

**CHARLOTTESVILLE – ALBEMARLE
TRANSPORTATION COALITION, INC.**

**THE RESURRECTION OF
THE ROUTE 29 BYPASS
– A Political Plot –**

October 10, 2013

The Resurrection of the Route 29 Bypass

– A Political Plot –

Introduction

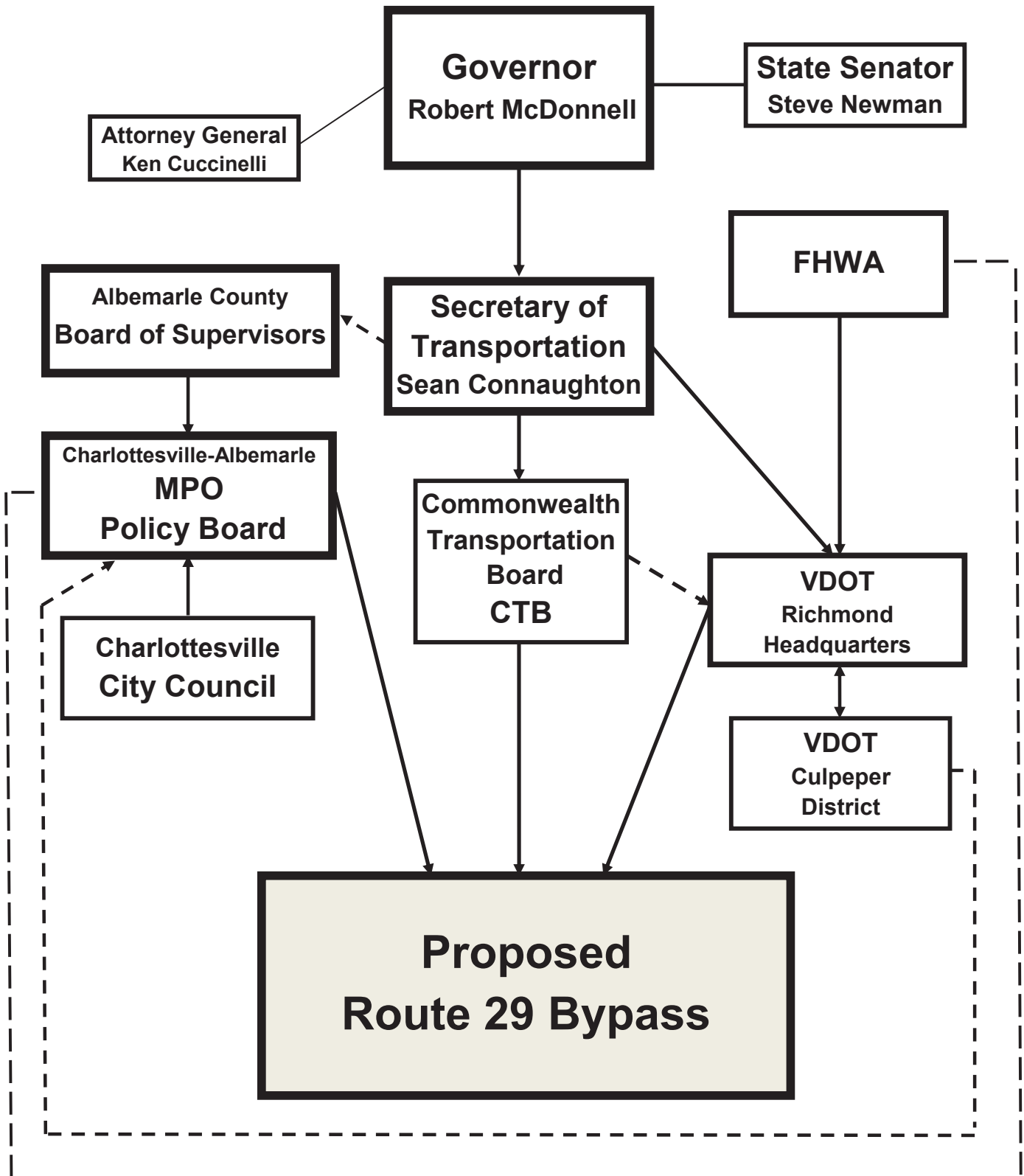
The Charlottesville-Albemarle Transportation Coalition (CATCO) has actively opposed the proposed Route 29 western bypass for twenty-five years. As part of our research, we, along with other organizations and individuals, have filed numerous Freedom of Information Act (FOIA) requests and have received and reviewed thousands of documents from the Virginia Department of Transportation (VDOT), the Federal Highway Administration (FHWA), and other agencies. Through the years, these FOIA'd documents have painted a clear picture of what has transpired behind the scenes and out of the public eye concerning the proposed bypass.

During the early years of the proposed project, these documents provided detailed information as to its costs (as actually estimated by VDOT staff in Richmond), traffic analysis, design, and most importantly, its impacts on our environment and community – information that VDOT had not necessarily disclosed or accurately conveyed to elected and appointed officials or the public. After the success of the Southern Environmental Law Center's (SELC) lawsuit on behalf of the Piedmont Environmental Council and the Sierra Club in 2001 which resulted in the court's requiring VDOT to perform more environmental work and to issue a Supplemental Environmental Impact Statement (SEIS), and after the back-to-back elections of Mark Warner and Tim Kaine as Governors of Virginia, the FOIA'd documents indicated VDOT's movement toward plans to abandon the proposed bypass and sell the right-of-way it had acquired for the project. In fact, a member of the Charlottesville City Council noted that *"a statewide study of transportation completed in 2009 called the Western Bypass project obsolete and ineffective."*

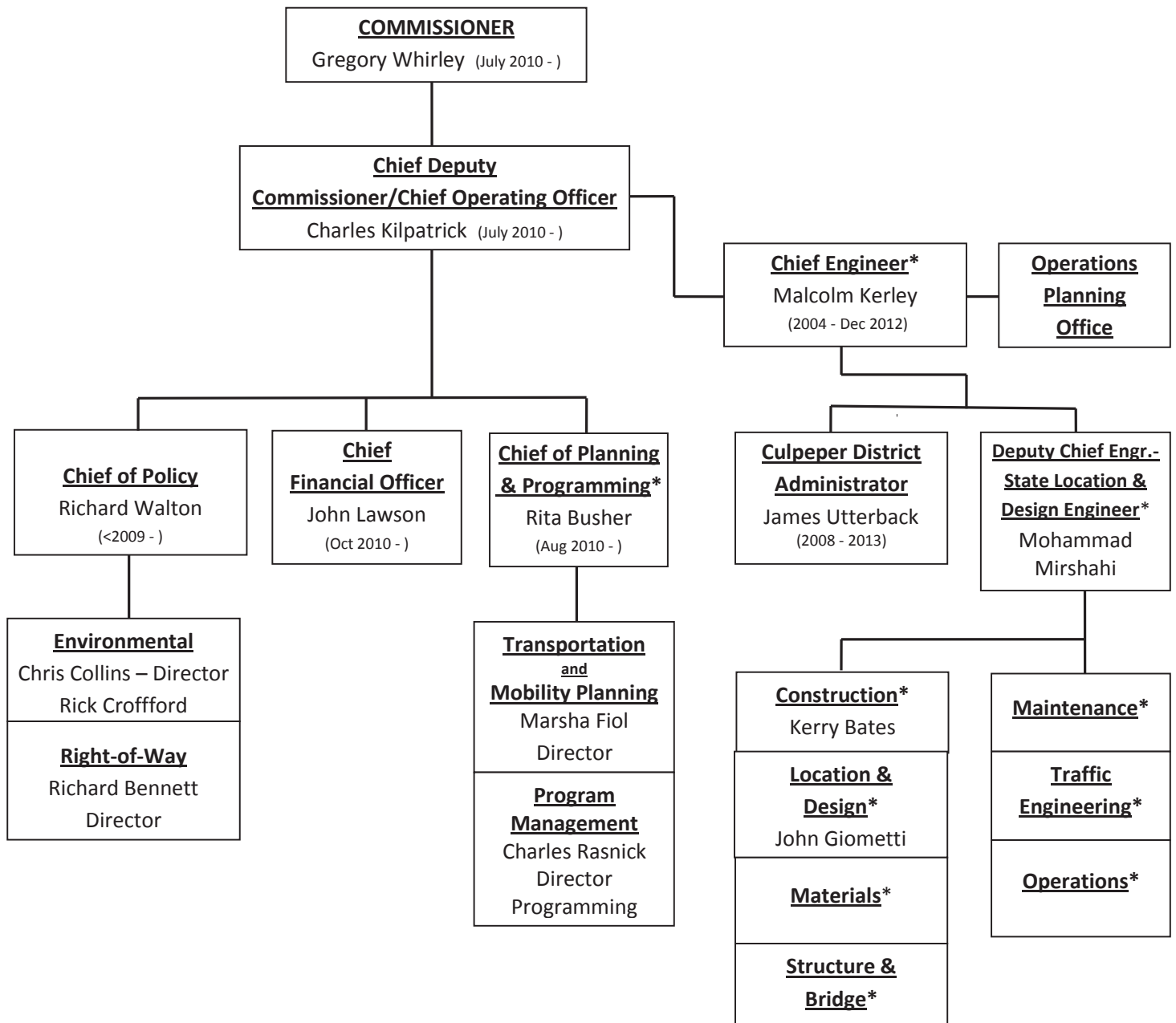
However, the plans to abandon the project and sell the right-of way changed dramatically with the elections of Robert F. McDonnell as Governor of Virginia, and Duane Snow and Rodney Thomas to the Albemarle County Board of Supervisors in 2009. Immediately following this election, FOIA'd documents indicated that political pressure was being brought on VDOT to reopen and, in fact, fast-track what had been the essentially dead bypass project.

The following narrative details the critical time period from November 2009 – September 2011 during which the bypass was, to quote VDOT, *"resurrected."* The information in this narrative is taken from news accounts, public officials, and documents that are either in the public domain or were obtained through FOIA. They clearly and convincingly reveal that the resurrection of the bypass was planned, orchestrated, and enacted politically by the Republican administration in Richmond, with impetus from Lynchburg and Southside communities, and with the cooperation of VDOT and the three Republican members of the Albemarle County Board of Supervisors – Snow, Thomas, and Ken Boyd – as well as, at the eleventh hour, Democrat Lindsay Dorrier.

Flow Chart for Proposed Route 29 Bypass



Virginia Department Of Transportation (Bypass Related)



*Designates positions requiring Professional Engineering license

List of Participants Noted in Document (2009 – 2011)

Bacon, Jim	“Bacon’s Rebellion” (online news service) founder, former editor of “Virginia Business”
Barefoot, Coy	WINA radio show host
Barron, Marshall, PE	Senior Transportation Engineer, Culpeper District - VDOT
Bates, Kerry, PE	Construction Division, Culpeper District - VDOT
Benish, David	Chief of Planning – Albemarle County
Bennett, Richard	State Right of Way Director, Richmond central office - VDOT
Boyd, Kenneth	Supervisor (R) – Albemarle County (2004 -)
Busher, Reta	Chief of Programming & Planning, Richmond central office - VDOT
Butler, Morgan	Senior Attorney, Southern Environmental Law Center
Cilimberg, Wayne	Director of Planning – Albemarle County
Clement, Whit	Virginia Secretary of Transportation (2002 - 2005)
Collins, Chris	Environmental Manager, Richmond central office - VDOT
Connaughton, Sean	Virginia Secretary of Transportation (2010 -)
Costello, Brian	Regional Right of Way & Utilities Manager, Fairfax office - VDOT
Crofford, Rick	Environmental Manager, Culpeper District - VDOT
Cuccinelli, Ken	Attorney General of Virginia (2010 - 2013)
Curling, Samuel	Environmental Specialist, Richmond central office - VDOT
Cutright, Jeffrey	Director, Project Management Office, Richmond central office - VDOT
Damer, James	Appraisal Team Leader, NE Region, VDOT
Davies, John J. “Butch” III	Commonwealth Transportation Board, Culpeper District representative (2002 - 2009)
Davis, Larry	County Attorney - Albemarle County
Deeds, R. Creigh	State Senator (D) 25 th District (2001 -)
Dimino, Terri	Northern Virginia District, Fairfax office - VDOT
Dorrier, Lindsay	Supervisor (D) – Albemarle County (2000 - 2011)
Ekern, David	Commissioner of Transportation (2006-2009) - VDOT
Elliff, Scott	Board of Directors, Forest Lakes Community Association
Esposito, Georgia	Executive Assistant to Secretary of Transportation
Foley, Tom	County Executive - Albemarle County
Fiol, Marsha	Director, Transportation & Mobility Planning Division, Richmond central office - VDOT
Giometti, John, PE	Land Development Manager, Culpeper District - VDOT
Hammond, Rex	President & CEO, Lynchburg Regional Chamber of Commerce
Hatter, Lou	Public Affairs Manager, Culpeper District - VDOT
Homer, Pierce	Virginia Secretary of Transportation (2006 - 2009)
Huja, Satyendra	Charlottesville City Councilor (D) (2008 -), city representative on MPO (2011 -)
Kaine, Tim	Governor of Virginia (D) (2006 - 2009)
Kilpatrick, Charles	Chief Deputy Commissioner (July 2010 -), Richmond central office - VDOT
Lafferty, Russell “Mac”	Albemarle County Planning Commission – Jack Jouett district representative (2010 -); Chairman, Charlottesville-Albemarle Regional Transportation Committee (CHART), CHART representative on MPO (non-voting)
Long , Steven	Environmental Division Administrator, Richmond central office - VDOT
Mallek, Ann	Supervisor (D) – Albemarle County (2008 -)
Mannell, Robert	Assistant Division Administrator - Transportation and Mobility Planning Division, Richmond central office - VDOT

McDonnell, Robert	Governor of Virginia (R) (2010 - 2013), Attorney General of Virginia (2006 - 2009)
Mirshahi, Mohammad, PE	Deputy Chief Engineer/State Location & Design Engineer, Richmond central office - VDOT
Monteith, Julia	University of Virginia Representative on MPO (non-voting)
Myers, Carter	North Charlottesville Business Council founder (1993), Commonwealth Transportation Board Culpeper District representative (1994 -2001)
Newman, Steven	State Senator – Lynchburg (1996 -)
Norris, Dave	Charlottesville City Councilor (D) (2006 -); Mayor (2008-2011)
Peake, Mark	Commonwealth Transportation Board Lynchburg District representative (2010 -)
Rasnick, Charles	Programming Director, Richmond central office - VDOT
Rich, Jim	Commonwealth Transportation Board Culpeper District representative (2010 - Jan 2013)
Rohm, Rick	Right of Way & Utilities Director, Culpeper District - VDOT
Rooker, Dennis	Supervisor (I) – Albemarle County (2002 - 2013), county representative on MPO (2002 - 2010)
Salehi, Morteza	Culpeper District Administrator (2004 - 2007) - VDOT
Slutzky, David	Supervisor (D) – Albemarle County (2006 - 2009)
Snow, Duane	Supervisor (R) – Albemarle County (2010 -), county representative on MPO (2011 -)
Springer, Joe	Consultant, Parsons Brinckerhoff
Sprinkel, Brent	Preliminary Engineering Manager, Culpeper District - VDOT
Strader, Matt	Virginia Assistant Secretary of Transportation
Sundra, Edward	Planning and Environment Program Manager, Virginia Division, FHWA
Szakos, Kristen	Charlottesville City Councilor (2010 -), city representative on MPO (2010 -)
Thomas, Rodney	Supervisor (R) – Albemarle County (2010 -), county representative on MPO (2010 -)
Thomas, Sally	Supervisor (I) – Albemarle County (1993 - 2008)
Thornton-McKenna, Arlene	Northern Virginia Right-of-Way Special Projects Coordinator - VDOT
Toscano, David	Delegate (D), Virginia House of Delegates– 57 th District (2006 -)
Utterback, Jim	Culpeper District Administrator (2008 - 2013) - VDOT
Warner, Mark	Governor of Virginia (D) (2002 - 2005)
Werner, Jeff	Field Director – Piedmont Environmental Council
Walton, Richard	Chief of Policy and Environment, Richmond central office - VDOT
Whirley, Gregory	Commissioner of Transportation (July 2010 -), VDOT
White, Ken	Commonwealth Transportation Board Lynchburg District representative (2006 - 2009)
Williams, Steven	Executive Director (~2009 - 2013), Thomas Jefferson Planning District Commission and MPO

TIMELINE

Resurrection of the Route 29 Bypass: A Political Plot

- September 23, 2009: MPO Meeting
- November and December 2009: Commonwealth Transportation Board (CTB) meetings on the Route 29 Corridor Study
- November 3, 2009: Election Day
- January 10, 2010: BOS Meeting
- July 7, 2010: BOS Meeting
- August 2010: Meeting with Lynchburg representatives cancelled
- December 1, 2010: BOS Meeting
- January 5, 2011: BOS Meeting
- March 23, 2011: Dorrier Announcement
- March 30, 2011: BOS Meeting
- April 6, 2011: BOS Meeting
- May 25, 2011: MPO Meeting
- June 1, 2011: BOS Meeting - First Bypass Vote
- June 8, 2011: BOS Meeting - The Infamous Midnight Vote
- July 13, 2011: BOS public hearing on the Bypass
- July 20, 2011: CTB Meeting – Bypass funded
- July 27, 2011: MPO meeting
- August 3, 2011: BOS Meeting
- September 28, 2011: MPO Meeting

The Resurrection of the Route 29 Bypass: **– A Political Plot –**

Before the plot began: February – November 2009

A local Charlottesville newspaper, "The Hook," summarized well the status of the proposed bypass in Albemarle County, Virginia, in a brief comment published online on February 11, 2009: *"Bad news for Lynchburg and Danville truckers (and folks dreaming of a cross-Albemarle pipeline), as Charlie Rasnick, VDOT's manager of a \$1.5 million Route 29 [Corridor] study says, according to Charlottesville Tomorrow: 'The bypass would not function today as it was envisioned when it was first planned back in the 1970s. We don't anticipate building that bypass.'"* The Route 29 Corridor Study was financed by state and federal funds.

