr. Hazzard.

	Vote:
G. E. "Ed" Via, III	Aye
W. Canova Peterson	Aye
Sean M. Davis	Aye
Wayne T. Hazzard	Aye
Angela Kelly-Wiecek	Aye
Aubrey M. Stanley	Aye
Elton J. Wade, Sr.	Absent

Motion to advertise is on the table the maker may withdraw the motion.

Mr. Rives clarified that the motion to advertise the public hearing for Jan. 9th is on the table and the maker of the motion may withdraw that motion.

Mr. Peterson motion to withdraw motion to advertise the public hearing for Jan 9th on the motor vehicle fee, concurrence by second of the original motion - Mr. Hazzard concurrence to withdraw. Motion no longer on the table.

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Mrs. Kelly-Wiecek understand that we operated within Roberts Rules of Order but a number of citizens she had spoken with, many citizens she had spoken with were looking forward to the opportunity to come and discuss the issue of the motor vehicle fee not because they wanted a motor vehicle fee but because they saw it as an opportunity to come and address the broader picture of which they felt they did not have the input and that is how do we fund growth here in Hanover and Mrs. Kelly-Wiecek still believe that we have rescinded the motion and understand there is not going to be a public hearing now on the motor vehicle fee but encouraged this board to think very carefully about ways that we might solicit that public input and solicit and encourage opportunities for people to come out and be heard and knows we have citizens' time each board meeting and advised she will go back to the folks who contacted her and encourage them to come forward and speak but she is a little disappointed that she will have to go back and tell her constituents and some are not necessarily her constituents that they will not have the opportunity to come forward and talk about how they think we are going to be funding roads and schools and offered that for the record.

~~3:45 p.m. IX. Presentation Human Services Annual Report Mrs. Crossen Powell, Social Services, Mrs. Sager, Community Services Board and Ms. Cadiena, Health Department~~

~~*Board Sheet Background: A presentation will be made to the Board of Supervisors to highlight human service activity during the last fiscal year. The update includes data and trends as reported by the various human services departments including Social Services, Community Services Board, and Health Department. The intent of the report is to provide an annual assessment of the general state or "health" of the community.*~~

~~*The presentation continues to show the increased demand for services in this area. It will also serve as a reminder of the many programs and services available to our residents.*~~

Request for Extension of deadline in Compliance Agreement Between Hanover County and Curtis and Bernice Shepperson – Mr. Taylor and Mr. Shepperson

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Board Sheet Background: Hanover County entered into a Compliance Agreement with Curtis and Bernice Shepperson in 2010 following the second documented escape of chimpanzees at the Shepperson facility. Under this Agreement, the County agreed to refrain from prosecuting the Sheppersons for violation of Hanover County Code §4-80 and the Sheppersons agreed to make certain structural and procedural improvements to their facility and relocate the four unpermitted chimpanzees by December 23, 2012. They further agreed to sterilize the two male chimpanzees in order to prevent the birth of additional chimpanzees. The improvements and sterilization were recommended by Dr. Steve Ross, a nationally recognized expert in chimpanzees and their care. The structural and procedural improvements have been made and the two male chimpanzees have been sterilized. However, Mr. Shepperson has been unable to relocate the four unpermitted chimpanzees because there is no space available at the zoos and sanctuaries in the United States that have facilities to house chimpanzees.

Mr. Shepperson requests a twelve month extension of the deadline in the Compliance Agreement to relocate the four unpermitted chimpanzees.

Copies of the Compliance Agreement, the First Amendment to the Compliance Agreement, the Notice of Violation, and the Revised Notice of Violation are attached.

- (1) deny Mr. Shepperson's request for an extension of the chimpanzee relocation deadline in the Compliance Agreement; and*
- (2) direct County staff to work with Mr. Shepperson to develop a plan for disposition of the chimpanzees, and report back to the Board on January 23*

5:16:46 PM Mr. Stanley left the meeting.

Mr. Taylor introduced this request and advised that Mr. Wade was not present due to illness.

5:18:15 PM Mr. Stanley returned to the meeting.

Request 12 month extension of deadline to relocate four unpermitted chimpanzees
Location 8207 Bultaco Trail, Cold Harbor, VA

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Zoning A-1
Acres Over 30

Aerial view of property displayed just off of Route 360.

Background:

- ❖ 1999 one chimpanzee approved and 2000 second chimpanzee approval – Board of Supervisors approved Vicious Animal Permit and amended permit for 2 chimpanzees
- ❖ March 28, 2007 - Board of Supervisors approved a Conditional Use Permit for a zoo
- ❖ July 2010 – Second documented chimp escape occurred; County Administrator’s Office became aware that Mr. Shepperson had 6 chimps in his possession
- ❖ August 2010 – Notice of Violation issued to Mr. Shepperson for violation of **Hanover County Code § 4-80, a class 4 misdemeanor**, giving Mr. Shepperson 90 days to come into compliance
- ❖ September 2010 – Revised Notice of Violation issued, giving Mr. Shepperson 90 days from revised Notice of Violation

- ❖ December 2010 – Compliance Agreement between Hanover County and Mr. Shepperson.
 - ❖ Mr. Shepperson agreed to relocate 4 unpermitted chimps within 2 years and make structural and procedural improvements to his facility.
 - ❖ Hanover County agreed to refrain from prosecuting Mr. Shepperson for violation of Hanover County Code § 4-80, conditions of permit, and zoning violations.
- ❖ 2011 – Structural/procedural improvements made
- ❖ December 23, 2012 – Deadline for relocation of 4 chimps

December 2010 Compliance Agreement:

Two Goals:

1. Solve immediate safety problems by improvements to the facility and procedures
2. Relocate 4 unpermitted chimps within 2 years

December 2010 Compliance Agreement:

Facility Improvements Made:

- ✓ Install double locks on primary access doors
- ✓ Implement safety/security protocols
- ✓ Sterilize two male chimps

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- ✓ Install high-gauge steel bars on windows
- ✓ Install high-gauge steel bars on attic access door
- ✓ Install a viewport in the door to the building
- ✓ Install a security vestibule around the outdoor cage primary access door

December 2010 Compliance Agreement:

- Use good faith efforts to relocate 4 unpermitted chimps within 2 years
 - Immediately begin the process of locating a suitable placement
 - Keep the County informed of this process
 - Work diligently in cooperation with Hanover County Animal Control and outside experts to find appropriate placements for 4 chimps

AZA Accredited Zoos and NAPSA Member Sanctuaries map with locations reviewed.

Mr. Davis and Mr. Taylor generally discussed NAPSA and what it stands for and Mr.

Taylor responded later in the meeting.

Mr. Peterson asked if there was a sanctuary in Arizona and Mr. Taylor advised there are other sanctuaries this map shows the ones identified by Project ChimpCARE.

Photos of the site prior to improvements being made were displayed.

Staff Recommendation:

- (1) deny Mr. Shepperson's request for an extension of the chimpanzee relocation deadline in the Compliance Agreement; and
- (2) direct County staff to work with Mr. Shepperson to develop a plan for disposition of the chimpanzees, and report back to the Board on January 23,

2013

Mr. Taylor and Mr. Via generally discussed the sterilization was performed by a veterinarian.

