At a Special Meeting of the Orange County Board of Supervisors held on Monday, August 24, 2009, beginning at 6:00 p.m., in the Orange County High School Auditorium, 201 Selma Road, Orange, Virginia. Present: Lee H. Frame, Jr., Chairman; S. Teel Goodwin, Vice-Chairman; R. Mark Johnson; Zack Burkett; and Teri L. Pace. Also present: Julie G. Jordan, Acting County Administrator; Sharon Pandak, County Attorney; and Donna D. Curry, Chief Deputy Clerk.

RE: CALL TO ORDER

At 6:00 p.m., this being the time and place as advertised in the Orange County Review and the Free Lance Star, Chairman Frame called the public hearing to order to receive comments on the following:

- SUP 08-07: An application from 3 & 20 Limited Partnership together with JDC Ventures, LLC, for a Special Use Permit to establish a "large retail use" for a Walmart retail store together with other retail uses on properties identified as tax map numbers 24-08 and 24-10. The property is located on the north side of Route 3 near the intersection with Route 20. The proposed site is designated for Economic Development on the Comprehensive Plan Future Land Use Map 2025, and is zoned C-2, General Commercial.

Chairman Frame read a statement regarding the procedures to be followed during the public hearing.

Deborah S. Kendall, Interim Planning Director, gave the staff report.

Tom Klein, attorney for the applicant, spoke in support of the application.

Chairman Frame opened the floor for public comment at 6:20 p.m.

The following individuals commented: Robert Johnson, 830 Eastover Parkway, Locust Grove; Andrew McWilliams, 15484 McWilliams Drive, Barboursville; Richard Lindenauer, 4223 Lakeview Parkway, Locust Grove; Doc Garnett, 7271 Old Rapidan Road, Rapidan; Gary Teates, 344 Birchside Circle, Wilderness; Richard Berra 115 Monroe Street, Locust Grove; Russ Smith, Wilderness Battlefield; Curtis Abel, 422 Birchside Circle, Locust Grove; Joan Bergstrom, 16075 Zachary Taylor Hwy, Unionville; Harry Hopkins, Jr., 4401 Governor Almond Rd, Locust Grove; Garry Hale, 13096 Kendall Road., Orange; Gerald Walker, 7010 Thomas Byrd Drive, Culpeper; Carla Bangs, 22140 Monrovia Road, Orange; John Bangs, 22140 Monrovia Road, Orange; Barbara Bannar, 12441 Kendall Road, Orange; Janet Loeffler, 28302 Burrell Drive, Unionville; Kathleen Mercer, 105 Crystal Ct., Locust Grove; Gregory Major,126 Monticello Circle, Locust Grove; Steve Yelton, 15620 Burnley Road, Barboursville; Debby Ware, Clarks Mtn. Road, Rapidan; Janet Rollins, 11366 Fairmont Street, Orange; Gary Wright, 1347 Riverview Drive, Locust Grove; Richard Delaney, 1333 Riverview Drive, Locust Grove; Edward Williams, 3416 Rapidan Hills Drive, Locust Grove; Chris Carr, P.O. Box 1157, Locust Grove; Joe Fleshman, 1326 Riverview Drive, Locust Grove; Sheila Carr, 117 Parliament Street, Locust Grove; Judy Troast, 115 Winchester Lane, Locust Grove; Barbara Wigger, 29648 Zoar Road, Burr Hill; Ron Matalavage, 7710 Vermont Road, Orange; Franklin Coverdale, 33722 Indiantown Road, Locust Grove; Donald Hirsch, 32290; Gadsden Lane, Locust Grove; Page Sullenberger, 155 North Madison Street, Orange; Judy Carter, 11536 Rapidan Road, Orange; Doug Chidlow, 103 Pleasant Grove Road, Locust Grove; Christine Jones, 13436 Tower Road, Unionville; Doug Rogers, 113 Birchside Circle, Locust Grove; Jonathan Chason, P.O. Box 1171, Locust Grove; Suzanne Brady, 306 Westover Pkwy, Locust Grove; Mary Bethkrob, 4503 Lakeview Parkway, Locust Grove; Harry West, 228 Beachside Cove, Locust Grove; Frances Herndon, 26141 Lafayette Drive, Rhoadesville; Philip Aitken-Cade, 5560 Flat Run Road, Locust Grove; Connie Buttimer, 256 Washington Street, Locust Grove; Victor Berry, 26071 Hetfield Drive, Unionville; Charles Edge, 19286 Spotswood Glade Drive, Gordonsville; Robert Kerrigan, 7420 Oakwood Lake Drive, Rhoadesville;