**2009
Feb**

However, the Lynchburg newspaper, "The News and Advance," had an entirely different opinion of the potential for a bypass in Albemarle County, and it voiced that opinion in a scathing editorial on September 8, 2009. The editorial stated, *"Once again, the folks up the road in Charlottesville and Albemarle County are doing all they possibly can to forestall any solution to the U.S. 29 corridor nightmare....all the planning has ground to a halt in Charlottesville and Albemarle, where monied residents and their elected officials fancy themselves as the center of the universe. No bypass of our fair city is needed, they've said for years, because there is no traffic bottleneck – it's mainly just local traffic, they say....The horse-country crowd in western Albemarle and the anti-development environmental folks dug in for the long fight, successfully delaying any work at all on a bypass....Now, county planners have unveiled 'Places29,' a proposed master plan for the U.S. 29 corridor north from Charlottesville to Greene County....[It is] extremely self-centered, even for the leaders of Charlottesville and Albemarle. For them, the world revolves around their little hamlet, much like popes of the Middle Ages believed Earth to be the center of the universe....But not everyone in Charlottesville and Albemarle is as self-centered as the anti-bypass crowd and their politicians. The Charlottesville Regional Chamber of Commerce has labeled the plan as fundamentally flawed because it ignores the 800-pound gorilla in the room: the U.S. 29 western bypass....Joining the Charlottesville chamber in raising severe doubts about Places29....are the Lynchburg Regional Chamber of Commerce and Rex Hammond, its president...."*

In fact, when the Virginia Department of Transportation (VDOT) briefed the Charlottesville-Albemarle Metropolitan Planning Organization (MPO) on the Route 29 Corridor Study on September 23, 2009, the briefing materials stated, *"As currently designated, the Western Bypass is no longer an effective option to serve corridor-wide trips."*

At the Commonwealth Transportation Board (CTB) meetings on the Route 29 Corridor Study in November and December 2009, Ken White (CTB Lynchburg district representative) stated, *"[e]verybody that has informed themselves on the subject realizes the [29 bypass] is now obsolete. There's no way that the bypass could ever be justified for the cost of what it would take to build it,"* and Pierce Homer (Secretary of Transportation) commented, *"I have yet to find a defender of the Charlottesville Bypass who says that particular configuration works."*

Election Day: November 3, 2009

2009
Nov

Republicans Robert F. McDonnell and Ken Cuccinelli were elected Governor and Attorney General of Virginia, respectively. This was the first time in eight years that Virginia had elected a Republican Governor. Also, Republicans Duane Snow and Rodney Thomas were elected to the Albemarle County Board of Supervisors (BOS), replacing Sally Thomas (an Independent who retired from the Board) and David Slutzky (a Democrat who was defeated). This shifted the balance on the BOS from one Republican (Ken Boyd), three Democrats (Ann Mallek, Lindsay Dorrier, and David Slutzky), and two Independents (Sally Thomas and Dennis Rooker) to three Republicans (Boyd, Snow, and R. Thomas), two Democrats (Mallek and Dorrier), and one Independent (Rooker). When Gov. McDonnell took office, he appointed representatives to the CTB who supported his agenda and served “at his pleasure.” In March 2010, the Governor also appointed as his Secretary of Transportation Sean Connaughton, the very aggressive former chairman of the Prince William County Board of Supervisors who had unsuccessfully sought the Republican nomination for Lieutenant Governor in 2005. These new appointments and the shifts in party alignment at the state and local levels proved to be critical to the resurrection of the proposed bypass.

Selling the bypass right-of-way: November 2009

However, for the remainder of 2009, it appeared that VDOT continued to discuss and pursue plans (apparently approved by the Kaine administration) to sell the bypass right-of-way. On November 11, Charles Rasnick (Programming Director, VDOT) emailed Richard Bennett (State Right-of-Way Director, VDOT) and copied Brent Sprinkel, P.E. (Preliminary Engineering Manager, Culpeper district, VDOT), Joe Springer (consultant, Parsons Brinckerhoff), Jim Utterback (Culpeper District Administrator, VDOT), and Brian Costello (Regional Right-of-Way and Utilities Manger, VDOT) concerning the upcoming presentation at the CTB meeting on November 18. He stated, “....the Commissioner [of VDOT, David Ekern] and Secretary [of Transportation Pierce Homer] want to sell the R/W. One of our slides will say that if there is no local transportation initiative from the County and MPO by 1/1/12, the R/W will be sold.” Rasnick reiterated this message in an email he sent to the same group on November 12, stating, “I believe that some of the properties will reach the 20 year time limit in 2011. VDOT could make a case for extending the time limit several years based on the number of years that the project has been in the Six-Year Program. However, both the Commissioner and Secretary want to move forward with selling the R/W. (Since the District CTB members may have a different view, I’m trying to find some middle ground on this issue so the CTB presentation indicates that VDOT will begin the process for selling the R/W after 1/1/12.)” Thus, the deadline for the plan was established – unless the County and the MPO changed their positions on the bypass during 2011, VDOT would begin selling the right-of-way in early 2012.

An attempt to change the MPO: January 2010

2010
Jan

The first meeting of the year for the Albemarle County BOS is traditionally its organizational meeting when the chair and vice chair are elected and when committees are assigned for the upcoming year. 2010 was no exception. Rooker had served on the MPO since 2002 and wanted to continue to serve as one of the County's two representatives on that board. However, since the balance of power on the BOS had shifted, the Republican members of the BOS appointed Thomas to be one of the representatives (to replace Democrat David Slutzky whom he had defeated) and would only agree to allow Rooker to serve one more year.

With this first step, the plan to change the county's MPO representation, crucial to the resurrection of the bypass, was underway.

Pressure from Southside Virginia Increases: May - December 2010

Throughout the long history of the proposed bypass, the influence of Southside Virginia communities such as Lynchburg and Danville is well documented. (In fact, between May 2010 and September 2011 alone, the Lynchburg "News & Advance" published at least twenty-seven articles strongly supportive of the proposed bypass.) Still angry over the location of Interstate 64 through Albemarle County instead of near Lynchburg as was originally planned in the early 1960's and blaming the lack of a bypass around Charlottesville for their economic woes, many of the Southside elected officials and their Chambers of Commerce were active in lobbying efforts for the bypass for years. With the election of McDonnell as Governor and Cuccinelli as Attorney General, these efforts increased, and, with the Lynchburg and Danville areas heavily Republican, they had the ear of the new administration in Richmond. In particular, state Senator Steve Newman, a Republican who represents the Lynchburg area, called on his friendship with McDonnell from their days together in the General Assembly to press the case for the bypass. In May 2010, "Asphalt News," a publication of the Virginia Asphalt Association, included a brief article about Newman's efforts. The article stated, *"State Senator Steve Newman and the Lynchburg Chamber of Commerce are asking the governor and attorney general to break a 20 year impasse on building a US 29 bypass at Charlottesville. Albemarle County has allowed US 29 to continue to run through a heavily commercialized area with 29 traffic lights and a lot of congestion. The Governor's office has agreed to review the matter and consider options to address the problem."* (In fact, there are 14, not 29, traffic lights on the part of Route 29 to be bypassed.) "Charlottesville Tomorrow" also commented on Southside's lobbying efforts in an article on July 9 which stated, *"Lynchburg and Danville officials have consistently pressed for a bypass of U.S. 29 to be built to allow truck traffic to travel unimpeded along U.S. 29 through Albemarle County. 'It is very important in terms of getting product to Northern Virginia and getting supplies down to Lynchburg for manufacturing,' said Gary Christie, the director of the Local Government Council of the Region 2000. That organization is the Lynchburg region's planning body.... At times, rhetoric between the two communities [Charlottesville and Lynchburg] has been heated. For example, Lynchburg State Senator Stephen Newman (R-23) has called for the Charlottesville MPO to be stripped of its authority over U.S. 29."*

The newly appointed (March 2010) Secretary of Transportation Connaughton heeded the message from Lynchburg and told NBC 29 news on May 13 that *"he wants to see action on the Western Bypass sometime during the next four years...."* In reference to the right-of-way already purchased for the bypass, Connaughton commented, *"We'd like to see that land actually used for what it was intended for. We still think the road is needed. I think when you talk to a lot of businesses down there [Lynchburg] and the residents, they want to see it happen....obviously we need to get the support of Albemarle County and the city of Charlottesville so we can end up moving that project forward."* The same NBC 29 news report concluded, *"No word on whether the attorney general will weigh in, but the governor's office is really hoping to see at least some progress, soon."*

2010
May

However, Connaughton gave a different impression when he met with Albemarle County representatives a few months later. Rooker reported at the July 7, 2010 BOS meeting that Thomas and he had met with Connaughton. According to the minutes of the meeting, *"Mr. Rooker said that about a month ago, he and Mr. Thomas met with the Secretary and his Deputy – along with some interns from State colleges, in Richmond. Mr. Cilimberg [Director of Planning, Albemarle County] and Mr. Benish [Chief of Planning, Albemarle County] also attended and it was a nice, cordial meeting. He explained that Albemarle representatives took maps and traffic modeling information to show the measures they are doing to try to improve the traffic flow in the US 29 Corridor, how land use and transportation planning are being integrated, collaborative studies with the State and the City in an effort to jointly improve traffic conditions in the corridor, and specific traffic improvement projects – some of which are being paid for by developers. He said that he thinks it was a good meeting and they were impressed with what the locality is doing. Mr. Rooker said that they are having another meeting August 5th in Charlottesville to also include representatives from Lynchburg, and have invited him and Mr. Thomas to attend. They talked about the bypass and the Secretary of Transportation made it clear that they did not have the money for it; in fact, they do not have money for much – secondary road funds are down 94% from where they were four of five years ago. He commented that there are some political issues with Danville and Lynchburg, and he and Mr. Thomas are hoping to extend a hand of friendship and see what might be accomplished."*

2010
Jul

"Charlottesville Tomorrow" reported on this meeting in an article on July 9, stating, *"Rooker and Supervisor Rodney Thomas traveled to Richmond to meet with Connaughton in early June to discuss their plan to address traffic congestion on U.S. 29. The pair lobbied for funding for a \$25.7 million project to widen U.S. 29 to six lanes from the South Fork of the Rivanna River to Airport Road. 'All the models that we've gotten back from the Thomas Jefferson Planning District Commission (TJPDC) have said if [widening] is done, it will relieve some of the traffic congestion,' Thomas said....Rooker said Connaughton told him and Thomas that it was doubtful the bypass would be built any time soon. 'He made it clear that [the state] didn't have the money for it,' Rooker said. Secretary Connaughton was not available for comment."*

Connaughton's plan, shared with Rooker and Thomas when they met with him in June, to have a meeting in Charlottesville to discuss the Rt. 29 corridor and to include Rooker, Thomas, and representatives from Lynchburg changed abruptly in early August when the meeting was canceled. No explanation was provided and no efforts were made to reschedule. A plan was in the works.

According to media accounts, by November the Lynchburg Chamber of Commerce had *“passed a resolution supporting a bypass and urging state officials to start evaluating options and developing a plan for implementation.”* On November 8, media accounts further stated that the *“Lynchburg City Council will consider joining the local Chamber of Commerce today in calling on state leaders to reinstate consideration of a U.S. 29 bypass around Charlottesville....A board subcommittee was charged with the task of developing a plan to improve traffic flow north of Charlottesville.”* On December 6, Marsha Fiol (Director, Transportation & Mobility Planning Division, VDOT) emailed Charles Rasnick attaching Campbell County’s resolution *“requesting the reinstatement of the Western and Eastern alternatives for the area north of Charlottesville that were eliminated from the 2009 ‘route 29 Corridor Study’ final report,”* and stating *“a similar resolution was recently adopted by the Lynchburg City Council.”*

During November and December, activities at VDOT involving the proposed bypass increased. On November 10, John Giometti (District Land Development Manager, Culpeper district, VDOT) emailed Jim Utterback and copied Brent Sprinkel a message that was labeled *“high”* importance. Giometti’s email stated, *“Jim, Talked with Brent and he mentioned that you are looking for info on the C’ville Bypass that was readily available. Attached are 2 powerpoints I worked on for Morteza [Salehi, previous Culpeper District Administrator, VDOT] 3 years ago. They are very similar, but may offer different ‘flavor.’ Of course the cost data is old and would need to be updated. Let me know if you need anything different.”* (This “old” cost data that needed updating would be presented to the CTB in July 2011.)

On that same day, November 10, Reta Busher (Chief of Programming and Planning, VDOT) emailed Charles Rasnick asking, *“Can I get a very short update on the Rt. 29 Bypass project in Charlottesville? The Governor is doing a radio interview in the morning and he needs it.”* Rasnick’s response to Busher attached a summary of the CTB’s subcommittee for the Route 29 Corridor Study which included the statement, *“Everything should be ‘on the table’ for discussion: parallel service roads, elimination of median cross-overs and commercial entrances, new interchanges on existing Route 29 as well as the possibility of a bypass.”*

While activities to resurrect the bypass were moving forward in Southside and Richmond, the MPO was maintaining its position of opposition to the bypass and still planning to participate in a meeting with Lynchburg area officials. At its November 22 meeting, Steve Williams (Executive Director, Thomas Jefferson Planning District Commission and MPO) briefed the board on VDOT’s Route 29 Corridor Study in 2008 and 2009 as well as the work of the CTB subcommittee. The minutes of the MPO meeting state, *“Mr. Williams stated that the CTB subcommittee was made up of four members that met throughout 2010 and have developed the plan for the Route 29 Corridor in the Charlottesville area. Mr. Williams stated that this plan would be submitted to the CTB at their December 8th meeting in Roanoke Virginia. Mr. Williams stated that the plan consisted of hiring an outside facilitator to review all the documentation about....the Charlottesville-Albemarle portion of route 29 north. The facilitator would also plan two regional workshops, one with elected officials in the Charlottesville-Albemarle area and one with elected officials in the Lynchburg-Danville area. The next steps would be to hold a joint workshop/charrette with the Lynchburg and Charlottesville area. The final step would be to find areas of consensus that could serve as the first steps for developing collaborative solutions....”* When Julia Monteith (UVA’s representative on the MPO) voiced her concern about the ability of a facilitator to understand the complexity of issues

concerning the Rt. 29 Corridor Study, Jim Utterback (VDOT's representative on the MPO) responded *"that the exact course of action for this process is not yet laid out due to changes in the State government and on the CTB."* These workshops were never held.