Mr. Peter Henderer, Attorney for Sheppersons' came forward, A Handout from Mr. Henderer was passed out (Exhibit 1 of 1). Referred to the handout and advised before County began permitting the animals. A lot of the background history handed out has a lot of the

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information the Board has already seen but goes back to the acquisition to the first chimpanzee in 1997 before the county began permitting chimpanzees and permitting similar types of animals and shows that they have had the first chimpanzee Toby since that time and got their first permit for Toby in 1999 when permits were first issued by the County and they did receive a second permit in 2000. They did acquire 4 other chimpanzees - 3 came through a breeder loan program and there was a woman in Florida (Jenny Val Buena) who wanted to lend three chimpanzees to the Sheppersons' for the purposes of breeding them in the intervening time she lost her licenses to have her chimpanzees so they were unable to return to her and that is how three of them came into his possession. That is an unfortunate situation in that he kind of got stuck with them however he has kept them and he has maintained them in order to ensure their good health. This was before the 2010 incident which led to the escape which resulted in the compliance agreement that Sheppersons' entered into with the County under which they agreed to relocate four of the chimpanzees. Part of the process was an evaluation of the Shepperson's facilities' by Steve Ross of Project ChimpCARE - his report is included in the materials handed out and the Board has seen this before. Many of the suggestions of Steve Ross were incorporated into the compliance agreement particularly the improvements to the facilities' all of which the Sheppersons' made and the particular provision on relocation is correct as cited by Mr. Taylor but it does note that any of the proposed relocation sites should be approved by the experts associated with Project ChimpCARE including Steve Ross. The issue was to try to provide the most humane outcome for the chimpanzees and try to provide some place safe for them to go in the form of a sanctuary. Over the course of the last two years the Shepperson's have acted in good faith and tried to relocate the chimpanzees, they have reached out with project ChimpCARE to try to identify places at different sanctuaries. The Shepperson's have been in

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regular contact with Steve Ross to try to provide and to contact the sanctuaries and try to find an adequate relocation site for them. That has turned out to be very difficult to find a suitable sanctuary with available space to take these four chimpanzees but they have continued to work on that issue. Mr. Henderer has copies of the most recent letters that the Shepperson's have sent included in the materials and obviously Steve Ross has written an additional report that notes the shortage of available spaces in chimpanzee sanctuaries. Mr. Henderer added that in the intervening time beside the Sheppersons' having been in full compliance with the compliance agreement in terms of doing all of the other things requested of them there have been no safety issues over past 2 years all of the inspections that Hanover County had done have been positive (reports included) that report the facility is very safe and the animals are in good health and that the facility is very clean. With one exception the neighbors of the Sheppersons' have been supportive of the chimpanzees (included in handout). The alternative here is very limited we have two extremes on one hand. Mr. Via interrupted to ask if there were people who were not in favor of having those there - some neighbors. Mr. Henderer advised there is one person. Mrs. Kelly-Wiecek clarified two neighbors. Mr. Via stated to not say there are no dissenters when there are. Mr. Henderer advised he only knew of one and now he knows there is a second. Mr. Henderer stated the Shepperson's are looking for addition time - additional 12 months in order to find placement for the chimpanzees. Mr. Henderer knows the County had recommended denying this request but really the best opportunity here is to place the chimpanzees in an appropriate facility and an appropriate sanctuary for their good health. The alternative is to probably kill the chimpanzees and Mr. Henderer advised he does not think anybody really wants to kill the chimpanzees and that is kind of an extreme position. Obviously another alternative would be to allow the Shepperson's to keep six and he does not think the County ever expressed

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any interest in permitting that so we are looking to try to create some type of middle ground between those two extremes. We think granting them an additional twelve months to try to place the chimpanzees is reasonable under the circumstances. The Chairman asked the Shepperson's if they wished to address the board and they declined. Mr. Taylor responded to Mr. Davis' question earlier that NAPSA stands for the North American Primate Sanctuary Alliance founded in 2010 not too long ago by seven of the leading chimpanzee's sanctuaries on the continent. The mission of NAPSA is to advance the welfare of captive primates through exceptional sanctuary care, collaboration and outreach. NAPSA is one of the sources cited on the Project ChimpCARE site which is the site by Mr. Steve Ross who we have been relying on for our advice. Mr. Rives stated that every member of the staff who has been involved in working on this case has the concern that if the board were to grant the one year extension that one year from today we would be back here in exactly the same situation we are in now. We acknowledge and appreciate the improvements to the physical facility that has been made and those have made the community safer but the fact is that we are four chimpanzees out of compliance and do not appear to be any closer to coming into compliance than we were 2 years ago when this agreement was originally approved. Mr. Rives advised his question to Mr. Henderer whose presentation he appreciated is what assurance you could give us that one year from now there will be compliance if the Board were to extend this agreement that we would be into compliance. What would be different in the next years' time in the efforts to relocate the chimps than the efforts that we have seen over the last two years? Mr. Henderer advised that is a legitimate question and concern. It is very difficult for the Sheppersons' to assure the Board of what the third parties are going to be able to do. It is very hard to be able to say yes we are going to be able to find a sanctuary that has space for four chimpanzees in the next twelve months. They have been looking for 24 months and it

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has been hard to find and obviously the report of Project ChimpCARE suggests that it is difficult to find. By the same token if the Staff's recommendation is to develop a plan for disposition isn't that plan for disposition going to be substantially similar to what we are doing now which is we really need to continue to try to work on trying to find suitable placement for the chimpanzees and it needs to be at some type of safe and humane facility and while we can continue to work on that and continue to press forward with that it is hard to assure the Board that yes there is going to be four spaces that open up in the next twelve months and agrees that is a concern but think the appropriate response is the Sheppersons' have to continue to work on that. Mr. Hazzard asked Mr. Taylor if you were to negotiate with the Sheppersons' in the next 30 days for disposition what do you think you would do. Do you recommend we kill them? Mr. Taylor advised that would be a last resort. Mr. Hazzard asked if we get to the 22cnd is that the last resort. Mr. Taylor advised if that is the direction of the Board we will report back on the January 23, 2013 with a recommendation. This would give us time to talk some more about what we could try to do and Mr. Rives statements until this comes to the point where something has to happen it will be difficult to make something happen. We can pick any date and if it is 12 months, 6 months whatever we would probably be in the same exact position that we are today. Mr. Rives the agencies which arrange for the placement of chimpanzees have a priority list and look at physical circumstances where housed, health and care and our view is as long as the chimps are there with the consent of Hanover County government as has been the case over the last two years as has been the case with the ongoing agreement they do not rise to the top of the list. If the facility is in violation of animal control ordinances and in violation of the conditional use permit which governs the operation of the facility we think extending existing agreement

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makes it less likely not more likely that these chimpanzees will be adopted out and that is why we recommend denial of the request.