Bob Hoh, 132 Madison Circle, Locust Grove; Ron Foust, 801 Lakeview Parkway, Locust Grove; Brian Powers, 123 Larkspur Lane, Locust Grove; Ernest Shifflett, 505 Lakeview Parkway, Locust Grove; James White, 22373 Berry Run Road, Orange; George W. Anthony Smith, 18201 Constitution Hwy. Orange; Georgia VanderVeer, 227 Birdie Road, Locust Grove; Lynn Lewis, 236 Peliso Avenue, Orange; Paul Donahue, 236 Peliso Avenue, Orange; Ruth Dailey, 114 Cumberland Circle, Locust Grove; Anna Bielecki, 376 E. Main Street, Orange; Anne Snyder, 12574 Chicken Mtn. Road, Orange; Diane Kennedy, 35384 Wilderness Shores Way, Locust Grove; Chris Merrill, 14743 Porterfield Drive, Orange; Roderic Slayton, 6094 Blue Run Road, Somerset; Paul Corneliussen, 100 Landon Lane, Orange; Richard Green, 9345 Cedar Hollow Road, Unionville; Jack Snyder, 12574 Chicken Mtn. Road, Orange; Craig Rains, 204 Fairway Drive, Locust Grove; Clive Louden, 719 Eastover Pkwy, Locust Grove; Steve Satterfield, 21041 Clarks Mtn. Road, Rapidan; Kimberly Herman, 33413 Old Plank Road, Locust Grove; Mike Herman, 33413 Old Plank Road, Locust Grove; Anne Stelter, 12171 Spicers Mill Road, Orange; John Floyd, 6505 Spotswood Trail, Gordonsville; Robert Snead, 34112 Indiantown Road, Locust Grove; Laura Harding, 205 Pine Valley Road, Locust Grove; Charles Seilheimer, Mount Sharon Farm, Orange; David Heyl, 13488 Brookman Road, Somerset; Mary Lou Seilheimer, 19180 Mount Sharon Road, Orange; Donald Whorton, 10448 Marquis Road, Unionville.

RE: RECESS

The Board took a short recess at 8:18 p.m. and reconvened at 8:30 p.m.

RE: PUBLIC HEARING CONTINUED

Public comment continued with the following speakers: John McCarthy, 1208 Spotswood Drive, Locust Grove; Raleigh Timmons, 9026 Mt. Sharon Road, Orange; McCanna Hancock, 21001 Clarks Mtn. Road, Rapidan; Catharine Gilliam, 2703 Brownsburg Turnpike, Brownsburg, VA; Brent Laurenz, Alexandria; Dan Holmes; Lynn Tuckwiller, 2250 Blue Sulphur Pike, Lewisburg, WV; Raymond Tuckwiller, 2250 Blue Sulphur Pike, Lewisburg, WV; Al Stone, Hinton, WV; Robert Nieweg; Sonja Ingram, Richmond; Claludia Bayliff, 101 Lounsbury Place, Falls Church; David Meisk, 5408 Yorkshire Street, Springfield; Michael Paquette, 11901 Branchwater Street, Fredericksburg; Peter Glyer, 4302 Orkney Court, Woodbridge; Gail Grimes, 11621 Forest Walk, Spotsylvania; Brett Leake, 3561 Leatherwood Lane, Maidens, VA; Mayo Carter, 424 Hanson Avenue, Fredericksburg; Robert Carter, 263 Stagebridge Trail, Lovingston; Michael Phillips, 100 Mt. Hope Church Road, Stafford; Alfred M. king, 11102 Fawnlake Parkway, Spotsylvania; Tom Randolph, White Plains, VA; Mary Kobman, 10202 Tinder Lane, Unionville; Phyllis Robinson, 535 Harrison Circle, Locust Grove; Brandon Ridgeway, 19576 Constitution Highway, Orange; Kevin Scott, 141 West Washington Street, Orange; and Teresa Yelton, 15620 Burnley Road; Barboursville.

There being no further speakers, Chairman Frame closed the public hearing at 10:27 p.m.

Mr. Burkett thanked those individuals who traveled a great distance to attend the public hearing.

Chairman Frame thanked everyone who had attended the meeting and for their respectful conduct.

Mr. Johnson responded to comments made during the public hearing suggesting that the Board's decision had already been made on the application. He stated that the Board members have had open minds throughout the process and that the County had no involvement in the deal. He explained that the Board's responsibilities include: educating children, providing law enforcement and public safety without breaking the backs of the taxpayers. He stated that history is not the ground that is stood upon, it is the people, their deeds and the lives lived. Mr. Johnson commented on the letter received from Governor Kaine and Speaker Howell and stated that he felt it was a mistake for them to have written it. He concluded by reading a letter he had received from a constituent supporting the proposed application.