Williams noted that the MPO had been invited to make a presentation to the CTB at its December 8 meeting and that *"he anticipated that a CTB member would ask about the MPO's position regarding the construction of a Western Bypass. Mr. Williams continued [stating] that he intended to say that the MPO through its transportation planning process feels that it can meet the 20 year needs of our transportation system. Mr. Utterback stated that the MPO released their position on the Western Bypass years ago and that this position is not a secret. Board members agreed with Mr. Williams intended answer."* It is important to note that Thomas, one of two Albemarle County representatives on the MPO, did not attend this meeting.

Rooker reported on the MPO's upcoming presentation to the CTB at the BOS meeting on December 1. According to the minutes of that meeting, *"Mr. Boyd asked if the MPO would be meeting with the Secretary of Transportation. Mr. Rooker explained that, at one time, he was planning to attend a MPO meeting, but then they decided to do the MPOs at the CTB level instead, although the Secretary would be present. He added that there would be a meeting with Lynchburg and Danville officials, but no meeting date has been set yet. Mr. Rooker stated that they decided to create a process around the Route 29 Corridor Study, with a series of local meetings and different participants – with a process set out by the Secretary of Transportation. Mr. Boyd asked what the MPO's position is on the Western Bypass, noting that it was not a part of Places29 and there may be some interest in reviving it. Mr. Rooker responded that the MPO's position has consistently been not to support that project. It was put in the Six-Year Plan for preliminary engineering and right of way acquisition only and has been in [that] status since then."*

In the intervening years, the last two Secretaries of Transportation – including Whit Clement from Danville – said it would not go forward because it did not make sense, and could not pass any reasonable cost/benefit analysis.

Mr. Rooker said he does not believe it is supported by VDOT staff at this point, and the Route 29 Corridor Study concluded that it does not make sense. The MPO position has been consistent with all of those positions. Mr. Boyd said that in speaking with various people in VDOT's administrative office, they have indicated that they have taken Albemarle's lead on the position because in the past the majority of this Board has been totally opposed to it, and he is not sure that is still the case....Mr. Boyd said that rather than debate it now, he would like to bring it back on an agenda next year for the Board's consideration....Mr. Boyd reiterated that he would like to see this brought back as an agenda item for discussion. Mr. Thomas concurred." However, neither Boyd nor Thomas ever brought this back as an agenda item.

On December 8, Williams, Rooker, and Thomas represented the MPO at the CTB meeting in Roanoke. In its December 9 article on that meeting, "Charlottesville Tomorrow" reported that Williams told the CTB, *"We think the projects and ideas we have for the 29 corridor would serve both state and local transportation needs better than a bypass and would also be less expensive,"* noting that the *"top two priorities to address congestion on the U.S. 29 are to add an additional lane from the U.S. 29 and U.S. 250 intersection to Hydraulic Road and the widening of U.S. 29 to six lanes from Airport Road to the South Fork of the Rivanna River."* However, the article continued, *"Officials from cities south of Charlottesville....press the [bypass] issue."* The draft report of the

CTB's Route 29 Corridor Study committee called for *"meetings between elected officials from communities along the U.S. 29 to build consensus on long-term planning. When another CTB member asked if that would be an 'exercise in futility,' Lynchburg's representative said yes."* In fact, Mark Peake, Lynchburg's representative on the CTB, stated, *"It has been in dealing with the Charlottesville and Albemarle folks. They have fought us every step of the way in proceeding with the bypass."* Clearly, Lynchburg representatives were not interested in meeting with Charlottesville-Albemarle representatives about Route 29 issues, let alone working toward a consensus. The article concluded that Rooker and Thomas had very different opinions of the meeting. Rooker stated, *"I think the CTB appears to be open to dealing with different strategies at a time when there's little money. I think they recognize that our strategies will improve the traffic."* Thomas' comments foreshadowed the actions that were to unfold in the coming months; he said, *"I learned there's a big concern on [the CTB] because of the bottleneck. I don't want U.S. 29 to be the catch-all road for everything. I want there to be an alternative."* Thomas was publicly voicing his support for the bypass although his opinion did not reflect the longstanding policies of the BOS and MPO on which he served.

During this same period of time, State Senator Steve Newman expended a lot of effort to ensure the bypass would move forward. According to a December 7 article in the "Lynchburg News and Advance," Newman *"hopes to spur progress toward a U.S. 29 bypass of Charlottesville in the coming General Assembly session. He is scheduling a meeting to discuss the bypass with Virginia Gov. Bob McDonnell and Attorney General Ken Cuccinelli, Newman told [the Lynchburg Regional Chamber of Commerce] Tuesday. They will focus on how to get Charlottesville-area leaders to either build the bypass or repay the state dollars spent on it."*

Danville became actively and publicly involved in Southside's push for the bypass in December when the president of the Danville-Pittsylvania Chamber of Commerce asked the Danville City Council *"to join Lynchburg's City Council in adopting a resolution encouraging both VDOT and CTB to include the bypass alternatives around Charlottesville in the [Route 29 Corridor] study,"* according to an article in the "Danville Register & Bee" on December 29. The Danville City Council passed such a resolution.

2010 ended with officials in Southside and at least two members of the Albemarle BOS (Boyd and Thomas) working actively to resurrect the bypass and with increased activity about the bypass at VDOT in response to requests from the new administration in Richmond.

A Change in the MPO: January 2011

If 2010 had been the year of planning the bypass' resurrection, then 2011 was to be the year that those plans were revealed to the public and implemented. The first step was to change Albemarle County's representation on the MPO, and the Republican members of the BOS wasted no time in doing just that. On January 5, at the BOS' first meeting in 2011, the BOS reappointed Thomas to the MPO, but appointed Snow in place of Rooker. The Republicans who wanted to resurrect the bypass now had control of the MPO, since their two votes, combined with the vote from VDOT's representative (Jim Utterback), would constitute the majority.

Simultaneously, VDOT was responding to political efforts to resurrect the bypass. On January 21, Connaughton emailed VDOT Commissioner Gregory Whirley (with copies to Charles Kilpatrick

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[Chief Deputy Commissioner, VDOT], Georgia Esposito [Executive Assistant to Secretary of Transportation], and Matt Strader [Assistant Secretary of Transportation]), asking, *"Can we get Jim Utterback in to meet with me and Senator Newman on this issue [the bypass] and give recommendations on next steps?"* On January 23, Kilpatrick responded, *"I can get Carol to set it up with you. Commissioner has suggested after crossover and to include Jim Utterback and Charlie Rasnick who is leading the latest review of the Route 29 corridor."* One day later, Rick Crofford (Environmental Manager, Culpeper district, VDOT) emailed Chris Collins (Environmental Manager, VDOT), *"I'm not sure who to coordinate with regarding this but I remember that you had some involvement with this project in the past. Our DA convened a meeting this morning to discuss the future of the C'ville Bypass with environmental, ROW, and L&D. One of the questions he would like the environmental section to answer is what would be involved environmentally with bringing this to life again... if it were to go DB [design build] or PPTA [Public-Private Transportation Act] what environmental path would need to be taken?"*

Tellingly, the title of his email was "Charlottesville By-pass – The Resurrection?"

On January 25, Brian Costello emailed Richard Bennett, commenting, *"The Culpeper District is trying to revive [the bypass]."* A day later, John Giometti emailed Marshall Barron (Senior Transportation Engineer, Culpeper District, VDOT) and copied Brent Sprinkel, *"As discussed, Jim [Utterback] would like us to have any of the forecasted traffic/modeling that was done on the Charlottesville Bypass 'at our finger tips' should we need this information at a moments notice."*

Clearly, things were moving very quickly behind the scenes at VDOT.

In another significant development in January, Lindsay Dorrier, a Democrat who had represented the Scottsville magisterial district on the BOS for four consecutive terms and who had always opposed the bypass, announced that he would probably run for a fifth term in 2011. *"As far as I know, I'll be running. I'll make an announcement sometime in the future,"* Dorrier stated in an article in "The Daily Progress" on January 14.

MPO meeting: January 26, 2011

At the MPO meeting on January 26, Steve Williams updated the board on the Joint Legislative Audit and Review Commission's (JLARC¹) review of Virginia's transportation planning and programming. According to the minutes of the meeting, Williams *"stated that last year's Virginia General Assembly requested that JLARC do an analysis and report on Virginia's transportation planning and programming methodologies."* The review included a section on the *"[m]inimal MPO role in allocations [which] is missed opportunity for more informed decision-making."* Williams commented that *"the report discussed how construction costs in the past decade have soared, while transportation funding has decrease [sic] considerably, which means there is less and less funding for new projects....the MPO does not have a statutory role in the development of the Six Year Improvement Program [SYIP]....JLARC recommended that VDOT work with the MPOs to establish a methodology for including MPOs in the development of the SYIP....."*

¹JLARC is the oversight agency of the Virginia General Assembly, established to evaluate the operations and performance of State agencies and programs.

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However, despite JLARC's concerns and recommendations, VDOT still had responsibility for preparing and approving the SYIP. Albemarle County's SYIP contained several projects including funding for widening Route 29 North between Polo Grounds Road and Airport Road to six lanes. This was a very important project for the county; it had been in Albemarle County's SYIP since 2006 and was included in the county's Places29 plan. In fact, on October 6, 2010, Jim Utterback had emailed Charles Kilpatrick a list of priority projects for the Culpeper district, and that list included *"Route 29 widening to 6 lanes in Albemarle County. Project supported by Albemarle County in their Places 29 Study. Project strongly supported by MPO and in the MPO's Constrained Long Range Plan. Project was active in FY09-14 SYIP and \$2.8M PE allocations were taken and project removed from active FY10-15 SYIP."*

The obvious questions are, if the county and the MPO strongly supported this widening project which had been in the SYIP for several years, why was it suddenly removed – and to what did its funding get allocated?

Places29: February 2, 2011

On February 2, the Albemarle County BOS unanimously approved Places29, the Master Plan for the 29 North corridor from Hydraulic Road to the Greene County line. Places29, an integrated land use and transportation plan, had been vetted by the community, the Albemarle County Planning Commission, and the Board of Supervisors in over seventy public workshops and meetings during nearly six years. Albemarle County and VDOT had worked cooperatively on the plan, and it was touted by the state as a model for coordinating land use and transportation planning. Places29 was developed to alleviate congestion on Route 29 through a series of improvements in the corridor over a period of time; those improvements did not include the bypass. However, according to the minutes of the BOS discussion of Places29, Boyd stated *"that the Chamber of Commerce has requested having the Board consider mention of a Western Bypass. He has always felt it should be included in consideration for future planning for Places 29 and should not have been excluded in the first place. He asked fellow Board members if they are in favor of including this mention in the plan so that it can be addressed in the five year updates in the plan."* Rooker responded, *"that it is pretty complicated to just add that in without any language, noting that Mr. Boyd has raised the issue throughout the process and the Board has not gone with it. He has a problem when five and one-half years later and the Board is ready to vote on the plan, and the issue is brought up during the vote. Thomas agreed with Boyd, saying he also "would like to see it considered" and that "there are already discussions with local officials and the MPO, and that process should continue going forward."* Although Boyd and Thomas advocated publicly for the addition of the bypass to the Places29 plan, their attempt failed and the plan was unanimously approved without it.

Nine days later, on February 11, Richard Bennett emailed Richard Walton (Chief of Policy and Environment, VDOT), with a copy to Jim Utterback *"Some of the newer CTB members asked for an update on the right of way situation on the Rte 29, Charlottesville Bypass."* The new members referenced were appointed by McDonnell after he became Governor in January.

Dorrier announcement: March 23, 2011

In a reversal of his January statement, Lindsay Dorrier announced on March 23 that he would not seek re-election to the Board of Supervisors. In an interview in January, Dorrier had stated, *"As far as I know, I'll be running,"* according to an article in "The Daily Progress." There has been much speculation about the reason for his decision.

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Thomas announced meeting with Connaughton: March 30, 2011

According to the minutes of the March 30 BOS meeting, Rodney Thomas *"reported that on Monday, April 4, 2011 he and Mr. Snow would be meeting with Secretary of Transportation Connaughton. He does not know exactly what the meeting is about, but thinks it relates to the corridor. There are a number of things he and Mr. Snow would like to talk about. He will provide an update to the Board following the meeting....Ms. Mallek asked if they would go to the meeting with Secretary Connaughton armed with a list of local priorities. Mr. Thomas responded, 'yes'.... [Rooker commented]if there is going to be money for localities, this area has the Route 29 improvements that they have been trying to get funded for quite some time."*

The aftermath of the meeting with Connaughton: April 2011

On April 5, one day after meeting with Thomas and Snow, Connaughton was overheard by VDOT staff talking about funding for the bypass. Marsha Fiol emailed Reta Busher that day, *"Ben shared with me that Charlie had overheard a comments [sic] by the Secretary at recent meeting regarding funding the Rte. 29 bypass. This is the first I have heard of these comments. Would you like to meet with Charlie tomorrow morning....to discuss this first hand?"* Busher responded, "Yes."

The following day, Busher emailed Greg Whirley, summarizing *"the decisions made regarding changes to the FY 2012-2017 Draft SYIP"* and identifying four *"additional projects from the Governor's Illustrative List² [including the bypass] to fund in the FY 2012-2017 SYIP."* The summary included shifting money from the construction management, administration, and maintenance program budgets in order to add \$150 million to funding for the construction program over six years, and it identified *"additional projects from the Governor's Illustrative List to fund in the FY 2012 – 2017 SYIP"* including *"UPC 16160 Rt 29 Bypass in Albemarle County - - \$233 million."*³ The Governor's Illustrative List represented projects personally supported by the Governor; clearly,

² According to VDOT, *"the Governor's Illustrative List includes more projects than can be funded by the Governor's proposed transportation funding package. This is so that there are contingency projects which could be funded in the event another project on the list can not advance, that bids come in below project estimates, or if changes need to be made to individual projects. The list draws from projects already in the FY 2011-2016 Approved Six-Year Improvement Program that could not advance without additional funding."*

³ In particular, the process transferred (1) *"\$15 million per year for 6 years from the Construction Management Program to the Maintenance Program (FY 2012 – 2017) for a total of \$90 million";* (2) *"\$10 million per year for 6 years from the Administration Budget to the Maintenance Program (FY 2012 – FY 2017) for a total of \$60 million";* and (3) *"\$25 million per year for 6 years of Equity Bonus (federal funds) from the Maintenance Program (FY 2012 – FY 2017) to the Construction Program for a total of \$150 million."* The additional \$170 million necessary to complete the total for all four projects would be programmed from Capital Projects revenue bond reserve.

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the political plan to approve and construct the bypass was supported by Gov. McDonnell and was being rapidly advanced. The timing of this is critical since it occurred two days after the meeting with Connaughton, Thomas, and Snow. Since Thomas and Snow were Albemarle County's two representatives on the MPO, their votes were crucial to resurrecting the bypass. Their meeting with Connaughton had sealed the deal.

While Connaughton, Thomas, and Snow weren't yet ready to go public with this, the plan was laid out in a lengthy email marked "confidential" and flagged "red" that Fiol sent Busher the next day (April 6). Fiol stated, *"I had a phone call from Jim Utterback....He was looking for information on the 29 Bypass and what needed to be done to get it into the CLRP and TIP. (He did not want to discuss it with his District Planner.) He asked what I had heard about this issue and from whom.*

He also said that **the Secretary is not ready to have this information go public.** Jim commented that he is sharing information as necessary with the Secretary, Greg and Charlie and you, Reta. He's also working with/around the environmental document, to move it forward. Earlier today, the Secretary asked him about the long range plan and TIP....The District is currently doing TIP amendments.... Since this would require it to go to a public hearing, the Secretary didn't want to do that right now....I sent an e-mail earlier today with advice on the sequencing of this effort. The MPO does not have Tech or Policy Committee meetings in either April or June, so May would be the time to introduce it, with action by resolution in July.

The Secretary wants this project accomplished through 'design build' and wants it to go out this Summer for \$200 million. The intent is to begin construction in 2012 and complete construction in 2016 or 2017.