Mr. Peterson advised he visited the facility and is a fan of zoos and thinks Mr. Shepperson's facility is equal to anything he has seen throughout the country but he does have concerns. Mr. Peterson advised there is no doubt that Mr. Shepperson loves every one of the animals he has got out there and takes extremely good care of them. Mr. Peterson does have concerns when the chimps will outlive Mr. Shepperson and probably his son as to how the long term care would be taken. Concerned when seeing the five letters sent out looking for people to help none of them were dated earlier than October 15, 2012. Mr. Henderer advised those are his most recent letters he has been working with Project ChimpCARE and had monthly calls with them throughout the last two years. We do not have documentation of the calls but hopefully Mr. Ross would confirm that however it is not documented. Mr. Stanley advised that he has served on the Board through the years this request has been before the board and advised Mr. Wade called Mr. Stanley last night. Mr. Stanley clarified that Mr. Wade has been ill over the last two weeks and he had tests today and was not able to be present. Mr. Wade told Mr. Stanley that the Shepperson's were really great people, they did everything they were asked of over the years and he is very fond of them and they have been very good community citizens. Of course Mr. Wade would like to give Mr. Shepperson the year that he asked for and he said he could go for 6 months and if the board deemed it necessary to come back in 30 days with a recommendation that hopefully in that 30 days that our Staff could work with the Shepperson's and now their attorney to work out an agreement where he could have it for 6 months but after that no more as something has to be done with the chimps. Those were his wishes and he was very kind. Mr. Davis stated he visited the facility and Mrs. Kelly-Wiecek and he received a call from a reporter

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and advised that he had no comment until the Board reviews the request and advised that Mr. Shepperson is a fine man, does the right thing and is a salt of the earth Hanoverian. Mr. Wade brought it up in the hospital while Mr. Davis was there visiting him. Mr. Davis advised that the Attorney provided information the Board already had and appreciates the Shepperson's being present and advised we have to listen to the legal side from the Staff and the recommendations. Mr. Davis advised what compels the Board to not take the Staff recommendation. Mr. Henderer advised it appears from the Staff recommendation #2 that they really want to develop a plan for the disposition of the chimpanzees that hopefully would be consistent with what the Shepperson's are trying to do is to try to place them at a suitable sanctuary. Mr. Henderer advised he is not sure how long county staff would take to do that and whether they would be able to do it any faster than the Shepperson's would but essentially that is a common goal to try to place 4 chimpanzees in sanctuaries and at some place that is suitable, appropriate and humane for the chimpanzees. That hopefully would reach the same goal that the 12 months that the Shepperson's have asked for would be 12 months to achieve disposition of the chimpanzees and if the County is not interested in killing them then essentially they are asking to do the same thing that the Shepperson's would be doing. Mr. Stanley advised that after listening to the debate he is also listening to Mr. Wade's recommendation as this is in his district and he has been a good representative of his people if the Shepperson's want a year then Mr. Stanley is recommending on behalf of Mr. Wade that the County give them 6 months to work the situation out and after 6 months the chimps will be removed. No one wants the chimps euthanized. Mr. Stanley asked the staff, Shepperson's and their attorney, to work on this as we have to find somewhere for the chimps, seconded by Mrs. Kelly-Wiecek. Mrs. Kelly-Wiecek advised she visited and it is sturdy and safe looking facility but as with the issues that caused the accidental

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escape before we are dealing with a human factor here and is one of the reasons we are looking so hard for an appropriate facility is because when you go to a professional facility not just in terms of construction but in professionally staffed facility you have a higher degree of redundancy and higher degree of continuum of care, safety and policy procedures. We have to consider the worst case scenario in a situation like this. Mr. Via stated the chimps are extremely dangerous and the times that they have gotten out we are lucky that we did not lose somebody and he does not think there should be any of them in the County and truly believes with due respect for Mr. Stanley and Mr. Wade he cannot support giving an extension. You had two years to do it and if you were going to do it you would have done it in that time.

	Vote:
G. E. "Ed" Via, III	No
W. Canova Peterson	Aye
Sean M. Davis	Aye
Wayne T. Hazzard	Aye
Angela Kelly-Wiecek	Aye
Aubrey M. Stanley	Aye
Elton J. Wade, Sr.	Absent

Motion carries 5:1

Mr. Harris clarified that is six months from the 23rd which was the signed agreement.

Closed Session - Section 2.2-3711(A)(7) – Consultation with legal counsel and staff regarding proposed development agreement for a project in Northlake Business Park

Mr. Peterson moved that the Board of Supervisors go into Closed Session pursuant to the following: Section 2.2-3711(A)(7) – Consultation with legal counsel and staff regarding proposed development agreement for a project in Northlake Business Park

Seconded by Mr. Stanley.

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	Vote:
G. E. "Ed" Via, III	Aye
W. Canova Peterson	Aye
Sean M. Davis	Aye
Wayne T. Hazzard	Aye
Angela Kelly-Wiecek	Aye
Aubrey M. Stanley	Aye
Elton J. Wade, Sr.	Absent

Motion approved.

Board Members entered Closed Session at 5:43 p.m. p.m. At the conclusion of the Closed Session, all Board Members returned to the Boardroom, and the Chairman called the regular meeting back to order at 6:05 p.m.

Certification of Closed Session

Mr. Peterson moved that the Board of Supervisors certify that during the Closed Session only public business matters lawfully exempted from the open meeting requirement of the Freedom of Information Act and only such public business matters as were identified in the motion for the Closed Session were discussed.

Mr. Stanley seconded the motion.

	Vote:
G. E. "Ed" Via, III	Aye
W. Canova Peterson	Aye
Sean M. Davis	Aye
Wayne T. Hazzard	Aye
Angela Kelly-Wiecek	Aye
Aubrey M. Stanley	Aye
Elton J. Wade, Sr.	Absent

Motion approved.

Mrs. Kelly-Wiecek moved that the Board approve the expenditure and authorization for the County Administrator to execute development agreement in its substantive form with the

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Craig Realty Group, Richmond LLC , Hanover County and Hanover County County Economic Development Authority, seconded by Mr. Peterson.

	Vote:
G. E. "Ed" Via, III	Aye
W. Canova Peterson	Aye
Sean M. Davis	Aye
Wayne T. Hazzard	Aye
Angela Kelly-Wiecek	Aye
Aubrey M. Stanley	Aye
Elton J. Wade, Sr.	Absent

Motion Approved.

Recess

At 6:06 p.m. the Board went into recess.

Reconvene

At 7:00 p.m., the Board reconvened. Six Board Members were present. Mr. Wade was absent for the meeting

Citizens' Time

The Chairman opened Citizens' Time to anyone who wished to address the Board of Supervisors for up to five minutes on any matter within the scope of the Board's authority that is not on the agenda for that meeting.

No one to address the Board, Citizens' Time closed.

Presentation of Proclamations for Eagle Scouts –

- A. **Chase Cameron Prince**, Chickahominy Magisterial District, Boy Scout Troop 500
Delivered by Mrs. Kelly-Wiecek
- B. **Paul W. G. Adam**, Cold Harbor Magisterial District, Boy Scout Troop 531- Delivered by Mr. Via.