Mr. Goodwin stated that he ran for the Board of Supervisors because he supports education and economic development.

Mrs. Pace stated that the decision is a comprehensive issue for the County and that it is important to look at it all. Economic development is very important. She suggested that the proposed project be moved further west and noted that Wal-mart is only part of the equation.

Chairman Frame stated that he blames himself for having to conduct a public hearing as he supported the Big Box Ordinance. He explained that the ordinance was not designed to keep business out but to better manage development. He stated that the Park Service or benefactor should have purchased the land if they didn't want to see it developed. Chairman Frame reported that there will be no significant visual impact from Route 3. He stated that the current proposal with conditions is the best way to preserve the battlefield than if something is built by-right.

Mr. Johnson moved to adopt the following ordinance approving the SUP 08-07 with the conditions as adopted by the Orange County Planning Commission:

WHEREAS, the 3 & 20 Partnership and JDC Ventures, LLC have requested the Orange County Board of Supervisors to consider a Special Use Permit to allow a Large Retail Use for a Walmart retail store together with other retail uses on their property identified as Tax Map Nos. 24-8 and 24-10, an aggregate of 51.56 acres, currently zoned C-2, General Commercial; and

WHEREAS, a Large Retail Use is an allowed use in the C-2, General Commercial zoning district subject to an approved Special Use Permit; and

WHEREAS, the Planning Commission held a public hearing on the proposed Special Use Permit on May 21, 2009, and considered this application on June 11, 2009 and June 25, 2009; and duly advertised and conducted a public hearing on August 20, 2009, and further considered this application on August 20, 2009 and August 21, 2009, and recommended approval subject to conditions dated July 16, 2009; and

WHEREAS, the Board of Supervisors duly advertised and held a public hearing on the proposed Special Use Permit on August 24, 2009, and the Board's consideration of the Special Use Permit extended into August 25, 2009; and

WHEREAS, the Department of Planning and Zoning has recommended approval of the Special Use Permit subject to conditions dated July 16, 2009; and

WHEREAS, the Board has considered whether the proposed Special Use Permit would further the purposes of the Comprehensive Plan and the Zoning Ordinance; threaten the public health, safety or welfare; be compatible with its surroundings; or would result in substantial detriment to the surrounding property; and

WHEREAS, public necessity, convenience, general welfare, and/or good zoning practice support approval of the proposed Special Use Permit;

NOW, THEREFORE, BE IT ORDAINED, that the Orange County Board of Supervisors hereby approves SUP 08-07, which allows a Large Retail Use for a Walmart retail store together with other retail uses on property identified as Tax Map Nos. 24-8 and 24-10, subject to the proposed conditions, dated July 16, 2009, as amended by the Board on August 25, 2009 and attached hereto.

Mr. Burkett seconded the motion.

Discussion ensued including: the type of store it will be; landscape islands; pad sites one (1) and three (3); and proffers.

Vote on motion – Aye: Johnson, Burkett, Goodwin, Frame. Nays: Pace.

Chairman Frame asked if there was a motion to approve the conditions as presented.

Mr. Burkett made a motion to delete item 5b from the list of conditions. Mr. Goodwin seconded the motion. Ayes: Johnson, Burkett, Goodwin, Frame. Nays: Pace.

Mr. Burkett made a motion to delete item 5c from the list of conditions. Mr. Johnson seconded the motion. Ayes: Johnson, Burkett, Goodwin, Pace, Frame. Nays: None.

At 11:57 p.m., Mr. Burkett moved, seconded by Mr. Johnson and carried, to extend the Board meeting past midnight. Ayes: Johnson, Burkett, Goodwin, Pace, Frame. Nays: None.

Mr. Burkett moved to add an additional condition: 6j – *"The County and VDOT can agree to an adequate engineering alternative to the foregoing conditions."* Mr. Goodwin seconded the motion. Ayes: Johnson, Burkett, Goodwin Pace, Frame. Nays: None.

Mr. Burkett moved to strike item 6f. The motion died for lack of a second.

Mr. Johnson moved to modify condition 6d with the following additional language: "provided such dedication occurs within five (5) years of occupancy of the Wal-mart store." Mr. Burkett seconded the motion. Ayes: Johnson, Burkett, Goodwin, Pace, Frame. Nays: None.

Chairman Frame moved to modify condition 3 as follows: change 133,481 to 134,000; 4,748 to 5,000; 98,750 to 100,000. Mr. Burkett seconded the motion. Ayes: Johnson, Burkett, Goodwin, Pace, Frame. Nays: None.