Jim cautioned that this is very confidential." Busher and Fiol agreed to limit email traffic on this, and noted that Jim had "expressed the same request." Clearly, the plan was proceeding in secrecy, outside of the public eye.

Meanwhile, that very same day, according to a transcript of the Albemarle County BOS meeting, Snow stated, *"Rodney and I met with Secretary Connaughton this week and the issue that – the subject that was brought forward – is if we would be interested in a – ah – in a bypass around the city and I said, well, you know, a bypass might just be beneficial, but I felt like the main – Rodney and I both said the same thing that the main thing we're interested in right now is the widening of 29 and getting a bridge for Berkmar Extension. And I said – you know – this is one thing that I – that the studies have shown that that will be more beneficial to us than anything else that we could do – and ah – so until we got those issues solved – ah – we – that would be something we'd be interested in. So that's basically how we left it."* Snow's remarks clearly left the impression that Thomas and he had advocated for the widening of Route 29 and the construction of the Berkmar Drive Extended bridge – not for the bypass. That impression was wrong.

MPO meeting: May 25, 2011

However, at the May 25 MPO meeting, Thomas, following *"the advice on the sequencing of this effort [to resurrect the bypass]"* as stipulated in Marsha Fiol's April 6 email to Reta Busher, presented an entirely different position (one that had not been mentioned to, discussed by, or voted on by the BOS). According to the minutes of that meeting, during the public hearing on the FY12 – FY15 Transportation Improvement Program (TIP) amendments, Thomas *"recommended*

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that text....be removed in order to disencumber the bypass so that the Policy Board can discuss that project.” MPO Executive Director Williams stated that “the Policy Board passed a resolution opposing the Rt. 29 Bypass on November 12, 2002....” and “that the Policy Board would need to revisit its policy position on the Rt. 29 Bypass in order to remove that text and if it has changed, to follow the procedure for a TIP Amendment....Mr. Snow noted that a lot of money is currently invested in this project. Mr. Thomas stated that the widening of Rt. 29 and the Rt. 29 Bypass should be up for consideration....Mr. Snow asked how the Policy Board could move forward with discussing these projects....Mr. Thomas asked how to move forward. Mr. Williams stated that because the public hearing had been advertised for the status quo Tip Amendment and because it had been recommended for approval by the Technical Board, that he recommended approving the document in its current form. He also recommended that at June’s meeting, the Policy Board discuss the current policy position. If it is decided to adopt a new position, then a TIP Amendment can be submitted regarding the Rt. 29 Bypass and a public hearing for that amendment can be advertised and held.”

The next day, Williams emailed Rooker and Mallek about the MPO meeting, “....the Policy Board decided to review its adopted policy on the US29 Bypass at a meeting on June 22....There was not a clear consensus yesterday among a majority of the board and the only [thing] they have agreed to do at this point is have the discussion. This action was taken at the instigation of Rodney Thomas and Jim Utterback. Jim told us that this is simply removing a barrier to progress on US29 issues and that there is no money available for the bypass.”

Utterback’s statement is quite interesting in light of Marsha Fiol’s April 6 email in which she referred to a conversation with Utterback who was seeking information about how to advance the bypass, stating its timetable and cost.

Also on May 26, “Charlottesville Tomorrow” published an article about the MPO meeting, stating, “Albemarle County Supervisor Rodney S. Thomas has called for the Metropolitan Policy Organization to reconsider a 2002 resolution that prevents funding from being allocated for construction of the proposed Western Bypass of U.S. 29. ‘I’ve been trying to get the U.S. 29 [bypass] back on the burner for a long time,’ said Thomas at an MPO meeting Wednesday. ‘I thought it should have been part of Places29. I think it needs [to be] part of our overall discussion of the U.S. 29 corridor....I think it’s up to us to get it on the burner as an MPO. That’s our duty, to get it back on there’....Thomas’ request prompted outrage from two fellow members of the Board of Supervisors. ‘This issue has been brought up a number of times at Board of Supervisors meetings and the Board has not changed its long standing opposition to the project,’ said Supervisor Dennis Rooker in an e-mail to Thomas obtained by Charlottesville Tomorrow. ‘Moreover, during the Board’s numerous Places 29 and transportation discussions, we all agreed to the priority projects in the Rt. 29 corridor.’ Supervisor Ann Mallek said reopening the bypass discussion would distract the community from more pressing issues.”

VDOT officials were keeping a close eye on the developing situation in Albemarle County. On May 31, Utterback emailed Whirley the weekly update from the Culpeper District staff. First on the list was “Emerging issues of potential significant or statewide impact – MPO chairman asks reconsideration of Charlottesville Bypass – Albemarle County Supervisor Rodney Thomas, who also chairs the Charlottesville MPO, called for the MPO to reconsider its 2002 resolution opposing construction of the Charlottesville Bypass at its May 25 meeting. Thomas said he plans to pursue the issue at the MPO’s June meeting.”

BOS meeting: June 1, 2011

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As a result of Thomas' and Snow's statements and actions, Rooker and Mallek anticipated the need to address procedures for the BOS appointees to other boards, commissions, and committees. At the June 1 BOS meeting, Rooker presented a resolution that he had drafted *"with the purpose of making it clear that Board members are appointed to boards, committees and commissions as a representative of the Board, not to act individually....when the Board has a specific resolution or a specific policy that has been adopted by the Board, then the Board members who serve on the committees that could vote on that issue are required to vote in line with the Board's previously adopted policy or statement....otherwise, Board members could go in and vote individually for items that are contrary to the Board's position"* according to the minutes of that meeting. Interestingly, Thomas commented *"that this [resolution] is generated from his own actions recently at the MPO meeting."* The resolution, which was unanimously approved, stated, in part, *"....board members who are appointed to boards, committees and commissions are required to vote on matters that come before those entities in a manner which is consistent with the policies and positions of the Board as reflected in previously adopted resolutions or official action of the Board on such matters."*

Immediately following the discussion and vote on this resolution and in an attempt to get four votes to support the bypass, Thomas distributed to the BOS copies of the Board's 2002 resolution which stated Albemarle County's position on the bypass. He stated that *"constituents and fellow City business partners in the Route 29 Corridor and the area have continually asked for the bypass, not necessarily the actual Western Bypass. He said that by removing the opposition language from the bypass will offer the possibilities of discussion and getting the funds in order to construct the bypass and widen Route 29 from the South Fork Rivanna to Hollymead, as well as getting the needed bridge built across the South Fork Rivanna."* (Although Thomas claimed to be speaking about a bypass, *"not necessarily the actual Western Bypass,"* all of his, Snow's, and Boyd's previous and subsequent actions were focused on the western bypass that VDOT had supported, designed, and purchased some right-of-way for beginning in the early 1990's.)

Thomas then made a motion *"to remove the opposition from the wording so that it states that the Board of Supervisors does not oppose the bypass."* This motion was necessary in light of the resolution that the BOS had just approved, binding its representatives to committees, commissions, and boards to uphold and vote in favor of the official policies and positions of the BOS. A lengthy discussion ensued, during which Dorrier *"said he was against the road because it was close to St. Anne's Belfield and Farmington, going through Colthurst. He said he did not see any sense in that road....this particular road is one he would vote against, as he did in 2002..."* Boyd argued that *"all the Board is being asked to do is direct MPO representatives to put this back on the agenda."* However, Rooker and Mallek objected to Boyd's claim, explaining that Thomas' motion was a clear attempt to allow funding for the bypass. Mallek stated that *"the proposal made by Mr. Thomas to take out the paragraph from the long range transportation plan that addresses only this specific bypass that is on the table right now is not something that she can support."* Despite his previous assertion that Thomas' motion was only about putting a discussion about the bypass back on the agenda for the MPO, Boyd said that *"he wants to remove the language that is there that says the County opposes the bypass."* When Mallek clarified that the language was about *"this particular western bypass project,"* Boyd said that *"he is willing to remove that language,"* thereby reiterating his support for the bypass.

Snow, on the other hand, tried to characterize his support for Thomas' motion as a way to get other projects – the Berkmar bridge and the widening of 29 – done. He said, *"The County would need these other items before the bypass is even on the table."* His later words and actions would disprove this statement.

After Boyd seconded Thomas' motion, Dorrier reiterated his objections to the bypass, stating that *"he has never been in favor of this road, the one that will go by St. Anne's Belfield School...it is too close in....he is in favor of doing the doable, and that is what he has always been in favor of. He feels this is not doable."*

Clearly concerned about the direction that Thomas, Snow, and Boyd were taking, Rooker commented that *"he did not know how long the Board was going to inflict harm on the people that were represented by the neighborhoods....as well as many, many other people."*

The vote failed on a 3-3 tie, with Thomas, Snow, and Boyd supporting Thomas' motion to remove the BOS' opposition to the bypass, and Rooker, Mallek, and Dorrier opposing it. The discussion had been lengthy, tense, and intense. At the conclusion of the vote, Rooker said *"that he hopes the Board members do not wait until someone is absent to raise this again for the fifth time in the last four months."* Snow *"asked if Mr. Rooker was going on vacation anytime soon"* to which Rooker responded *"that he will not tell the Board when he will be on vacation."* No one laughed.

The following day, June 2, "Charlottesville Tomorrow's" article about the BOS's vote on the bypass stated Boyd's continued attempt to define Thomas' motion as *"simply to allow the bypass to be discussed as an option."* However, Rooker countered that claim, noting that the *"MPO's line item for the bypass is related to a specific project for which preliminary engineering has been conducted and right of way has been purchased."* The article quoted Dorrier as saying, *"There's going to have to be some road put somewhere someday. I think that we can have that debate, but to debate [the Western bypass] is going to go back with all the problems we've got with this road."* One week later, Dorrier's strongly worded position would inexplicably change.

Thomas was surprised and disappointed by the vote, as he stated when interviewed on WINA by Coy Barefoot on June 6, *"We had planned on it [the vote] 4-2."* In the interview, he also alluded to *"a lot of stuff"* behind him pushing the bypass along. Obviously, Thomas and others were involved in political machinations behind the scenes and out of the public eye to resurrect the bypass.

VDOT officials monitored Thomas' failed attempt to resurrect the bypass. On June 2, Robert Mannell (Assistant Division Administrator, Transportation and Mobility Planning Division, VDOT) emailed Fiol and Rasnick, *"looks like the Rte29 Bypass vote failed again...."* On June 3, Fiol emailed Busher, *"As an FYI – MPO Members from Albemarle, including the MPO Chair, Rodney Thomas, went to the Albemarle BOS and asked for concurrence on removal of the caveat language on the 29 bypass from the CLPR and TIP (which restricts the project from moving to construction in the TIP). The BOS took a vote, resulting in a 3/3 tie, meaning the motion did not carry and those members are restricted from voting for the removal of the language."*

But things were about to change.

The Infamous Midnight Vote: June 8, 2011

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When the BOS met on June 8, the agenda was packed with several lengthy items including public hearings on the controversial topic of the county's continued membership in ICLEI-Local Governments for Sustainability and Cool Counties. Due to the length of the agenda and the number of speakers during the public hearings, the meeting lasted until 11:30 pm. According to the BOS minutes, Chair Mallek was poised to adjourn the meeting when Dorrier stated that he wanted *"to bring up the Bypass issue and he wants to move to change his vote."* Mallek responded that *"the rule from the Chair is that they are not going to change a vote tonight on something that the Board needs to have public notice about."* There ensued a lively debate on this issue, with Boyd arguing for Dorrier's motion, and Mallek and Rooker vehemently defending the rules of the board. Mallek stated that *"the Board doesn't allow people to change their votes when it is not part of the agenda,"* and Rooker added that *"the issue can be brought back, but it has to be on the agenda. The Board voted at the beginning of this meeting on what the agenda was...."* Dorrier had been a few minutes late to the meeting and was therefore not present when the agenda for the meeting was unanimously adopted by the other five Supervisors; the meeting was called to order at 6:05 pm, and Dorrier arrived at 6:08 pm. Boyd argued that that allowed Dorrier to add something to the agenda at the end of the meeting. Rooker asked Boyd *"if he wanted to violate the rules of order the Board just adopted."* Mallek reminded the Board that *"at the Board's last meeting [June 1] it adopted policies to not bring up items at the end of the meeting for a vote unless they had been introduced at the beginning of the meeting and adopted as part of the final agenda."*

Albemarle County BOS attorney Larry Davis offered his opinion as to how the BOS could address this issue and take a vote, which would require the BOS to suspend its own rules of order. Rooker, clearly concerned about this process, commented that *"at 11:35 at night, the Board is willing to take a huge public interest item and vote to suspend its own rules, so that it can deal with that item without the public knowing about it, without putting it on an agenda for discussion, and without any public input."* He asked *"why it cannot be put on the agenda for the next meeting to allow the public to actually know that this is going to be discussed."* Boyd's response to this suggestion was to move *"to suspend the Board's Rules of Procedure adopted at the last Board meeting."* Thomas seconded the motion and it was approved by a 4–2 vote with Mallek and Rooker opposing. Rooker said that *"he cannot believe that he is sitting on a Board that will simply change the rules at the drop of a hat....He asked why they could not bring this back on the agenda at the next meeting and actually make it an agenda item so the public knows you are doing it like the rules require."*

After the BOS narrow majority suspended its own rules of order, the Supervisors engaged in a lengthy and contentious discussion regarding Dorrier's desire to change his vote on the bypass. Mallek noted that the language about the bypass existed *"in the MPO document [the Long Range Transportation Plan] that has representatives of the City, the County and the University, and this is not something this Board can do all by themselves. It is also referring to money being applied to the design and construction of a particular route and a particular project number. It has nothing to do with discussion or raising an issue for the community or finding a different route....the community needs to make sure that it is being very careful about how it chooses to proceed with its transportation long-range plan to make sure that the community vision is represented....it is a*

terrible mistake, especially at this hour and in this procedural way, to proceed in this fashion....she is horrified to think that people think this is an acceptable way to behave."

Rooker concurred, stating, *"....not only that, but apparently the resolution that Mr. Dorrier introduced was typed up by Mr. Thomas, or he had it in his hand; he gave it to Mr. Dorrier [during the meeting]. Mr. Thomas did not let anybody else on the Board know that [Dorrier] intended to raise it."* When Mallek and Rooker suggested that Thomas should have distributed the resolution to the rest of the Board at the beginning of the meeting and asked that it be added to the agenda, a defensive Thomas asked *"why/how was he supposed to hand them out?"* Mallek reminded him of the rules of order that had been adopted at the last meeting, and, before Thomas could respond, Boyd abruptly asked Dorrier *"if he had a motion he wanted to make."* When Dorrier had some difficulty wording his motion, Davis suggested that he thought Dorrier's intent was *"to move to rescind the action that was taken at the last meeting, which was a motion that was defeated, which resulted in an action to continue the County's current position on the Western Bypass."* Snow immediately seconded the motion.

Dorrier then explained that *"he had a discussion with Secretary of Transportation Sean Connaughton. They talked about the pending Western Bypass, and he stated to him (Mr. Dorrier) that the County could receive the full cost. Secretary Connaughton did not have an exact figure, but said it was in the nature of \$260-\$270 million; that the communities of Danville and Lynchburg were in favor of transferring money from their localities to Albemarle to put in the improvements to the road that would also give the County Berkmar Drive Bridge and would approve the widening of Route 29 North. They (VDoT) would also put the road in and the work would begin this fall. Mr. Dorrier said that the Secretary assured him that the full funding would come through and this would help to provide a parallel road to Route 29, the Berkmar Drive Bridge and it would use existing projects for its funding, and for its implementation. Secretary Connaughton also told him the Governor was behind the project."* It is important to note that transferring money from other localities was not how the bypass was funded.