Public Hearing – Disposal of Surplus Property via Quitclaim Deed – Hanover County, GPIN: 7880-83-0625(portion) – 10' right of way and GPINs: 7880-84-9468 (portion) and 7880-84-9165 (portion) – 5' right of way (Beaverdam Magisterial District) – Mr. Maloney

Mr. Maloney reviewed:

- This request is connected with the development of the Providence subdivision

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- HHHunt, the developer, has discovered that there are a number of easements that cross the property, including 2 that Hanover County has an interest in as the result of a property transfer to the County in 1986
- The property acquired by the County in 1986
 - At that time, 10' and 5' right of way easements were created to provide access to a 497-acre property
- This 497-acre parcel has since been divided and conveyed numerous times
- The right to use these easements appears to have been conveyed with each subsequent property transfer dating to 1919 and there is no indication that the rights of way have ever been extinguished
- Hanover County acquired 200 acres of the original tract along with the apparent right to use these rights of way
- The rights of way are not improved and are not necessary to provide access to the County property as the County property now has public road frontage on Woodside Lane

Recommendation:

- **APPROVE** disposal of surplus property identified as 10' right of way, located on a portion of 7880-83-0625 and 5' right of way, located on portions of 7880-84-9468 and 7880-84-9165 by Quitclaim Deed

No questions for Mr. Maloney. Chairman opened public hearing no one to address the board.

Mr. Stanley made a motion to approve disposal of surplus property identified as 10' right of way, located on a portion of 7880-83-0625 and 5' right of way, located on portions of 7880-84-9468 and 7880-84-9165 by Quitclaim Deed, seconded by Mr. Hazzard.

	Vote:
G. E. "Ed" Via, III	Aye
W. Canova Peterson	Aye
Sean M. Davis	Aye

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Wayne T. Hazzard	Aye
Angela Kelly-Wiecek	Aye
Aubrey M. Stanley	Aye
Elton J. Wade, Sr.	Absent

Motion Approved.

Planning Public Hearings – Mr. Maloney

Mr. David Maloney, Director of Planning, came forward to present the Planning Public Hearings.

Mr. Maloney reviewed Rezoning C-7-12(C) and Special Exception SE-23-12 concurrently.

Mr. Stanley disclosed he knows the Goodman Family for many years and has a financial relationship with them arising from some property that they have purchased from him and accordingly will recuse from participating in discussion or vote on these two matters.

Joint Public Hearings –Rezoning C-7-12(C) and Special Exception SE-23-12

C-7-12(c) JOYCE P. AND RONALD D. REED LIFE ESTATE/REED FAMILY TRUST AND CYNTHIA R. AND RAYMOND M. GOODMAN, SR., Request to rezone from A-1, Agricultural District, to AR-6(c), Agricultural Residential District with conditions, on GPINs 7863-57-2097(part) and 7863-66-0397(part),consisting of approximately 12.0 acres, and located on the north and south lines of Reed Town Lane (Private Road), approximately 850 feet south of New Market Mill Road (State Route 685) in the **BEAVERDAMMAGISTERIAL DISTRICT**. The subject property is designated on the General Land Use Plan Map as Agricultural. The proposed zoning amendment would permit the creation of one (1) additional lot for a family member for a gross density of one dwelling unit per 6.0 acres.

A copy of the Schedule of Notification and December 12, 2012 Staff Report is on file with the Board's papers. (Exhibit 1)

Mr. Maloney introduced this request, displayed the General Parcel Map,

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Executive Summary:

- The submitted plan shows 2 lots being created
- There are 2 existing residences on the 12.0 acres requested for rezoning, approval of the rezoning would allow the applicant to divide the 12.0 acres into a 6.8-acre lot and a 5.2-acre lot, each with a separate residence
 - No new homes are being constructed
- Both lots shall use the existing road

Conceptual Plan Displayed

Proffers:

- Conceptual Plan
- Tree Preservation

Recommendations:

The Planning Commission and staff recommend **APPROVAL** subject to the submitted proffers

The Companion case was then reviewed SE-23-12.

SE-23-12 CYNTHIA R. AND RAYMOND M. GOODMAN, Request a Special Exception Permit in accordance with Title I, Article 5, Section 1.6.17(b) of the Hanover County Zoning Ordinance to permit a manufactured home in the case of a medical hardship on GPINs 7863-66-0397(part) and 7863-57-2097(part), consisting of approximately 4.4 acres, zoned A-1, Agricultural District, and located at the terminus of Reed Town Lane (Private Road), approximately 2,900 feet south of New Market Mill Road (State Route 685) in the **BEAVERDAM MAGISTERIAL DISTRICT**.

A copy of the Schedule of Notification and December 12, 2012 Staff Report is on file with the Board's papers. (Exhibit 1)

Companion case reviewed.

Executive Summary:

- This is a companion case to the previous rezoning
- To allow a manufactured home in the case of a medical hardship

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- This is a request to continue the use of an existing manufactured home under a medical hardship
- The original SE approved in December 1992 has since expired
- The current resident of the home has submitted a physician's statement verifying the medical hardship
- Approval of this request will allow the property to be brought into compliance with the Zoning Ordinance

Sketch plan reviewed. It is on a portion of the property that you just rezoned and there will be a boundary line adjustment and that was reflected in the zoning and the location of the manufactured home was displayed and it will become part of the adjacent property.

Staff Recommendation:

APPROVAL subject to the conditions outlined in the staff report.

The Chairman asked if Board Members had any questions of Mr. Maloney. Hearing none, opened the joint public hearings and asked all those in favor or in opposition to come forward. Seeing no one come forward, closed the public hearing and entertained a motion for approval.

Mr. Davis made a motion to approve C-7-12(c), seconded by Mrs. Kelly-Wiecek.

ORDINANCE C-7-12(c)

OWNER OF RECORD: JOYCE P. AND RONALD D. REED LIFE ESTATE/REED FAMILY TRUST AND CYNTHIA R. AND RAYMOND M. GOODMAN, SR.

WHEREAS the Planning Commission of Hanover County has held an advertised public hearing and forwarded this case to the Board of Supervisors with a recommendation of **APPROVAL** of the adoption of the following amendment to the Zoning Ordinance and Zoning District Map of Hanover County; and

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WHEREAS the Board of Supervisors has held public hearings on the 12th day of December, 2012, and advertised in the *Hanover Herald-Progress* once a week for two successive weeks as required by Virginia Code Section 15.2-2204; and

WHEREAS the Board of Supervisors has determined that the public necessity, convenience, general welfare, and good zoning practices require this amendment.

NOW, THEREFORE, BE IT ORDAINED by the Board of Supervisors of Hanover County that the Zoning Ordinance and the Zoning District Map of this County are amended (with conditions) by the rezoning of the property described as GPINs 7863-57-2097(part) and 7863-66-0397(part), consisting of 12.0± acres located on the north and south lines of Reed Town Lane (Private Road), approximately 850 feet south of New Market Mill Road (State Route 685), (a detailed description is filed with the Board's papers) from A-1, Agricultural District, to AR-6(c), Agricultural Residential District with conditions, subject to the following conditions which were proffered by the Applicant on November 19, 2012, and accepted by the Board:

1. Conceptual Plan. The property shall be divided in substantial conformity with the conceptual plan attached, titled "Plat Showing a Property Line Adjustment of a Parcel of Land Located on Reed Town Lane," dated October 24, 2012, revised October 30, 2012, and prepared by Herman Whitt, L.S.
2. Tree Preservation. Existing trees of 5 inch caliper or greater on the Property shall not be removed with the exception of dead or diseased trees or parts thereof. This shall not prevent the removal of trees necessary for the construction of improvements, driveways, drainfields, or drainage facilities.

BE IT FURTHER ORDAINED that this Ordinance is effective on the date of adoption and the Planning Director is hereby directed to designate the boundaries of the foregoing area as rezoned, subject to conditions, on the Zoning District Map of Hanover County.