Mr. Goodwin moved to modify condition 5a with the following additional language: "two (2) hours prior to the opening of the store until two (2) hours after it closes"; and with regard to the Second Phase "from two (2) hours prior to the opening until two (2) hours after closing of each establishment." Mr. Burkett seconded the motion. Ayes: Johnson, Burkett, Goodwin. Nays: Pace, Frame.

Chairman Frame made a motion that condition 7d be modified with the following additional language: "The Applicant shall be required to pay 100% of the costs in the event that the State or County determines that the development on Pad Sites 1 and 3 of the Subject Property causes the need for the upgrade." Mrs. Pace seconded the motion. Ayes: Pace, Frame. Nays: Johnson, Burkett, Goodwin.

Mr. Burkett moved to add a condition – 8f: "1. The Applicant and Wal-mart shall keep the Subject Property free of litter, to include but not limited to, plastic and other packaging of merchandise, and shall take steps to ensure that litter will not leave the Property boundaries. 2. The Applicant and/or Wal-mart shall provide the County with $5,000 to be placed in an escrow account at the County for the County to use to provide clean up of litter deemed by the County to have originated from the Subject Property. Prior to commencing any clean-up using said fund, the County shall give the Applicant and Wal-mart ten (10) days written notice to clean-up the litter; if the litter has not been removed to the County's satisfaction in that time period, the County may proceed to provide clean-up. If the County determines that an emergency exists, it may give the Applicant and Wal-mart notice at the time it commences clean-up. 3. The Applicant and/or Wal-mart shall replenish the fund within ten (10) days of notice from the County that funds have been expended." Mr. Johnson seconded the motion. Ayes: Johnson, Burkett, Goodwin, Pace, Frame. Nays: None.

Mr. Burkett moved to modify condition 7b with the following additional language: "In the event that Orange County indicates to the Applicant that it desire the foregoing +17.55 acres or wants it conveyed to a conservation or preservation organization, the Applicant shall deed the acreage to the

County or County-designated organization subject to the easement prohibitions on future disturbance or development." Mr. Johnson seconded the motion. Ayes: Johnson, Burkett, Goodwin, Pace, Frame. Nays: None.

Mr. Frame moved to modify condition 3 regarding the following: change Pad Sites I, II, and II to Pad Sites 1, 2, and 3. Mr. Goodwin seconded the motion. Ayes: Johnson, Burkett, Goodwin, Pace, Frame. Nays: None.

Mr. Johnson moved to add an additional condition - 11h: "The entrance sign to be located adjacent to Route 3 shall be of the same color scheme as that of the Wal-mart store." Mr. Burkett seconded the motion. Ayes: Johnson, Burkett, Goodwin, Pace, Frame. Nays: None.

Mrs. Pace asked Mr. Klein if they would be willing to proffer a more expedient time frame for opening the store. Mr. Klein stated that they would avail themselves to getting the site plan in expediently. He indicated that they would be more interested in following the State Code which is five (5) years.

Mrs. Pace moved to add an additional condition – 11i: "Local Products. Wal-mart agrees to purchase food form local growers to supplement its current products, and to identify said food as local in its in-store labeling. Wal-mart shall identify a contact person for local growers in this regard, and prominently display the information in its Customer Service area." The motion died for lack of a second.

Chairman Frame moved to modify condition 8c with the following language: "In addition, if the owners of Parcels 24-10A and 24-10D do not object, the Applicant shall, at Applicant's expense, extend the proposed proffers and landscaping to visually screen those properties from Route 3 as well."
Mrs. Pace seconded the motion. Ayes: Pace, Frame. Nays: Johnson, Burkett, Goodwin.

Mrs. Pace moved to add an additional condition – 10d: "The Applicant agrees to contribute $15,000 to Orange County towards the funding of a Historic Entrance/Corridor or similar study if the County determines to contract for or participate in such a study within five (5) years from the date of this SUP." Chairman Frame seconded the motion. Ayes: Goodwin, Pace, Frame. Nays: Johnson, Burkett.

Mr. Johnson thanked everyone for attending the public hearing and staying throughout the evening.

Mr. Johnson moved to approve the Special Use Permit and conditions as amended and revised. Mr. Burkett seconded the motion. Ayes: Johnson, Burkett, Goodwin, Frame. Nays: Pace.

Mr. Burkett moved to adjourn the meeting at 12:54 p.m. Mr. Johnson seconded the motion. Ayes: Johnson, Burkett, Goodwin, Pace, Frame. Nays: None.