Upon further questioning by Mallek and Rooker about the validity of Connaughton's statements to him, Dorrier reiterated that the widening of Route 29 was part of this project, and Snow stated, *"Secretary Connaughton said it would include widening Route 29 as part of it....As a bonus, the County also gets a bypass....the Board talks about a lack of money for all of these different projects, and to have them all taken care of, would eliminate traffic congestion on Route 29 completely."*

Discussion ended when Boyd called the question, and the BOS voted, 4-2 (with Mallek and Rooker dissenting), to rescind the June 1 vote to continue the County's current position on the bypass. In comments among BOS members immediately following this vote, it was clarified that Connaughton's statements were not put in writing, so, as Mallek stated, *"it means the County has lost its possible control."* Further, Dorrier told the BOS that *"he had just found out about it today at 2:00 p.m., this afternoon."* When Mallek questioned this, stating that she thought he said he had met with Connaughton, Dorrier responded that *"he talked to Secretary Connaughton by telephone for about half an hour, and this is what they discussed; this is what he assured him."* Rooker explained that *"VDoT has agreed to provide money for a road that Mr. Dorrier opposed."* Dorrier agreed, stating, *"....they would provide money for the Western Bypass."* Dorrier's seemingly newfound support for the bypass reversed the position he had publicly held for almost

ten years. Despite what Dorrier offered as his reasons for changing his vote, many questions and much speculation still remain about what really motivated him.

Thomas moved *"to remove the word 'opposition' from the wording which is to change the County's position of being in opposition to the construction of the Western Bypass to the position that 'The Board of Supervisors does not oppose a bypass.'"* Snow seconded the motion which was approved on a 4–2 vote with Mallek and Rooker dissenting.

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It was almost midnight, and, in an extremely controversial action without notice to all BOS members, without notice to the public, and without a public hearing or comment, a narrow majority of the Albemarle County Board of Supervisors had changed the direction of the county's policy on the largest road project to impact the county in over five decades.

Reaction: June 9 – 14, 2011

Response to the BOS midnight vote was swift, widespread, and vociferous. It largely fell into two categories – jubilation and incredulity - jubilation from the officials in Southside Virginia and their supporters in the Chambers of Commerce in Lynchburg and Charlottesville who had been lobbying the Governor and others for the bypass, and incredulity from residents of Albemarle County and opponents of the bypass who were blindsided by the BOS action. Morgan Butler, senior attorney at the Southern Environmental Law Center, summarized the reaction of many people when he commented to "Charlottesville Tomorrow" on June 9, *"The board forced this vote through and changed the county's position without the public's knowledge or input. Regardless of one's position on the bypass, this is not the board's most shining hour. The public deserves a chance to be heard."*

An article in "The Lynchburg News and Advance" on June 9 stated, *"Lynchburg-area transportation advocates rejoiced Thursday after the almost-dormant U.S. 29 bypass around Charlottesville was revived in a late-night reversal Wednesday by the Albemarle County Board of Supervisors. Virginia's top transportation official, Sean Connaughton, played a key role in persuading Albemarle Supervisor Lindsay Dorrier to change his vote and end the board's opposition to a six-mile bypass route through western Albemarle County. 'I had a conversation with him yesterday,' Connaughton said. Sen. Steve Newman, R-Lynchburg, said he had talked about U.S. 29 with Connaughton in February. 'I was convinced, coming out of that meeting, that he had a plan to make the U.S. 29 bypass a reality, and to do it within Gov. Bob McDonnell's administration time,' Newman said. Rex Hammond, president of the Lynchburg Regional Chamber of Commerce, called the Albemarle board's vote 'a huge step forward.'"*

Also on June 9, Newman's office issued a press release, praising the BOS action and stating, *"During the 2011 legislative session Virginia Transportation Secretary Sean Connaughton met with me in my Richmond office and we agreed to a number of steps to help make the bypass around Charlottesville a reality....We have reason to believe that a Charlottesville 29 bypass could be started, if not completed, during Governor Bob McDonnell's term in office....As Attorney General, McDonnell was extremely helpful in responding to my request for an opinion related to the*

bypass....I also believe that Secretary Connaughton is the right man to move us toward finally seeing the construction of the 29 bypass. He has a realistic plan and the fortitude to get it done. I had indicated to the Secretary that if he did not get the road built during his time in office the project would likely fail....” In another article in “The Lynchburg News & Advance,” Newman stated that “the Albemarle County board’s vote was partly set up after talks he had in February with Sean Connaughton, Virginia’s secretary of transportation.” This same article stated that Lindsay Dorrier “said a long conversation with Connaughton led him to change his position. Dorrier said Connaughton promised to find money for improvements to solve a congestion problem on the existing U.S. 29 corridor, including a bridge on Berkmar Drive.”

The bridge on Berkmar Drive was not included or funded in Connaughton’s request to the CTB and, as of the publication of this document, still has not been funded.

Another proponent of the bypass, Rex Hammond of the Lynchburg Chamber of Commerce, emailed supporters of the bypass on June 9, recounting the BOS vote and stating, “*The Chamber has initiated a letter writing and email campaign asking our Chamber members, US 29 Alliance members and the public to urge VDOT to fast-track the progress and completion of the US 29 Bypass of Charlottesville. Let me take a moment to commend Senator Newman [and others] for all that you have done and all that we will need to do to see this through to the end. I would also like to note that area media have been tremendous in advancing this project....*”

News media in Charlottesville took a more measured approach in reporting the story. A “Charlottesville Tomorrow” June 9 article factually summarized the BOS discussion and vote, stating that “Connaughton confirmed the conversation [with Dorrier] ‘I assured him that if the MPO did move forward and include construction in its transportation improvement plan that the state would end up altering or revising the six-year program to provide full funding for the project’....Connaughton said his assurance was based on the existing alignment and design, and not some other alternative....Connaughton said the project would also be connected to a widening of U.S. 29 from the South Fork of the Rivanna River north to the Hollymead Town Center.” (However, Connaughton would comment to NBC 29 news on September 21 that “Essentially we are talking about apples and oranges. One being the project originally intended, to the project that we are going to have to deal with today. But we don’t intend to build the project that was designed 20 years ago.”) The article noted, “The vote to make it the county’s new official position came shortly before midnight after a lengthy public hearing on the county’s participation in a regional sustainability planning grant. The board had to suspend rules adopted earlier in the month in order to take action. One of them was for the board to begin adopting an agenda at the beginning of each meeting to ensure the public is notified of matters the board will vote on. Supervisor Dennis S. Rooker was opposed to the rule change and the vote. ‘It’s 11:35 at night, and we’re willing to take an item which we know is a huge public interest item, and suspend our own rules....so that we can deal with that item without the public knowing about it,’ Rooker questioned. Rooker asked for the item to be placed on the agenda for the July meeting, but Supervisor Ken Boyd made a motion to suspend the rules and that vote carried 4-2 with Supervisor Ann Mallek joining Rooker in voting against. Two separate and identical votes rescinded last week’s stalemate on the bypass and established the new policy position....” According to the article, reaction to the vote from members of the Forest Lakes Community Association (which represents a community of 5000) was swift; the Association “sent a letter to Boyd on Thursday requesting to know why he

supported a project over their opposition.” A member of the group’s Board of Directors, Scott Elliff, summarized the opinions of many residents of Albemarle County when he commented, “We opposed this idea, as poorly conceptualized, ineffective, undesirable, high cost and dilutive of efforts to make useful and long overdue improvements to transportation in our area.”

“C-ville Weekly’s” June 9 article summarized the events of the past week, stating, “On June [1], Albemarle Supervisor Rodney Thomas failed to sway three fellow board members to remove language from Metropolitan Planning Organization (MPO) documents that prohibits construction funding for the [bypass]. Late yesterday evening, however, Scottsville Supervisor Lindsay Dorrier altered his vote, which gave Thomas support from a board majority.”

Also on June 9, a long feature article in “The Hook” summarized not only the events of the past week, but also the history of the bypass, noting that *“Its high per-mile cost, its inability to get around those northern suburbs, and the state’s own research suggesting that 90 percent of the existing 29 traffic is local, led a national group called Taxpayers for Common Sense to name the Western Bypass one of the most wasteful road projects in the nation.”* The article stated Dorrier’s desire to change his vote *“....began one of the more unusual – some might say bizarre – episodes in the history of the six-member Board of Supervisors, a body that changed dramatically in November 2009 with the election-day ouster of Democrat David Slutzky and the ascent of Republicans Rodney Thomas and Duane Snow. Together with incumbent Republican Ken Boyd and conservative Democrat Dorrier, the newcomers created a four-vote bloc tipping the balance of power. Never was the tip more evident than that Wednesday night, just one week after a similar discussion led to a 3-3 tie....One of the things concerning [bypass opponents Mallek and Rooker] is that Dorrier is reading from a motion provided by another Supervisor, Rodney Thomas, and Dorrier has such trouble reading it that Boyd begins interjecting words to assist his fellow supe.... ‘It’s his motion,’ interrupts Rooker. ‘Let him make it.’ As Dorrier gathers his thoughts, he asserts that what changed his mind was a half-hour conversation with Virginia Secretary of Transportation Sean Connaughton, in which the Bypass-eager Secretary also allegedly promises that the plan also includes full funding for a widening of U.S. 29, as well as a new bridge to extend Berkmar Drive northward over the Rivanna River.... ‘And as a bonus we get a Bypass,’ says Snow. ‘What more can we ask for?’ ‘Have you seen this in writing?’ asks an incredulous Mallek. ‘We will see our Hillsdale [Drive Extension] money [which had already been included in the funding in VDOT’s Six-Year Improvement Program since FY 2004] and all the other money leave those projects that are our highest priority. They have the power to move the funds around within the district at their discretion. I am horrified that people think this is an acceptable way to behave,’ says Mallek, as three consecutive 4-2 votes, with her and Rooker on the losing side, begin the fast-tracking of the Western Bypass.”* As if to prove Mallek’s point, Connaughton told “The Hook” that *“....his conversation with Dorrier did not include any promises about funding Berkmar Drive Extended or any extra bridge across the Rivanna River. ‘The conversation that I had with him was specifically about this project [the bypass].’”* Commenting on the BOS vote and specifically on Dorrier’s actions, long-time bypass opponent Dr. Robert R. Humphris stated, *“It’s the first time in my experience watching the board for 55 years that I’ve ever seen anything like that. That tactic – to not notify the public or have it on the agenda – I don’t know if it’s unethical, but it seems like it is. I’m so disappointed in what [Dorrier] did. I know in the past his financial statements show he gets his money from developers and builders. Somehow they got to him. They have high connections to Connaughton. I know Lindsay didn’t do it himself. It’s like a conspiracy to get this done.”*

In the late afternoon of June 9, during his talk show on WINA radio, Coy Barefoot interviewed Thomas about the events surrounding the vote on the bypass the previous evening. Barefoot, who stated that he supported the bypass, talked about the *“deal with the Secretary of Transportation”* and characterized the Board’s actions as *“sort of a sneaky move....They [Thomas, Snow, Boyd, and Dorrier] kept this a secret and sprung it on them [Mallek and Rooker] right at the end.”* When he asked Thomas to *“take us behind the scenes”* to tell what happened, Thomas responded, *“....I mean, honestly, I think that this had a tone of politics to it. You know, you couldn’t get anything done at all. You got to have some people that support you. And we got it. So, it, it was a matter of everyone understanding exactly what was being transpired. You know, the only way we could communicate was for Sean Connaughton to communicate it.”* Barefoot further questioned Thomas, *“Rodney, was this a surprise? You kept this all quiet until the last minute.”* Thomas responded, *“Um, yes, we did. Yup. Yup. It was a matter – we brought up a matter not listed on the agenda, on the Board, and we, we, that’s what we were able to do. We just didn’t have, you know, we just didn’t have the, uh, I don’t know that we’ve have had the time to, to bring it forth as a announcement or anything. And I’m not so sure you really have to.”*

Clearly, Thomas did not view suspending the BOS rules of order to change its long-standing policy regarding the bypass without notice to all of his fellow Board members or the public to be problematic.

Local media attention to the BOS action continued throughout the week. NBC 29 reported on June 13, in a story entitled, “Tensions High after Controversial Western Bypass Vote,” that “A late night vote on Albemarle County’s Western Bypass is now causing a major problem between supervisors. The vote required the board to suspend its own rules and make a decision without the normally required public input. Board members say there is tension between supervisors. There are questions....about what exactly lead [sic] up to the Western Bypass vote and how it all went down. Albemarle County Supervisor Dennis Rooker stated, ‘It creates a situation that approaches a dysfunctional board’....Albemarle County Supervisor Rodney Thomas said, ‘I don’t know if it’ll hurt us or kill us.’ Regardless, Thomas is pushing forward with plans [for the bypass]....Thomas is attempting to streamline the public hearing process so the Metropolitan Planning Organization can take up the issue in July.... ‘Some of the board members had been in some discussions over the prior days without disclosing that to the rest of the members of the board,’ said Rooker. Rooker says he was not included in those talks and is disappointed that some board members are operating behind closed doors. ‘If you’re willing to suspend the rules just because you’re trying to get something you want done what purpose [do] the rules serve?’ he asked.” Thomas’ claim that there would be *‘plenty of opportunity for public input in the future’* did not account for the fact that the BOS vote had already been taken five days prior without any input from the public.

In the early years of the bypass controversy, “The Daily Progress” had voiced its opposition to the project. Over the years, with a change of ownership and political viewpoint, the newspaper had reversed its position to one of support. However, on June 14, the “Progress” published a scathing editorial, extremely critical of the BOS action regarding the bypass. The editorial, entitled, *“Supervisors’ actions show disrespect,”* stated, *“A one-on-one call from a top state official. A late-night vote with no warning to the public. A surprise switch by a county leader. Last week’s actions by the Albemarle County Board of Supervisors were lawful. But they were disrespectful toward constituents and disdainful of best practices in public decision-making.”* The editorial detailed the events of June 1 and 8 in which Thomas failed in his first attempt to change the language of the BOS policy on the bypass, commenting, *“At the time, Supervisor Dennis Rooker, who voted against*

the motion, said about the change in language: ‘It’s already been brought up three or four times in the past year. The votes have never been there, ... so you keep coming back with it. I guess at some point you’ll catch the public unaware.’ That’s exactly what happened – indeed, what was engineered to happen. And that’s what disrespects constituents and the public process.” The editorial continued, *“The Board has a procedural rule in place saying that action items not on the agenda as approved at the beginning of a meeting should not be added at the end of a meeting for a vote. This procedure is specifically designed to protect the public from unexpected late-night votes on which constituents have no opportunity to comment. To take its unexpected, late-night vote on the bypass, the board had to not only rescind its earlier motion but also suspend its earlier rule. That, too, is lawful. But the combination of maneuvers – coupled with a personal, persuasive phone call from a state cabinet member (who instigated that intervention?) – paints a picture of back-room manipulation. This is not in the public’s best interest. Whether the bypass is the best solution for the public or not, the manner in which this step was taken is contemptuous in the extreme. The end-run around the public amounts to an act of contempt for the public, and for the highest and best practices of public leadership.”*

Out of the Public Eye at VDOT: June 9 – 17, 2011

A lot was happening out of the public eye.

Of course, VDOT monitored the actions of the BOS, as evidenced in an exchange of emails among several high-ranking VDOT officials on the morning of June 9. Richard Walton emailed Stephen Long (Environmental Division Administrator, VDOT) and Chris Collins stating that *“There will be federal dollars used so we need to assume federal involvement. Based on the vote of the Albemarle BOS last night I assume the MPO will advance the project in the TIP for construction.”* Less than 24 hours after the BOS vote, and before any action – meeting, public hearing, or vote – by the MPO, the Chief of Policy and Environment for VDOT, made the assumption that the MPO would advance the project.

In fact, on June 10, less than two days after the BOS vote, Robert Mannell emailed Reta Busher, Samuel F. Curling (Environmental Specialist, VDOT), and Marsha Fiol *“draft scenarios for moving forward with the Western Bypass.”* These scenarios stated, *“In the news article from Charlottesville Tomorrow, it was suggested that one of the City representatives would have to vote in support of the Bypass for it to move forward....However, a review of the MPO bylaws suggest only that one representative from Albemarle and one representative from the City should be present to constitute a quorum. Also, if both members of Albemarle vote in favor of the Bypass, and the state representative votes in favor of the Bypass, it appears that no City votes would be needed to formally adopt an amendment to the CLRP and TIP to include the Bypass, as long as one MPO member from the City attends the meeting.”* High level VDOT officials were prepared with a strategy to move the bypass through the MPO process as soon as possible – and their strategy did not seem at all concerned with the city’s position.