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The members of the Board of Supervisors voted to approve Ordinance C-7-12(c), Joyce P. and Ronald D. Reed Life Estate/Reed Family Trust and Cynthia R. and Raymond M. Goodman, Sr., as follows:

	Vote:
G. E. "Ed" Via, III	No
W. Canova Peterson	Aye
Sean M. Davis	Aye
Wayne T. Hazzard	Aye
Angela Kelly-Wiecek	Aye
Aubrey M. Stanley	Recused
Elton J. Wade, Sr.	Absent

C-7-12(c) Approved

Mr. Davis made a motion to approve SE-23-12, seconded by Mrs. Kelly-Wiecek.

RESOLUTION

WHEREAS the Board finds that, in its opinion, as a matter of fact, such exception will not substantially affect adversely the uses of adjacent and neighboring property.

NOW, THEREFORE, BE IT RESOLVED that Raymond M. & Cynthia R. Goodman are granted a Special Exception Permit in accordance with Title I, Article 5, Section 1.6.17(b) of the Hanover County Zoning Ordinance to permit a manufactured home in the case of a medical hardship on GPINs 7863-66-0397(part) and 7863-57-2097(part), consisting of approximately 4.4 acres, zoned A-1, Agricultural District, and located at the terminus of Reed Town Lane (Private Road), approximately 2,900 feet south of New Market Mill Road (State Route 685) in the Beaverdam Magisterial District, subject to the following conditions:

1. The manufactured home shall be located on the property in substantial conformity with the plan, titled "Plat Showing a Property Line Adjustment of a Parcel of Land located on Reed Town Lane," dated

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October 24, 2012, revised October 30, 2012, and prepared by Herman Whitt, L.S. The plan shall be recorded in the Clerk's Office of the Hanover County Circuit Court within 30 days of the Special Exception approval.

2. The Special Exception Permit shall be granted for a period of two (2) years from the date of approval or for the duration of the hardship, whichever occurs first. An extension beyond that time must be approved by the Director of Planning.
3. The manufactured home shall be removed within 60 days upon cessation of the hardship or expiration of the Special Exception Permit.
4. All development and use of the property shall comply with all Federal, state, and local statutes, ordinances, and regulations.

The members of the Board of Supervisors voted to approve this resolution as follows:

	Vote:
G. E. "Ed" Via, III	No
W. Canova Peterson	Aye
Sean M. Davis	Aye
Wayne T. Hazzard	Aye
Angela Kelly-Wiecek	Aye
Aubrey M. Stanley	Recused
Elton J. Wade, Sr.	Absent

SE-23-12 Approved

SPECIAL EXCEPTIONS

SE-22-12 BARBARA J. AND KENNETH W. RIGGINS (RIGGINS RESIDENTIAL, LLC), Request a Special Exception Permit in accordance with Title I, Article 5, Section 10.6.1 of the Hanover County Zoning Ordinance to permit an adult day care center on GPIN 8704-85-5192, consisting of approximately 0.81 acres, zoned B-1, Neighborhood Business District, and located on the west line of Hanover Green Drive (State Route 1100) approximately 400 feet north of its intersection with Mechanicsville Turnpike (U.S. Route 360) in the **MECHANICSVILLE MAGISTERIAL DISTRICT**.

A copy of the Schedule of Notification and December 12, 2012 Staff Report is on file with the Board's papers. (Exhibit 1)

Mr. Maloney introduced this request, displayed the General Parcel Map,

Executive Summary:

- The proposed adult day care will occupy a 4,050 sq. ft. building

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- The applicant is proposing to care for 25 adults with intellectual disabilities
- Prior to commencement of the use, the applicant must also obtain permits and licensure from the Department of Social Services, Building Inspections Department, and Fire Marshall's Office

Displayed the Sketch Plan and pointed out parking.

Staff Recommendation:

APPROVAL subject to the conditions outlined in the staff report

The Chairman asked if Board Members had any questions of Mr. Maloney. Hearing none, opened the public hearing and asked all those in favor or in opposition to come forward.

Ms. Barbara Riggins, Chickahominy MD, Applicant, came forward and reviewed her adult day care and the service it will provide to the community. Mr. Peterson asked if this was the first facility. Ms. Riggins advised she owns and operates five group homes in Henrico and Hanover.

Mr. Hazzard comments in support.

Seeing no one else come forward, closed the public hearing and entertained a motion for approval.

Mr. Peterson made a motion to Approve SE-22-12, seconded by Mr. Hazzard.

RESOLUTION

WHEREAS the Board finds that, in its opinion, as a matter of fact, such exception will not substantially affect adversely the uses of adjacent and neighboring property.

NOW, THEREFORE, BE IT RESOLVED that Barbara J. and Kenneth W. Riggins are granted a Special Exception Permit in accordance with Title I, Article 5, Section 10.6.1 of the Hanover County Zoning Ordinance to permit an adult day care center on GPIN 8704-85-5192, consisting of approximately 0.81 acres, zoned B-1, Neighborhood Business District, and located on the west line of Hanover Green Drive (State Route 1100) approximately 400 feet north of its

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intersection with Mechanicsville Turnpike (U.S. Route 360) in the Mechanicsville Magisterial District, subject to the following conditions:

1. The Special Exception shall be limited to an adult day care center, and the property shall be developed in substantial conformity with the sketch plan, titled "Riggins Sketch Plan," dated October 24, 2012, and prepared by Barbara Riggins. Any expansion of the existing structure will require an amendment to the Special Exception.
2. All necessary State permits or licensure shall be obtained from the Department of Social Services or other agencies, as may be appropriate, prior to commencement of the use. Copies of required permits or licensure shall be provided to the Planning Department prior to commencement of the use.
3. The adult day care operation shall serve no more than twenty-five (25) adults.
4. Should the hours of operation ever be extended to before 7:00 am or after 5:00 pm, a parking lot lighting plan, which meets the requirements of Article 7, Section 13, shall be submitted to the Planning Department for review and approval.
5. The applicant shall obtain a tenant up-fit permit from the Building Inspections Department prior to commencement of the use.
6. All development and use of this property shall comply with all applicable federal, state and local statutes, ordinances and regulations.

The members of the Board of Supervisors voted to approve this resolution as follows:

	Vote:
G. E. "Ed" Via, III	No
W. Canova Peterson	Aye
Sean M. Davis	Aye
Wayne T. Hazzard	Aye
Angela Kelly-Wiecek	Aye
Aubrey M. Stanley	Aye
Elton J. Wade, Sr.	Absent

SE-22-12 Approved

SE-24-12 CHARLES F. MIDKIFF, Requests a Special Exception Permit in accordance with Title I, Article 5, Section 1.6.23 of the Hanover County Zoning Ordinance to permit a bed and breakfast on GPINs 7801-03-2651, 6891-93-9261, 7801-04-5021, and 6891-92-5998,

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consisting of approximately 42 acres, zoned A-1, Agricultural District, and located in the southeast quadrant of the intersection of Bourne Road (State Route 617) and Taylors Creek Road (State Route 610) in the **SOUTH ANNA MAGISTERIAL DISTRICT**.

A copy of the Schedule of Notification and December 12, 2012 Staff Report is on file with the Board's papers. (Exhibit 1)

Mr. Maloney introduced this request, displayed the General Parcel Map,

Executive Summary:

- The applicant is requesting to operate a bed and breakfast out of the existing 8,500 sq. ft. home, located on a 42-acre horse farm at the intersection of Taylors Creek Road and Bourne Road

Planning Analysis:

- The property consists of:

- Residence
- 5-stall barn
- 3-car garage
- 30 acres of pasture
- Riding arenas

- No changes to the site are being proposed, and the use should have little or no impact on the area

Photos of the home, barn structures, arenas and road were displayed.

Staff Recommendation:

APPROVAL subject to the conditions outlined in the staff report

The Chairman asked if Board Members had any questions of Mr. Maloney. Hearing none, opened the public hearing and asked all those in favor or in opposition to come forward.

Mr. Michael Snavely, South Anna Magisterial District, came forward to address the board and lives across the street from the where the planned bed and breakfast is. Advised he spoke with several neighbors that could not be present and they are not in objection to having the bed and breakfast.

The stipulation they would like added is that the property which has the home (there are four tracts there) should have the permit for the bed and breakfast and not all four. The second item is the

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definition of BB and what future boards would do related to the definition. Would also like to see that the deed to the property have a covenant stipulates that based on the definition of the bed and breakfast at this date and time be the governing factor of the bed and breakfast as future boards could change what the County says a bed and breakfast is and we would like not to give that blanket statement and have a public saying in that.

Mrs. Elaine Midkiff, South Anna MD, Appreciate Mr. Snavey's comments who lives across the street. Not sure how you would operate BB without access to the two other tracts in front of the house and the other tract behind the house. Concerned by those comments and the impact.

Seeing no one else come forward, closed the public hearing and entertained a motion for approval.

Mr. Hazzard asked what the restrictions are on BB questioned by Mr. Snavey. Mr. Maloney advised ordinance provisions were included in the Board packets and it does limit the BB to accessory use to a single family dwelling and is important. Mr. Maloney and Mr. Hazzard generally discussed that should cover what Mr. Snavey wanted to limit to one facility. Mr. Maloney then reviewed the other requirements of the zoning ordinance - The property has to be the residence of the owner, minimal lot size 2 acres, provide off street parking, operator has to keep list of names at BB, limit stays to 14 days by any one guest, structure to remain residential, no more than two employees on property and limitation on signage. From the Staff perspective and not sure if it is the Midkiff's desire or not they may wish to use other facilities as amenities to BB. From Staff perspective limiting to single parcel or all do not see any significant benefit to owner or surrounding community and if separate parcels are under separate ownerships and they have the ability to develop those parcels for individual residence. By having SE in place for entire property

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limits the I-zoning action to what currently exists no matter what the future definition of BB would be. Staff believes all appropriate protections in place.

Mr. Rives putting a deed restriction or restrictive restriction in the covenants would not accomplish what the speaker was seeking. Noted that the recommended conditions on the SE provide for development in accordance with the sketch plan so the facility could not be expanded, condition states the number of guests shall not exceed 6 people.....stringent limits on the impact. Mr. Hazzard based on Mr. Maloney and Mr. Rives comments this seems to be a perfect fit and clarified in speaking to Mr. Snively should not have to worry about a whole lot of changes, it is one facility and advised he hopes it works out good for the entire neighborhood.

Mr. Hazzard made a motion to Approve SE-24-12, seconded by Mr. Stanley.

RESOLUTION

WHEREAS the Board finds that, in its opinion, as a matter of fact, such exception will not substantially affect adversely the uses of adjacent and neighboring property.

NOW, THEREFORE, BE IT RESOLVED that Charles F. Midkiff is granted a Special Exception Permit in accordance with Title I, Article 5, Section 1.6.23 of the Hanover County Zoning Ordinance to permit a bed and breakfast on GPINs 7801-03-2651, 6891-93-9261, 7801-04-5021, and 6891-92-5998, consisting of approximately 42 acres, zoned A-1, Agricultural District, and located in the southeast quadrant of the intersection of Bourne Road (State Route 617) and Taylors Creek Road (State Route 610) in the South Anna Magisterial District, subject to the following conditions:

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1. The bed and breakfast shall be developed as shown on the sketch plan titled, "Midkiff Sketch Plan, Page 1 and 2", prepared by Elaine Midkiff, dated November 27, 2012. The number of guests of the bed and breakfast permitted onsite at any time shall be limited to six (6) people, and no more than three (3) bedrooms will be used for guests of the bed and breakfast.
2. All development and use of the Property shall comply with all applicable federal, State and local statutes, ordinances and regulations.

The members of the Board of Supervisors voted to approve this resolution as follows:

	Vote:
G. E. "Ed" Via, III	Aye
W. Canova Peterson	Aye
Sean M. Davis	Aye
Wayne T. Hazzard	Aye
Angela Kelly-Wiecek	Aye
Aubrey M. Stanley	Aye
Elton J. Wade, Sr.	Absent

SE-24-12 Approved

CONDITIONAL USE PERMITS

CUP-5-12 BROWN GROVE BAPTIST CHURCH, Requests a Conditional Use Permit in accordance with Title I, Article 5, Section 1.5.21, of the Hanover County Zoning Ordinance to permit a church expansion and recreation center on GPINs 7798-36-5195, 7798-36-4728(part), and 7798-36-0550(part), consisting of approximately 10.70 acres. The property is zoned A-1, Agricultural District, and is located on the north line of Ashcake Road (State Route 657) approximately 1,100 feet east of its intersection with Egypt Road (State Route 741) in the **BEAVERDAM MAGISTERIAL DISTRICT**. The subject property is designated on the General Land Use Plan Map as Agricultural. *A copy of the Schedule of Notification and December 12, 2012 Staff Report is on file with the Board's papers. (Exhibit 1)*

Mr. Maloney introduced this request, displayed the General Parcel Map,

Executive Summary:

- Expansion of Brown Grove Baptist Church, which includes a new recreation center for use by the church and the community

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- Expanding the square footage by more than 50% at the site of the existing church requires that the church first obtain approval of a CUP

Sketch Plan:

- 14,750 sq. ft. recreation center and additional parking areas adjacent to the existing and proposed structures
- The sketch plan shows that the parking requirements have been met
- The property has 4 existing entrances
 - 2 of the entrances will be closed
 - 1 new entrance is being proposed in front of the new recreation center
 - A total of 3 entrances is shown on the sketch plan
- The future sanctuary, shown as a future phase, is not part of the current CUP request

Sketch plan displayed as well as elevations.

Recommendations:

The Planning Commission and staff recommend **APPROVAL** subject to the conditions outlined in the staff report

The Chairman asked if Board Members had any questions of Mr. Maloney. Hearing none, opened the public hearing and asked all those in favor or in opposition to come forward. Seeing no one come forward, closed the public hearing and entertained a motion for approval.

Mr. Stanley made a motion to approve CUP-5-12, seconded by Mr. Hazzard.

RESOLUTION

WHEREAS after a public hearing held on this 12th, day of December, 2012, as advertised in the Herald-Progress once a week for two successive weeks as required by Virginia Code, Section 15.1-431 and the Hanover County Code.