On June 16, VDOT and FHWA officials met about the bypass. Several officials summarized details of this meeting. On June 17, Chris Collins emailed Richard Walton about the meeting with Ed Sundra (Planning and Environment Program Manager, Virginia Division, FHWA) the previous day, stating, *“Ed told us that FHWA would most likely require that the reevaluation take the form of an Environmental Assessment (EA) and that it include public involvement. We resisted and pointed*

out that an EA is not required by law and outlined a simpler approach. We also pointed out that public involvement wasn't required and asked Ed the purpose of the public involvement. His response was that a lot of time had passed since the last time there was activity on the project. We indicated someone [perhaps a higher level FHWA official] may choose to elevate the decision to require an EA and public involvement. Ed also indicated that he was advised not to commit any resources to the project until the MPO gets it in the CLRP."

To emphasize VDOT's desire to avoid further environmental work and public involvement, Collins sent another email to Jeffrey Cutright (Director, Project Management Office, VDOT) on the same day, which stated,

"And for our part you may want to point out that we objected to EA with public involvement and proposed what we believe is a appropriate and simpler approach."

Clearly, behind the scenes, powerful forces were working to fast-track the project. But the question was – at what cost?

The fast-tracking brought with it problems. VDOT engineers and others realized there were concerns with the design that the Secretary had promised to fund, as well as the cost estimates for the project. In an email on June 21 from James Damer (Northeast Region Appraisal Team Leader, VDOT) to Terri Dimino (Northern Virginia District, VDOT) and Arlene Thornton-McKenna (Northern Virginia Right of Way, Special Projects Coordinator, VDOT), Damer stated, *"Rick Rohm brought to my attention this morning the Route 29 Bypass plans did not provide Ashwood Boulevard access to Route 29 in its original design....It was planned to run a service road parallel [to] Route 29 from Ashwood Boulevard to South Hollymeade [sic] Drive as a part of another project. There has been substantial development in that path since the project was stalled. There could be as many as 66 mobile homes, 16 townhouses and 3 to 4 single-family relocations in addition to the estimates previously provided."*

The following day, Brian Costello emailed Richard Bennett with copies to Dimino, Thornton-McKenna, and others, stating that *"No acquisition cost estimate has been provided to take into account the eventual access (if any) of Ashwood Drive to Route 29. The current plans for this project show no Ashwood Blvd access to Route 29....Our understanding is that the designers planned to construct a service road parallel to Route 29 from Ashwood Blvd to South Hollymeade [sic] Drive as part of another project. There has been substantial development in that area since the project was stalled. Therefore, if the service road concept is abandoned, and if access is to be provided as part of this project; then there could be as many as 66 mobile homes, 16 townhomes & 3-4 single family relocations in addition to the estimate provided here, amounting to an additional \$11-\$12 million dollars for relocation, demolition, and hazardous materials only, exclusive of acquisition costs."*

On June 28, Richard R. Bennett emailed Mohammad Mirshahi, P.E. (Deputy Chief Engineer, VDOT) about Mirshahi's cost estimate of \$370,000,000 - \$465,000,000 for construction only (not including right-of-way, preliminary engineering, etc.) for the bypass and stated, *"As I have previously advised this does not include the Ashwood Drive Connector which was/is to be a separate project. This connector is required to construct the by-pass as currently designed. Right of Way and utility cost for that project would be around \$12 million."*

In fact, between January 19, 2011 and June 28, 2011, VDOT cost estimates for construction alone ranged from \$118 million to \$465 million.

Delegate Toscano's intervention: June 17 – 21, 2011

2011
Jun

Delegate David Toscano, a Democrat from Charlottesville, who represents the 57th district of Virginia (which includes part of Albemarle County) in the House of Delegates, attempted to clarify the terms of the deal between Connaughton and Dorrier. In an email on June 17, Toscano told Connaughton that he was *"....trying to get more information about the press reports related to the 29 bypass. I was wondering about the representations that were allegedly made to Mr. Dorrier about monies being available for the expansion of 29 north to airport road, the Berkmar extended project (including the new bridge) AND the bypass. Given our transportation challenges, I did not think the Commonwealth had enough money to do these."*

Connaughton responded by email on June 21, *"The estimated cost to complete design and construction of the Western Bypass and widening Route 29 is \$196 million and \$34 million, respectively. Further engineering study and analysis is needed in order to identify a cost for the Berkmar Drive Bridge over South Fork of the Rivanna River. Identifying the necessary funding for these projects and meet planned commitments in the Program (SYIP) will be a challenge. In July, I plan to ask the Commonwealth Transportation Board to consider transferring \$230 million to the Route 29 project. Based on this action, we are hopeful that the Charlottesville-Albemarle MPO will amend the Transportation Improvement Program (TIP) and Constrained Long-Range Plan (CLRP) to support construction of the Western Bypass."* When four members of the BOS voted to approve the bypass on June 8, Dorrier assured them that Connaughton had included Berkmar Drive Extended bridge over the South Fork Rivanna River as part of the deal. However, Connaughton denied that assurance in his email response to Toscano and in the comments he made on June 9 to "The Hook."

On June 20, the Charlottesville City Council voted 4-0 to oppose the bypass if the MPO voted on it. With City Council on record in opposition to the bypass, it was now totally up to the Albemarle County representatives to the MPO, Thomas and Snow, along with VDOT's representative, Jim Utterback, to push the bypass forward.

Pro-Bypass Supervisors' Response to the Midnight Vote: June 28 – July 10, 2011

Public outcry about and media attention to the BOS midnight vote continued throughout June and July. In response to widespread criticism, Snow and Thomas produced two "position papers" which purported to defend and explain their actions. The first of these position papers on June 28 was entitled *"THE TRUTH IS DIFFICULT TO DETERMINE WITHOUT FACTS. That is the rationale behind this letter."* The paper began, *"We, Rodney and Duane received a call from the Secretary of Transportation, Sean Cannughton [sic] requesting a meeting with us, as members of the Metropolitan Planning Organization (MPO) representing Albemarle County. The meeting was set for April 4, 2011."* The paper recounted their meeting, stating that the Secretary asked, *"If the Commonwealth Transportation Board (CTB) is able to fund your priorities, would you support the Western Bypass?" We said, 'Yes'....Duane reported the meeting and its results at the April 6th BOS meeting."* (However, BOS minutes for that meeting reflect that Snow did not report Thomas' and his statement of support for the bypass.) According to the paper, Thomas received a telephone call instructing him on the necessary steps to move the bypass through the BOS and MPO process, and, when his efforts at the BOS meeting on June 1 failed, *"Rodney called Richmond June 2nd to report the results of the BOS vote."* The paper continued, *"Lindsay Dorrier was contacted and was*

asked to call Secretary Cannaughton [sic] for additional information....From the conversation with Secretary Cannaughton [sic], Lindsay decided to rescind his vote.” The paper contended, “*THERE WAS NO INTENTION OR DESIRE TO ELIMINATE PUBLIC INPUT*” explaining that there had been public comment on June 1 (at a BOS meeting in which the bypass was not on the agenda, but at which five members of the public spoke in opposition to it during the general public comment section of the meeting), and that there would be two MPO public hearings on July 14 and 27 (although, of course, these public hearings were to be held after the BOS had voted on the issue). Further, during his WINA interview with Coy Barefoot on June 9, Thomas had admitted that “*we brought up a matter not listed on the agenda....and that’s what we were able to do. We just didn’t....bring it forth as an announcement or anything. And I’m not so sure you really have to*” – an obvious attempt to circumvent the public. The paper did not mention that the June 8 vote was taken without public notice or public comment. The paper further contended, “*THIS PROJECT DOES NOT RELY ON ALBEMARLE COUNTY MONEY....WE REPEAT!! THIS IS NOT COUNTY MONEY,*” although, of course, VDOT’s and FHWA’s funding for projects comes from taxpayers. Most of the paper had a defensive tone, perhaps best exemplified in the statements, “*We have not based this decision to support the Western By-Pass on the desires of Lynchburg, Danville, or any other locality. THIS IS NOT A POLITICAL [sic] DECISION.*”

2011
Jun

Approximately a week later, Thomas and Snow made another attempt to explain their actions in a second “position paper” entitled “HOW WE CAME TO SUPPORT THE BY-PASS.” This paper was essentially the same as the previous one, with the additional information that Thomas had been instructed by Jim Utterback about how to move the bypass through the BOS and MPO process, and that Thomas had called Charles Kilpatrick to report the result of the failed June 1 BOS vote. It was reproduced as a featured commentary in “The Daily Progress” on July 10. These position papers clearly reveal, in their own words, Thomas’ and Snow’s political machinations and cooperation with VDOT out of the public eye and behind the scenes to resurrect and advance the bypass.

2011
Jul

In a WINA radio interview with Coy Barefoot on July 7, Thomas and Snow continued to state that their support for the bypass hinged upon getting other projects done as well, projects that Dorrier and they had asserted were promised by Connaughton. Thomas commented, “*I guess you could call it making a deal, but I’ll tell you what, Duane and I both left the meeting [with Connaughton] pretty doggone unsure as to what the outcome was going to be....*” Snow added, “*So everything, you know, we’re operating in good faith here, everything above board, you know,....nothing....nothing sneaky going on....I mean that not pulling something over on anybody.*” However, Mallek and Rooker as well as members of the public and the editorial staff of “The Daily Progress” did not view their actions as “*above board*” at all.

On July 10, “The Daily Progress” published commentaries from Ken Boyd and Lindsay Dorrier in which each stated reasons for supporting the bypass. Boyd’s commentary was replete with erroneous information. He stated that “*most of those residents affected already have had their property purchased by the Virginia Department of Transportation.*” Although most of the private homes that the bypass would destroy have been purchased, there is still 32% of the total right-of-way parcels to be acquired at an estimated cost of approximately \$70 million according to VDOT in July 2011. His statement also does not consider the property owners whose property is not taken by the bypass and therefore will not be purchased, but who will suffer adverse impacts from the bypass in perpetuity. He also stated that “*The school closest to the Western Bypass borders was designed and built after the road’s route had been determined; county government*

was fully aware of the implications of siting it so close to the proposed roadway,” when, in fact, the property for the school (Agnor-Hurt Elementary) had been purchased before the CTB selected the bypass route. Also, Agnor-Hurt is not the school that is closest to the proposed route of the bypass; St. Anne’s Belfield Lower and Middle Schools and Mary C. Greer Elementary School are several hundred feet closer. He further stated, “The current bypass route....was picked – after much debate over 26 other routes – as the least potentially dangerous to our water supply and the most environmentally sensitive.” However, according to VDOT and its consultants, the alternative that did the least damage to the water supply and was the most environmentally sensitive was the one that included the widening of Route 29 and grade-separated interchanges at its major cross streets. He stated that “the percentage of traffic taken off U.S. 29 by the bypass could be as high as 49 percent,” a figure that has never been confirmed by any reputable traffic studies, including VDOT’s own \$1.5 million dollar definitive origin and destination study, all of which agree that the bypass might take 10 – 15% of the traffic off of the bypassed portion of Route 29. Boyd concluded his commentary, “I believe if this bypass is not approved this year, there will not be another one proposed or approved in my lifetime, if ever.”

Clearly, Boyd knew that the political climate was right for the approval of the bypass, but that it could change. The question he failed to address was – if this bypass were a good road, why would a change in political climate affect its acceptance?

In his published commentary, Dorrier incredibly stated, *“It is my hope that the Albemarle Board of Supervisors, working closely with citizens and the Virginia Department of Transportation, will develop a workable and fair compromise for the long overdue improvements to U.S. 29 North, while protecting homes and schools on the route.”* It appeared that Dorrier was unaware of the effects of the motion that he made on June 8 and the wheels that he set in motion that changed the county’s longstanding transportation policy. In another incredible statement, Dorrier described the phone call he had received from Connaughton that changed his mind, stating, *“Receiving the state’s assurance of \$270 million or greater, previously unheard of, required an urgent response and vote change. It was indicated that there was narrow time for accepting these funds from the commonwealth for U.S. 29 North. Otherwise, the funds would be lost and released to other counties.”*

Again, the obvious question is, if the bypass were such a good idea, why was there such urgency to fast track it? The answer is, once again, politics. Gov. McDonnell was the first governor in eight years who supported the bypass. Bypass proponents knew they had until the end of his term to begin construction or the twenty year time limit for using the right-of-way would expire. In order to accelerate the project, they had to fast track it by eliminating as much public involvement and as many updated studies as possible. They had to include the bypass on the Governor’s Illustrative List and shift money toward its construction. They had to instruct the local Republican members of the BOS, in particular Thomas and Snow, as to how to push the bypass through the MPO process as quickly as possible, which consequently resulted in the infamous June 8 midnight vote when the June 1 vote didn’t go as planned. Further, the need to fast track the project was a major reason that Connaughton and VDOT decided to advertise the contract as design-build instead of the standard design-bid-build method. Yes, it was politics indeed. Politics at its worst.

Mallek and Rooker respond to the midnight vote: July 10, 2011

2011
Jul

On July 10, "The Daily Progress" also featured a commentary, co-authored by Mallek and Rooker, entitled, *"Why the road shouldn't be built."* This commentary began, *"On June 8, at almost midnight, four of our fellow supervisors voted to reverse the board's 20-year opposition to this project without prior notice to either the public or us and without taking public comment. This vote was preceded by a 4-2 vote (which we voted against) to suspend our own rules of order prohibiting voting on matters not included on the agenda. The vote on the bypass was taken based upon incomplete and undocumented assurances from one supervisor, who stated he had a telephone conversation with the secretary of transportation who said that the state would fund some other Albemarle County road projects if the board would change its position on the bypass. The vote taken that night did not include any reference to funding other transportation projects, and the county has not received any written assurance of this funding."* The commentary continued, *"There is a document being circulated by several supervisors stating that public comment was taken on the bypass on June 1, which falsely implies it was on the agenda for that meeting. The bypass hasn't been on a board agenda at any time in 2011, nor has any supervisor requested that it be placed on an agenda for discussion, public comment or vote in 2011 until we recently requested that a public hearing be held on July 13."* Of course, the obvious question is why hold a public hearing after the BOS had already voted? The commentary summarized all of the reasons that previous secretaries of transportation, VDOT consultants, several Commonwealth Transportation Board representatives, Senator Mark Warner, and various independent groups including Taxpayers for Common Sense have opposed the bypass. Noting that *"The bypass would cause the greatest destruction of property values in the history of Albemarle County,"* the commentary concluded, *"In times of incredible financial stress for governments, the last thing the state needs to do is spend more than \$250 million on a road that all objective analyses have established is not a good investment."*

But facts and fiscal reality didn't seem to matter.