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NOW, THEREFORE, BE IT RESOLVED that Brown Grove Baptist Church is granted a Conditional Use Permit in accordance with Title I, Article 5, Section 1.5.21, of the Hanover County Zoning Ordinance to permit a church expansion and recreation center on GPINs 7798-36-5195, 7798-36-4728(part), and 7798-36-0550(part), consisting of approximately 10.70 acres. The property is zoned A-1, Agricultural District, and is located on the north line of Ashcake Road (State Route 657) approximately 1,100 feet east of its intersection with Egypt Road (State Route 741) in the Beaverdam Magisterial District, subject to the following conditions:

1. The Property, which is the subject of this request, shall be used only for church related uses and associated activities and shall be developed in substantial conformity with the sketch plan titled "Brown Grove Baptist Church," prepared by Willmark Engineering, PLC, dated August 21, 2012, revised October 16, 2012.
2. The recreation center shall be constructed in substantial conformity with the elevations titled, "Brown Grove Baptist Church," prepared by Perretz & Young Architects, dated October 11, 2012. Rooftop or ground level HVAC equipment on this building shall be fully screened from view from Ashcake Road and adjacent residential uses by use of architectural features and materials that are compatible with the structure's architecture, materials and colors. Ground level equipment shall be fully screened at a height not less than the equipment being screened, utilizing evergreen landscaping, attached or unattached wing walls, decorative masonry or fencing, which must also be compatible with the structure's architecture, materials and colors.
3. No expansion of structures or parking areas beyond those shown on the above-mentioned sketch plan shall be added to the Church's site without an amendment to the Conditional Use Permit.

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4. With the exception of the existing parking lots, the new parking areas shall be designed and landscaped in accordance with Article 5A, Section 3, of the Zoning Ordinance.
5. Prior to site plan approval, the Church shall reserve thirty feet (30') of right-of-way from the centerline of Ashcake Road (State Route 657) to the property for future road widening purposes. Upon request of the County or VDOT, the Owner agrees to dedicate any right of way within the reserved area that is necessary for road widening to the County or the Commonwealth of Virginia, free of cost and free of encumbrances.
6. A 15' thoroughfare buffer shall be provided along Ashcake Road in front of the recreation center, landscaped in accordance with Article 7, Section 2B, of the Zoning Ordinance. In front of the existing church and parking areas, landscaping shall be provided in accordance with landscape plan, shown on Page L1.1 of the sketch plan.
7. All improvements to the property that affect the right-of-way shall meet VDOT standards.
8. A subdivision plat application shall be submitted for review and approval for the property line adjustments prior to site plan approval.
9. All development and use of the Property shall comply with all applicable federal, state, and local statutes, ordinances, and regulations.

The members of the Board of Supervisors voted to approve this resolution as follows:

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	Vote:
G. E. "Ed" Via, III	Aye
W. Canova Peterson	Aye
Sean M. Davis	Aye
Wayne T. Hazzard	Aye
Angela Kelly-Wiecek	Aye
Aubrey M. Stanley	Aye
Elton J. Wade, Sr.	Absent

CUP-5-12 Approved

- CUP-6-12** **DONNA L. R. AND JOHN E. HANNEMAN**, Requests a Conditional Use Permit in accordance with Title I, Article 5, Section 1.5.22 of the Hanover County Zoning Ordinance to permit an agricultural and forestal support center on GPIN 7758-09-2720, consisting of approximately 10.0 acres. The Conditional Use Permit area is limited to approximately 1.88 acres within the property. The property is zoned A-1, Agricultural District, and located on the south side of Greenwood Road (State Route 625) approximately 2,300 feet east of its intersection with Ashland Road (State Route 623) in the **SOUTH ANNA MAGISTERIAL DISTRICT**. The subject property is designated on the General Land Use Plan Map as Suburban Transitional (1-2 units per acre).
A copy of the Schedule of Notification and December 12, 2012 Staff Report is on file with the Board's papers. (Exhibit 1)

Mr. Maloney introduced this request, displayed the General Parcel Map and Zoning Map,

Executive Summary:

- For several years, the applicant has been packaging firewood in a large barn behind their residence located on Greenwood Road
- Complaints from the community this year made the Planning Department aware of the operation, which led to a Notice of Violation being sent to the property owner in January
- The applicant has submitted a CUP for the firewood packaging operation, classified as an agricultural and forestal support center in the Zoning Ordinance, in an effort to bring the property into compliance

Planning Analysis:

- Wood is split offsite and delivered to the subject property in a dump truck
 - Approx. 3 truckloads are delivered daily
- The wood is dumped into a 4700 sq. ft. barn, where machines are used to wrap the bundled logs with plastic film

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- Packaged wood is placed on pallets
- The pallets are temporarily stored in the barn until they are loaded onto trucks for distribution
- Delivery truck picks up the packaged firewood about twice a week
- Current hours of operation 7:00 am to 7:00 pm, August through February
- Employees of the business working onsite run the 2 packaging machines
- Neighbors have complained about noise from multiple trucks entering and exiting the property, sometimes at late hours of the night
- Other complaints have concerned the noise from activities taking place within and around the barn, particularly from loading and unloading the wood
- Distance between the entrance on Greenwood Road and the barn where the firewood packaging operation takes place is approx. 1000'
- Since the site generates fewer than 50 trips per day, VDOT has indicated that no improvements to the existing entrance are necessary

- ❖ A community meeting was held on Monday, November 12, 2012, to discuss the neighbors' questions and concerns
- ❖ The issues of concern included the following:
 - Noise from the loading and unloading of trucks
 - Potential fire hazard from the storage of wood pallets
 - Dump trucks and tractor trailers entering and exiting the property, sometimes after 7 pm
 - Possible effects on property values for adjacent residences

Sketch Plan Displayed, Driveway with large turnaround area, barn structure and semi enclosed addition with pallet material location was pointed out. Roughly 40-50 ft from the edge of the proposed barn expansion to the adjacent property.

Recommendations:

The Planning Commission and staff recommend **APPROVAL** subject to the conditions outlined in the staff report

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The Chairman asked if Board Members had any questions of Mr. Maloney. Hearing none, opened the public hearing and asked all those in favor or in opposition to come forward.

Mr. Albert Wright, Adjoining property owner to Mr. Hanneman, there was a community meeting at the firehouse and planning commission concerns were taken care of and Mr. Hanneman was given more than requested. He requested 5 day a week operation and he was given Hours 7:00 a.m.-7:00 p.m. daily and Saturday hours (Nov –Feb. – 8:00 a.m. – Noon and other months 7:30 a.m. – 3:30 on Saturday hours). Concerned with use of tractor trailer 10 times per week, and was given the operation two days before a storm warning. The business was operated for nine years illegally and it took the neighbors to complain about this and he was fined for this by the County but still allowed to operate. Property value is a concern and he has talked with several realtors. Should have requested permits.

Mr. Lewis Mosley, Adjacent property owner, echoed Wright's comments. If this will go forward want to make sure that the noise outside of normal hours of operation will not be permitted and noise is one of the two biggest issues and he moved out of his house in 2010 and he could not handle it any longer. It is a fire hazard to have a business like this. Requested no expansion of the business over and beyond the CUP, there is another building to be built. Their homes have turned into business parks. Request port o potty be moved to the back of the property so the property owners do not have to see it. Applaud Mr. Hanneman for operating his business. Dirty rotten trick for the County to put AR2 property in the middle of upscale homes. Don't know what to do to stop it.

Ms. Caroline Cooke, Beaverdam MD, where is the wood coming from, local or beyond the locality and where is the wood going to be sent. Tremendous effort by dept of forestry to prevent

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disease carrier in trees macrobiotic and insects and they request to not import wood and transport. Do not want to infect a clean area not sure if this was discussed or if the applicant could speak to those questions.

Mr. Maloney would have to defer to applicant on several of Ms. Cooke's questions. Mr. Maloney does know whether the wood is being distributed statewide.

Mrs. Hanneman came forward, and acknowledged they have heard neighbors' concerns at previous meetings and they make this to be an industrialized area and it is not industrial it looks like any other Hanover barn; instead of hay we have wood. We are not a big business (4 family members comprise staff (only one full time); packagers come in and part time driver. Distribution of wood to Kroger's- Virginia Beach to Roanoke and Pleasants Stores. The wood is local from tree companies in our area and it is already split before it comes to the site. It cannot go out of the state due to quarantine issues. Concerns related to a fire there was no fire at the barn, advised they had a bon fire. Advised their property is not AR1 it is A1 and not sure that the neighbors fully understand the zoning difference. The fire was a bon fire for less than 20 kids adults were out there the whole time with a water hose there the whole time and are a yearly tradition and it was not near the barn.

Seeing no one else come forward closed the public hearing and entertained a motion for approval.

Mr. Hazzard asked if the sound issue was addressed. Mr. Maloney conditions limit hours of operation, number of vehicles per week which will limit sound and the noise ordinance. Mr. Maloney spoke about changing conditions and the staff recommended conditions to the PC and the majority were accepted and there were some that the PC discussed with staff and applicant and wanted modifications to what staff recommended and staff concurred following public hearing and

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come forward with joint recommendation. From a process standpoint just as the staff can recommend the PC can make modifications and did so and staff concurred and is part of the public hearing process. The Board also had the discretion to modify conditions if directly related to the use of the property. Property value concerns based on general information we do not see any evidence to substantiate this.

Mr. Hazzard if normal farming operation any restriction on hours. Mr. Maloney – none other than not keeping with noise ordinance. Mr. Hazzard and Mr. Maloney agribusiness definition and forestry is related to those activities in the County. Mr. Hazzard we have AR6 backed up to A1 that has different rights than the AR6 and at the same time that is a situation how do you take ones rights away to not interfere with the others. Mr. Hazzard asked if they can move the port o potty and Mr. Hanneman advised from the audience he would be happy to. Mrs. Kelly-Wiecek loading wood, Saturday operation was not initial request but now it is. Is it a plan to continue on Saturdays? Mr. Hanneman we gave up Saturdays in Aug-Oct when folks are outside. Mostly Saturdays in cold weather.

Mr. Hazzard made a motion to approve CUP-6-12, seconded by Mr. Stanley.

RESOLUTION

WHEREAS after a public hearing held on this 12th, day of December, 2012, as advertised in the Herald-Progress once a week for two successive weeks as required by Virginia Code, Section 15.1-431 and the Hanover County Code.

NOW, THEREFORE, BE IT RESOLVED that John E. Hanneman is granted a Conditional Use Permit in accordance with Title I, Article 5, Section 1.5.22 of the Hanover County Zoning Ordinance to permit an agricultural and forestal support center on GPIN 7758-

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09-2720, consisting of approximately 10.0 acres. The Conditional Use Permit area is limited to approximately 1.88 acres within the property. The property is zoned A-1, Agricultural District, and located on the south side of Greenwood Road (State Route 625) approximately 2,300 feet east of its intersection with Ashland Road (State Route 623) in the South Anna Magisterial District, subject to the following conditions:

1. The agricultural and forestal support center shall be operated in substantial conformity with the sketch plan, titled "Hanneman Agricultural & Forestal Support Center," dated September 27, 2012, and prepared by Kenneth M. Hart & Associates.
2. Hours of operation shall be limited to 7:00 am to 7:00 pm, Monday through Friday. No dump trucks shall enter the property after 5:30pm. In October, Saturday hours shall be limited to 8:00 am to 12:00 pm. During the months of November through February, Saturday hours shall be limited to 7:30 am to 3:30 pm. There shall be no Sunday operation. There shall be no operation on the following holidays: Labor Day, Thanksgiving Day (including the day before and after), and Christmas Day (including the day before and after). These hours apply to the delivery trucks and tractor trailers entering and exiting the property as well as the activities internal to the site.
3. There shall be no more than three (3) dump trucks entering and exiting the property daily, Monday through Saturday. There shall be no more than ten (10) tractor trailer trips per week to the site.
4. The product storage area shall be for wood products only. There shall be no trash or debris stored on site.
5. The Owner shall reserve thirty (30) feet of right-of-way from the centerline of Greenwood Road (State Route 625) to the property for future road widening, free of cost to the County, upon request of the County or VDOT.
6. There shall be no retail sales permitted onsite.
7. There shall be no commercial vehicles stored onsite other than two (2) single-axle dump trucks for the transport of wood products.
8. No splitting or cutting of wood shall take place on the property, other than for personal use.

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9. All activities associated with packaging firewood, other than loading palletized wood products onto trucks for distribution and transfer of waste wood material from bins to trucks for transport away from the property, shall occur within the enclosed barn, as shown on the sketch plan.
10. A twenty-five (25) foot natural, undisturbed buffer shall be maintained along the southeastern line of the Conditional Use Permit area, shown on the sketch plan as 215.0' in length, S46°02'01"W. Removal of trees shall be limited to dead or dying trees only. This buffer may be enhanced with plantings at the discretion of the owner.
11. With the exception of family members employed by the business, there shall be no more than four (4) employees working onsite at any time.
12. A site plan, prepared in accordance with the requirements of Title I, Article 7, Section 6, of the Hanover County Zoning Ordinance, shall be submitted for review and approval prior to commencement of the requested use. A complete site plan application shall be submitted to the Planning Department by January 31, 2013.
13. All development and use of the property shall comply with all applicable federal, state, and local statutes, ordinances, and regulations.
14. In the event of a Winter Storm Advisory during the months of December, January, and February, the hours of operation may be expanded to 10:00 pm to compensate for product demand. This shall be limited to a period of three (3) days per storm commencing on the date the initial weather advisory was issued.

The members of the Board of Supervisors voted to approve this resolution as

follows:

	Vote:
G. E. "Ed" Via, III	Aye
W. Canova Peterson	Aye
Sean M. Davis	Aye
Wayne T. Hazzard	Aye
Angela Kelly-Wiecek	Aye
Aubrey M. Stanley	Aye
Elton J. Wade, Sr.	Absent

CUP-6-12 Approved

December 12, 2012

Announcements

Mr. Hazzard made comments as a first year board member that the past year went fast and congratulated Mr. Via on the leadership he provided over the last year. Mr. Peterson wished everyone a Merry Christmas. Mrs. Kelly-Wiecek thanked students present and Planning Commissioners present.

Adjournment

At 8:00:07 PM p.m. the Chairman adjourned the meeting to January 9, 2013 – Hanover County Administration Building – 2:00 p.m.


CHAIRMAN