BOS public hearing: July 13, 2011

Thirty-five days after it had taken a formal vote to reverse Albemarle County's longstanding opposition to the bypass, the BOS held a public hearing to receive input on the bypass as part of its regular July 13 meeting at the insistence of Mallek and Rooker. An article in "The Daily Progress" that day noted that *"non-local groups lobby for bypass."* Citing a non-existent "mutual promise," Rex Hammond (president and CEO of the Lynchburg Regional Chamber of Commerce) commented, *"We feel that this is a mutual promise that we made to each other 15- 20 years ago. Our communities have silently and patiently waited for Charlottesville to fulfill its end of the promise....special interests such as environmentalists and landowners have persuaded local elected officials not to pursue the road."* Mallek responded that *"Their [other communities'] purpose would be better helped by actually fixing the traffic on Route 29. After this bypass is built we would still have service level 'F' on U.S. 29."*

At the BOS meeting that night, 103 people voiced their opinions about the proposed bypass. The overwhelming majority (68%) spoke in opposition, and, of the speakers in support, several self-

identified as being from Lynchburg. In addition to understanding and commenting on the negative impacts of the bypass, many of the speakers expressed their shock, disappointment, and outrage at the BOS' midnight vote as well as their suspicions that politics, not facts, were responsible for reviving this bypass. According to the meeting minutes, one speaker commented that *"he suspects a deal has been made, with influence from powerful people in Richmond and some folks down South....it is clear this project is desperately wanted by the good folks in Danville and Lynchburg; but he is not sure how those folks have gained such a strong voice in Albemarle County Government."* Following up on the influence from outside of Albemarle County, another speaker suggested that Southside communities have supported the bypass because *"....they have nothing to lose. It is not their beautiful County that will be irreparably damaged. It is not their drinking water in the South Fork of the Rivanna River that will be polluted. It is not their air around their schools that will be filled with noxious fumes. It is not their other traffic priorities that will be put aside for the foreseeable future."* Another speaker opined that the bypass decision was *"all about political maneuvering from Richmond, Lynchburg, Danville, and even right here on this Board, in this room."* A former Albemarle County Planning Commissioner questioned, *"Why the rush? Was there a strategy to do this, to push it through before anybody noticed? Were you being coerced by the State? Was there a threat? Were you being manipulated?"* A speaker who identified himself as a professional engineer summarized the concerns of many of the bypass opponents when he stated, *"The vote by four Board members on June 8 was disrespectful toward constituents and contemptuous of thoughtful process and public policy decision making....the decision to revive the Route 29 Western Bypass showed extremely poor judgment....the combination of procedural maneuvers coupled with a personal call from a state cabinet member shows a picture of backroom manipulation and a conspiracy against the very constituents that the Board was elected to serve....the end-run around the public amounts to an act of contempt and disrespect to the citizens of Albemarle County."*

After over three hours of public comments, the BOS took no action to change its previous vote. In fact, Snow tried to recharacterize the Board's previous action by stating, rather incredibly, that the Board *"didn't make a decision to vote the bypass in, we just put it on the agenda so we can talk about it and have the [public] hearing. Nothing has been voted on and nothing has been decided,"* according to an article in "The Daily Progress" on July 15. He shared *"a list of conditions he said needed to be nailed down before he or Supervisor Rodney Thomas would vote as MPO representatives to change Albemarle's long standing policy of opposition to the road."*

Snow also revealed that Thomas and he had met with Commissioner Greg Whirley and Charles Kilpatrick that morning in Richmond, noting that *"those officials provided a memorandum of agreement but it was vague, mentioning the widening of Route 29 and guaranteeing that no other projects would be defunded."* Later in the meeting, Snow stated that *"he and Mr. Thomas again told State Officials today that if [certain] projects are not spelled out exactly as just explained, the County will not be voting for the bypass. He said that is a promise to the public here and everybody else who has left here tonight."*

The community would soon realize that Snow's promise meant nothing.
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MPO public hearing: July 14, 2011

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The following night, the MPO held a combined public hearing on the proposed amendment to remove the MPO's opposition to construction funding for the bypass from the fiscally constrained Long Range Transportation Plan (LRTP) and the Transportation Improvement Program (TIP). Sixty people spoke, many of them among the speakers at the BOS meeting on the previous evening. Approximately two-thirds voiced their opposition to the bypass. In a July 19 article in "C-ville," Thomas was asked if the public hearings had *"changed his opinion on the Western Bypass."* He responded, *"Nothing's changed with me."* No matter how well-informed public speakers were, they hadn't affected his opinion, nor would they. That wasn't part of the plan.

According to the minutes of the meeting, Kristen Szakos, Charlottesville City Council representative on the MPO, observed that *"a statewide study of transportation completed in 2009 called the Western Bypass project obsolete and ineffective."* MPO Executive Director Williams *"confirmed that various corridor studies completed throughout the years have not recommended this project."* In response to Szakos' question about public input during the design process, Williams *"stated that typically there are public workshops during the design project and that a Design Public Hearing would be required for the project."* However, VDOT's representative on the MPO, Jim Utterback, stated that *"the Design Public Hearing requirement had been previously met for this project...."* (The design public hearing to which he referred was held on February 25, 1997.) This statement was very telling in that it revealed VDOT's intent to exclude the public from the design phase of the project.

At the suggestion of Executive Director Williams, the MPO decided to send a letter to the Commonwealth Transportation Board before its July 20 meeting. The intent of the letter was to identify *"local priority projects for the CTB to consider funding along with the proposed US 29 Western Bypass. These projects include Hillsdale Drive completion, US 29/US 250 ramp [Best Buy ramp project which had already been included for funding in VDOT's Six-Year Improvement Program since 2008] and lane improvements, Berkmar Drive extension, Belmont Bridge project, and Hollymead/Forest Lakes/Charlottesville Airport transit service."* After discussion, the MPO agreed *"to include the North Town Trail to the project list and to change the language for the Berkmar Drive Extension to include the engineering of the bridge to accommodate the extension as well as a design for the Bypass."* According to an article in "The Daily Progress" on July 15, Snow and Thomas both voted in favor of sending this letter to the CTB, *"explaining the conditions under which it will support a bypass."* Snow commented, *"We don't know how much money there is or where it will be coming from. This is just a letter to say what we want and what we expect."*

The message to the public was that the MPO would not approve construction funding if the other local transportation priorities were not addressed. The message proved to be totally misleading.

Commonwealth Transportation Meeting: July 20, 2011

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Not surprisingly, the CTB rubber-stamped VDOT's request for construction funding for the bypass at its meeting on July 20. According to "Charlottesville Tomorrow," the Board *"approved the allocation of \$197.4 million to the Western Bypass of U.S. 29 through Albemarle County, fully funding the \$233 million cost estimate for the project."* (Documents obtained through the Freedom of Information Act in September would reveal that the cost figures Jim Utterback presented to the CTB had been a matter of great discussion and debate within the VDOT hierarchy, but, Connaughton never revealed that to the CTB members or the public. One of these documents, an email from Kerry A. Bates, P.E. [District Construction Division, VDOT] to Utterback and several others in the VDOT hierarchy in Richmond, dated June 30, was marked "Confidential – FOIA Exempt" and stated the design-bid-build estimate to be between a low of \$297,973,353 and a high of \$413,851,879. These estimates were for construction only.)

Jim Rich, the Culpeper District's representative on the CTB – and, therefore, the representative of Albemarle County and Charlottesville – cast the single vote against funding and was the lone challenger of the project on the CTB. According to "Charlottesville Tomorrow," Rich stated that the bypass is *"not going through a cornfield. You're going through a developed area. It's going to take [over] 40 homes, negatively impact 1,500 more, and affect the health of 4,000 school children at 6 schools....That is why people are upset."* During the public comment period, at which over 30 people spoke, most in opposition to the bypass, Snow stated, *"I can understand how people would get upset. I think it's important we stop studying this and start doing it."* Thomas commented, *"I request the board vote 100 percent in favor of these projects and the improvements the MPO board has requested."*

In a valiant but unsuccessful attempt to delay approval, Rich proposed *"an amendment to defer consideration of bypass funding"* stating, *"This road dead ends into a growth area. We do not have all the right of way. This project is not shovel ready."* His plea to fellow CTB members was ignored.

After the vote, *"Connaughton was dismissive of the request [by the city to accelerate construction of the Belmont Bridge replacement project] especially given that the city's two representatives on the MPO have indicated they will vote against the bypass."* Clearly, Connaughton was not in the mood to fulfill the requests of anyone who crossed him – and that would be evidenced again several months later when, on Gov. McDonnell's behalf, he fired Rich from the CTB.

"The Daily Progress" reported on the politics behind the BOS and CTB votes in an in-depth article on July 24. The article stated, *"Connaughton sits squarely at the center of the stunning and swift revival of the controversial road project....drawing high praise from bypass backers but leaving others to wonder if a road project here is being used for political leverage elsewhere. 'The secretary is a political animal,' said John J. 'Butch' Davies III, a former Democratic state delegate who represented the region on the CTB from 2002 to 2010. 'He came from a political position in Prince William County. He has other political ambitions....The secretary is clearly trying to respond to political pressures from the people in the Lynchburg and Danville areas.'" Although Connaughton denied these allegations, he stated, "Honestly, Gov. [Bob] McDonnell is a supporter of moving this project forward."* In confirmation of that assessment, state Senator R. Creigh Deeds commented, *"The bypass is a major focus for business interests south of Charlottesville."*

Those people supported the governor in his campaign. He likely made a commitment to them to get something done."

The article discussed the push from the Southside communities to get the bypass built, quoting state Senator Newman as saying, *"I don't think any one person has been responsible for jumpstarting this process. I will say that my shoulder has been at the wheel pushing it for over a decade, and certainly when we received a new administration I renewed that effort this year."* The article further stated that *"Newman said he told Connaughton this year that if the bypass were taken out of VDOT's six-year plan – which looked like a serious possibility – he would seek an opinion from the attorney general [Ken Cuccinelli] on whether that would amount to a violation of state code."*

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The article also discussed the motivations and influence of Lynchburg's representative on the CTB, Mark Peake. Characterizing Peake as a *"politically ambitious Lynchburg attorney who would like to join Newman in the state Senate,"* the article quoted a July 11 press release from Peake's campaign which stated, *"Peake said he would work closely with Sen. Steve Newman, whose 23rd District includes the other half of Lynchburg, to make sure the U.S. 29 bypass is completed."* Peake was defeated in his attempt to win the Republican nomination for this state Senate seat.

Further evidence of the political influence on the bypass resurrection was noted in a July 22 article in "Cville Tomorrow" about the Forest Lakes community's concerns about the impact of the northern terminus on their neighborhood. The article quoted Carter Myers, a founding member of the North Charlottesville Business Council and one of the driving forces behind the bypass for years, as stating, *"The northern terminus probably needs a little bit of work [but] we've got a Board of Supervisors member, Ken Boyd, on this project...."*

As proponents celebrated the resurrection of the bypass, their political machinations behind the scenes became less guarded.

Raising false hopes: July 20 – 25, 2011

Two days before the MPO's vote on amending its Transportation Improvement Program to allow construction funding for the bypass, MPO chairman Thomas raised false hopes among bypass opponents when, in a July 25 article in "The Daily Progress," he stated that he might postpone the vote *"if a list of other local transportation priorities is not guaranteed funding by state officials."* Thomas declared, *"I'm on the edge right now....I do not want to defer the vote on this, but if we have to defer the vote, it would be until after City Council meets to see if we can get the city's support for the bypass."* On behalf of the MPO, Thomas had signed a letter that was sent to the CTB, prior to its July 20 meeting, which stated in part, *"We are willing to do our part to assist in meeting the commonwealth's transportation needs and respectfully request that the CTB give consideration in helping us meet our local needs."* The letter included a list of local road priorities that had been discussed by the MPO. But, according to the article, *"While the letter came up during the CTB's meeting last week, no promises were made to fund any of those priorities."* In response, Szakos declared, *"If the CTB doesn't include funding for those projects in a multi-year budget, then I don't think we have anything to talk about. We need to stick to our guns and say this is not the process that we do. As an MPO member, I think it's irrelevant to even discuss how we'd vote right now because we're not in a place where we're ready to take a vote."* Although

Thomas had noted immediately after the CTB meeting on July 20, *“Those four things that we wanted...[they] haven’t addressed them yet,”* he stated a few days later that he was still negotiating with VDOT, commenting, *“We’re trying to make it happen and encourage it to make it happen.”* However, after the same CTB meeting, Snow had stated that he had a verbal agreement with VDOT, declaring, *“When we go forward from here and do our resolution of intent to vote for this, it will be based on the items that we put in that resolution. I’m going to vote for [the bypass] if these other items are met.”*

The ensuing action by the MPO would reveal that both Snow’s and Thomas’ statements were apparently nothing more than a smokescreen to make bypass opponents think that facts might yet prevail.

MPO meeting: July 27, 2011

Over 100 people voiced their opinions during the MPO’s second public hearing on the proposed amendment to the constrained Long Range Transportation Plan (CLRP) and the Transportation Improvement Program (TIP). Once again, the overwhelming majority opposed amending these documents to allow construction funding for the bypass. Once again, Albemarle County’s two representatives on the MPO, Snow and Thomas, dismissed the pleas of the public.

The Charlottesville-Albemarle Regional Transportation Committee (CHART), an advisory committee to the MPO composed of a diverse group of citizen appointees from the city and county, sent a list of recommendations to the MPO for its consideration during the July 27 meeting. According to the written statement of the committee’s chairman, Russell “Mac” Lafferty, the committee reached *“a strong consensus on two fundamental points: There is an urgent need to obtain more factual information, before approving or rejecting the Bypass; and We must excise – in the clearest and most well publicized manner – what is a dubious but still principal claim for the Bypass: that its benefits include the significant relief of current and future traffic congestion in the Charlottesville and Albemarle County Rt. 29 corridor.”* CHART’s recommendations included obtaining more information about the impacts of the bypass on other area post-2002 transportation plans for the region; funding sources and effects that funding the bypass would have on other local, regional, or state transportation priorities including those that are multi-modal; cost effectiveness; and analysis of impacts on the region’s water supply plan. The committee’s statement concluded, *“Put simply, without a more realistic description of the true costs and benefits of the revived Bypass project and more precise assurances that the project will not impede other more highly prioritized transportation investments, the community represented by the CHART committee will not support the Western Bypass.”* Like the pleas of the public, the recommendations of the MPO’s own appointed advisory committee were ignored by the two county representatives on the MPO, Snow and Thomas.

During the meeting, MPO Executive Director Williams revealed that, just prior to the meeting, the MPO Board had received a letter from Connaughton which stated the CTB’s actions regarding the funding of local projects that the MPO had requested. According to the minutes of the July 27 meeting, city representatives on the MPO, Szakos and Satyendra Huja, questioned why the letter was so delayed since the CTB meeting had occurred a week earlier. Szakos noted that the tardiness of the letter *“appeared to show a certain disdain for this process.”* Utterback responded *“that the Secretary’s office is extremely busy and that he was surprised that the letter arrived*

before today's meeting." Szakos and Huja also expressed concern about the content of the letter, with Huja noting that *"the letter is very general regarding funding for Hillsdale Drive and Belmont Bridge and that these promises seem ambiguous."* The city representatives, clearly concerned about the process and the promises, argued to delay the MPO vote until more clarity about VDOT's commitments could be obtained and until they could discuss the letter's content with legal counsel. However, Snow and Thomas insisted on moving forward despite Snow's prior statement at the BOS meeting on July 13 that *"he and Mr. Thomas again told State Officials today that if [certain] projects are not spelled out exactly as just explained, the County will not be voting for the bypass. He said that is a promise to the public here and everybody else who has left here tonight."* Szako's motion to defer the vote until the next MPO Policy Board meeting failed on a 2-3 vote, with Snow, Thomas, and Utterback (VDOT's representative) opposed. Snow then made a motion *"to amend the LRTP to include funding for the Route 29 Bypass project and the widening of Route 29."* Thomas seconded the motion, which passed on a 3-2 vote (with Szakos and Huja opposed).

Near the conclusion of the meeting, Rooker addressed the MPO, stating that *"he was disappointed with how this project had moved forward and [he] felt members of the public were never fully aware of all of the information, particularly the important letter from the Secretary of Transportation. Mr. Rooker also stated that the County reviewed a resolution regarding the local projects that the Bypass is conditioned on. The resolution had included a condition for full construction funding [for] Berkmar Drive Extended."* The minutes continued, *"Mr. Thomas stated that while some of the suggestions from this resolution were taken to the Secretary of Transportation, he and Mr. Snow revised the requirements for Berkmar Drive Extended."* In other words, Thomas and Snow had not felt bound by the resolution approved by the BOS and had unilaterally changed it to assure that the bypass would move forward.

The resurrection of the bypass, planned and orchestrated by Gov. Robert F. McDonnell, Secretary of Transportation Sean Connaughton, and a group of politicians in Albemarle County, Lynchburg, and other Southside communities, had been accomplished by the narrowest of margins – one vote on the Albemarle County Board of Supervisors and one vote on the Charlottesville-Albemarle Metropolitan Planning Organization.

Commentary on the MPO decision: July 28, 2011

Jim Bacon, conservative Republican, former editor of "Virginia Business" magazine, and founder of "Bacon's Rebellion," an online news service, attended the MPO meeting on July 27 and opined on it the following day in an article entitled, "Promises, Promises." Bacon wrote, *"The Charlottesville region will get \$197 million for a western bypass plus \$33 million to widen a stretch of U.S. 29 north of the city, but citizens may have to wait years before funds come available to build other priority projects in the U.S. 29 corridor. In a split decision, the Charlottesville-Albemarle Metropolitan Planning Organization voted to amend its Transportation Improvement Plan to include the two projects but did not make the approval contingent upon state funding for the other projects, as two MPO board members had hinted they might. Instead, the board attached a*

letter from Transportation Secretary Sean Connaughton that outlined his promise to ‘recommend’ the improvements to the Commonwealth Transportation Board (CTB) for incorporation into the states’ Six Year Plan next year. The value of the promises in Connaughton’s letter became the object of contention between MPO board members. ‘I’ve got the letter that I sought,’ declared Albemarle County representative Duane Snow, who also serves on the Albemarle County Board of Supervisors. ‘We’ve got two major projects funded. I think Connaughton’s letter is sufficient’ for the rest. But Charlottesville representative Kristin Szakos said the letter ‘doesn’t offer any concrete assurances.’ Moreover, she said, she didn’t like the fact that the letter had been delivered the day of the hearing, giving neither board members nor the public time to examine it carefully....The letter doesn’t say when the money will become available, she said.... ‘It doesn’t commit to anything. This doesn’t meet the conditions you set,’ she told Thomas and Snow. ‘It doesn’t offer any concrete assurances.’ But Thomas and Snow said the letter was good enough for them....”

Reaping the whirlwind: August 3, 2011

Although the MPO approved funding for the bypass at its July 27th meeting, with nothing in writing, Mallek and Rooker along with hundreds of bypass opponents were not satisfied that Connaughton’s commitments to other local road projects were strong or comprehensive enough. According to an article in “The Daily Progress” on August 3, “Mallek said she is worried that without concrete guarantees of funding for the area’s other projects, the funding may never materialize. ‘We’ve given away the marbles without asking for anything in return, and that makes me very nervous....The actions [of the MPO on July 27] against the recommendations of staff to postpone the vote on the change to the [Transportation Improvement Program] until proper language could be prepared were grievously destructive to our community process and well being. The county reps [Snow and Thomas] turned their backs on their city colleagues, who were right in demanding time to think over a contract as huge and consequential as this one. The MPO majority lost a chance to handle the process correctly and help citizens feel that transparency and good government prevailed, despite the decision made. There is certainly no claim to that now....”

At its regularly scheduled meeting on August 3, the BOS once again did not list the bypass as an agenda topic, but Mallek added it for discussion at the end of the meeting. Many members of the public once again spoke passionately against the bypass and the BOS’ actions, pleading with the Board to at least get a better commitment from the state to fund other transportation projects in the area. The public would again witness their pleas go unheard as the meeting transpired.

According to the minutes of the meeting, when Mallek opened the BOS discussion on “*how to help the MPO move toward something enforceable and secure for the community,*” Thomas immediately declared “*that he is personally satisfied with the letter he got [from Connaughton].*” Mallek and Rooker repeatedly made the point that the Board’s actions to support the bypass on June 8 and July 13 were contingent on funding for other transportation projects in the area that had been itemized and agreed upon by the Board, but that Connaughton’s letter gave no such assurance that those projects would be funded. Rooker noted that “*Mr. Thomas and Mr. Snow said they would not support the bypass without a firm commitment for these other items. He said he does not feel like the Board gave them a blank check to go out and vote in favor of something that never came back to this Board to look at....that the impression Mr. Thomas and Mr. Snow gave most people at the Board meeting was they wouldn’t support a vote for the bypass unless*

they obtained some commitment to advance [Berkmar Drive Extension and bridge]Mr. Rooker explained that the bottom line is this is not a commitment to fund anything, even though Mr. Snow promised he would get that commitment.” Snow responded by echoing Thomas’ words that he was “satisfied with the letter from Secretary Connaughton.” Rooker continued, stating that “The night the four Board members voted to go forward with this project, he asked that they get the best deal for the community. He stated that the reason people did not like what had happened is because there is no legal commitment to fund anything else and he doesn’t understand why they would not agree to put anything in the TIP amendment to ensure that....”

The issue of funding for Berkmar Drive Extended was repeatedly discussed, as it was a very important part of the “deal” that Dorrier said Connaughton had offered. According to the minutes, “Mr. Rooker stated that with respect to Berkmar, Mr. Dorrier had indicated on the night he changed his vote that ‘we got Berkmar,’ but the only commitment is the ‘bypass won’t preclude it’....Mr. Rooker said that Steve Williams’ letter says that ‘Full funding of Berkmar Extended is an essential aspect of the Western Bypass project because it maintains access to both U.S. 29 and the Forest Lakes/Hollymead area.’”

Thomas commented that “construction [of Berkmar Drive Extended] was not asked for;” Snow stated that “The Berkmar Extension can be connected with proffers;” and Boyd said that “VDOT would have to spend quite a bit of dollars on engineering design, and what the state is committing to do is figure that out....VDOT cannot even guarantee that it is possible to do.”

Obviously, although Berkmar Drive Extended was part of the Places29 master plan which the BOS had unanimously approved in February, Snow and Thomas had not argued for its funding when they met with Connaughton, nor did they see the necessity of including it in the MPO’s TIP resolution. Perhaps Snow, Thomas, and Boyd feared that Berkmar Drive Extended would not only divert money from the bypass project, but also might render the bypass unnecessary.

After a lengthy discussion, Mallek moved “to develop a specific list of projects that could be checked with legal counsel for incorporation in the MPO’s final adoption of their changes to the TIP.” According to Mallek, “in her phone conversation with Mr. Utterback, he indicated it would be wise for the County to have an MOU or a very specific agreement on this. She said that Mr. Utterback stated it was perfectly legitimate to have a specific list of projects, and there is no reason to hide whether Board members are making the bypass contingent on them or not.” Albemarle County attorney Larry Davis said that “a letter or an MOU would simply create a moral obligation and not a legally binding obligation, because you cannot bind a future Secretary or a CTB to fund something. The only way that you can control it locally is by what is in the TIP, and the TIP with conditions can force funding decisions to be made if the project goes forward.” Thomas feared “that would take things back to before the language opposing the bypass was changed,” to which Rooker responded that was not the case, but rather the condition “would say that the MPO supports the project but only supports construction funding conditioned upon certain things taking place. At least you will have some assurance that the funding will go in and stay in the state’s plans for the things that are conditions to approval. Right now you don’t have anything that is binding.” Boyd suggested drafting conditions and showing them to Connaughton for his opinion, but he added that he “does not think the Board can ask for the entire Berkmar Drive Extended.”

After further discussion, County Executive Tom Foley suggested that Davis and he draft conditions for the TIP, working with the Board and the city. Boyd agreed, but stated that “either Mr. Thomas

or Mr. Snow needs to be part of crafting that language.” Rooker suggested that Davis, Snow, and Mallek “work together on the wording on conditions to provide some assurance as to what the community would get.” Thomas voiced his objections to the delay in the process that this would cause, but said that he “would go along with what has been discussed.”

In order to clarify what would be voted on, “Mr. Foley stated that the Secretary’s letter won’t stand as an official position in the TIP, adding that there is no need to move forward with conditional language here without a majority of the Board....that the language to address the bridge over the river as it relates to the bypass, the way Mr. Rooker described it, is very different from the language in the Secretary’s letter.” Mallek noted “that is what Mr. Snow said needed clarification because it is different from what he was told.”

Davis further clarified that “the vote would be to defer any final action on the TIP until the Board meets on September 7 to discuss it,” and Rooker made a motion, seconded by Mallek to that effect. Snow commented that “he does not want to close down any options [and] that things have a tendency to get turned around and mean different things and all of a sudden they get locked into a vote.” Thomas expressed fear that “Secretary Connaughton might just pull everything back, right off the bat.” Snow then declared that “he does not know that the Board needs to take a vote on this,” while Dorrier feared that a vote “may tie the hands of the MPO.” Rooker stated that “the Board’s representatives on the MPO should represent the Board, and the Board should be able to give clear direction.” Boyd stated that he would not support the motion because “it ties the hands of the MPO.” (This was an interesting comment since Snow, Thomas, and VDOT representative Jim Utterback had three votes on the MPO, effectively controlling it.) Snow stated that “he wants to proceed in good faith but does not want to make it a vote and lock things in.” Picking up on the same theme, Dorrier opined that “the Board needs to keep things open and it is not wise to tie the hands of their two representatives to the MPO. He stated that there needs to be a resolution specifically defining what the Board is asking for, what it wants and when they want it, how much it is going to cost, but to tie their hands right now without knowing all the details in the future they could reap the whirlwind....He trusts their judgment and thinks they will make wise decisions.”

The motion for the Board “to direct their MPO members not to vote on a final TIP agreement until after the Board meets and discusses such amendment on September 7 at their next regular Board meeting” failed on a 2-4 vote, with Boyd, Snow, Thomas, and Dorrier refusing to support it.

Near the conclusion of the meeting, Foley brought up the bypass issue again, summarizing its most recent history at the MPO. Foley “stated that staff would work with Mr. Snow and Ms. Mallek, coordinating with the City, to try to get a clear position [on a minor amendment to the TIP to include more specific conditions] and not rush it through to get it to the CTB by the 21st – so it would be on the Board’s agenda for September 7.” An article in “The Daily Progress” on the following day stated Mallek’s hope that “the language would add conditions to the bypass’s construction that, she said, should have been in place anyway. ‘We’re trying to fix what was done prematurely at the July 27 MPO meeting and get what we want for our community. I think there will be a continued outpouring of support for this effort in the next week or so.’” According to the article, the conditions would include “full funding for Hillsdale Drive Extended, Berkmar Drive Extended, the U.S. 29/250 bypass ramp at Best Buy and the replacement of the Belmont Bridge.” However, Thomas countered that “a preliminary design for Berkmar was the only condition he remembered,” stating, “Funding for a conceptual design was all we ever wanted.” Snow declared that he “trusted the secretary’s letter. ‘I’m fine with the letter we have gotten from Secretary

Connaughton'....[and he was] afraid that adding language that obligated funding of the priority projects would prevent the bypass from being built." Mallek denied Snow's accusation that Rooker and she were trying to stop the bypass, stating that they were trying to ensure funding for those local priority projects.

The BOS agreed by consensus with Foley's suggestion, but, at the meeting with Mallek and Foley, Snow refused to address any contingencies. The issue never came back to the BOS.

Dorrier's whirlwind had been reaped. Again.

Greasing the skids: August 10 – 25, 2011

Jim Bacon ("Bacon's Rebellion") continued to observe and write about the events surrounding the BOS June 8 vote to resurrect the bypass. In an online article, posted August 10 and entitled, "Gentlemen's Agreement," he wrote, *"In a side deal forged to grease the skids for construction of the \$200 million Charlottesville Bypass, the chairman of the regional Metropolitan Planning Organization and member of the Albemarle County Board of Supervisors has agreed to limit private property owners from opening new access points to U.S. 29 north of Charlottesville. The specifics of the handshake deal had not been spelled out until today during a meeting between Rodney S. Thomas and Gregory Whirley, commissioner of the Virginia Department of Transportation [a meeting that Thomas did not announce in advance to the BOS]. In exchange for Albemarle's approval of the Charlottesville Bypass, the McDonnell administration has committed to fund or assist four smaller projects on the region's list of priorities. But that help is contingent upon the county's commitment to the state's 'access management' strategy for U.S. 29. In addition to limiting new access to the highway, the County also may buy up 'a few driveways' from private property owners, Thomas says, and it will 'consider' deleting some median-strip crossovers. The informal understanding worked out between Thomas and Whirley brought clarity to a side deal that had been worked out between Thomas and Whirley's boss, Transportation Secretary Sean Connaughton in negotiations to gain funding and approval for the Charlottesville Bypass....While the Bypass project was a 'go,' it was not clear to the public what was included in the side deal. In a letter to the MPO board, Connaughton specified the recommendations he would make to the CTB to advance or accelerate the remaining priority projects....Overlooked in the MPO board discussion of the deal and in subsequent press coverage was the fact that Connaughton had attached what he later described as a 'quid pro quo' – the region had to get serious about keeping U.S. 29, a Corridor of Statewide Significance, free from curb cuts, traffic lights and other access points that slowed traffic on the highway."*

According to the article, prior to Thomas' meeting with Whirley, there were no specific local obligations. After the meeting, Thomas stated, *"There is no specific proposal or plan. We don't have to sign anything. It would be nice if we could cooperate with VDOT to improve traffic situations rather than make problems for them."* Thomas appeared to forget that VDOT and Albemarle County worked cooperatively together for several years to craft Places29, the land-use and transportation master plan for Route 29 North, that he and the other members of the BOS had unanimously approved six months prior. Just as his meeting with Whirley resulted in *"no specific proposal or plan,"* likewise, *"Connaughton's commitment to advance Albemarle's transportation priorities is an informal one."* But Thomas apparently didn't consider that a problem, stating once again, *"I trust Sean Connaughton."*

Following up on this article, "The Hook" published an article entitled, "Rodney's role: 'I am not a wheeler dealer'" on August 25 (online on August 19). The article stated, *"Rodney Thomas is mad. It's one day after a prominent blogger has accused the Albemarle supervisor of agreeing to 'grease the skids' for the construction of the Western U.S. 29 bypass by limited access to the rest of 29."* According to the article, Thomas characterized the accusation as *"a bunch of baloney"* and stated, *"There is no deal."* However, the article continued, *".... the fact remains that, along with fellow freshman supe Duane Snow, also elected in 2009, Thomas has been instrumental in resurrecting the long-buried Western 29 bypass from the grave."* Thomas characterized bypass opponents as *"a small, loud group that jumps up and down and is very passionate,"* a description that caused Jeff Werner of the Piedmont Environmental Council to comment, *"He's surprised people are angry? He takes the most controversial project in 20 years and rams it through in a midnight vote."*

Perhaps explaining at least part of Thomas' strong support for the bypass, the article noted that *"Thomas is friends with the owners of Harris Trucking in Lynchburg"* although he claimed that *"Lynchburg and Danville didn't have anything to do with the Bypass."* The article further noted that *"Thomas won his Rio District election on a platform of keeping the property tax rate low and pushing the board to create a climate of business and economic vitality. If he had the Bypass on his mind, he didn't campaign on it."* Did Thomas deliberately not campaign on it because it would have negatively affected his chance to be elected or did he not campaign on it because, until McDonnell was elected Governor, and Snow and he were elected Supervisors, all in the election of November 2009, there was no chance to resurrect the previously dead project?

Although Thomas repeatedly stated that he trusted Connaughton, he also voiced concerns about restricting driveways and taking away people's property rights. On August 23, in an article entitled, "Deal or No Deal?," Bacon commented, *"It's not clear....that Thomas understand Connaughton's expectations regarding the access controls. The secretary says he wants to get serious about limited encroachments on the state highway because, 'We want to make sure we aren't back here again.'"*

Whether or not Thomas believes there was a 'deal' or an understanding regarding access management, Connaughton is talking as if there was. And he holds all the cards. He's gotten the approval for the U.S. 29 Bypass that he sought, and he doesn't have to release funds for the related projects unless he's satisfied with the Charlottesville-Albemarle region's efforts to clean up the corridor. The secretary has explained what he expects three times – once in writing and twice to reporters. It's possible that Thomas and others just aren't getting the message."

Trying to avoid getting run over by a train: BOS meetings, September 7 and 14, 2011

Although they had been repeatedly rebuffed by their fellow BOS members, Mallek and Rooker continued in their efforts to make VDOT respond to community concerns for the impacts of the bypass project before it was too late.

According to the minutes of the September 7 BOS meeting, Mallek proposed a resolution which stated that the BOS *"hereby requests that, before issuing a request for proposals concerning the design and construction of the bypass, the Virginia Department of Transportation" would "[e]valuate updated traffic modeling for the bypass...., [c]onsider new scientific research documenting the detrimental effects of highway pollutants on the health of individuals, and children, especially....,[c]onduct thorough analyses of the potential health and noise impacts of the bypass on children attending the six schools and the residents of the neighborhoods located along its proposed route....,[e]ngage in meetings with impacted citizens and representatives of impacted schools concerning appropriate strategies to mitigate such impacts....and, [h]old a public hearing to allow comment on the above information after it has been prepared."* Albemarle County attorney Davis clarified that the resolution *"is asking that before issuing an RFP these things be addressed....He said that VDOT agreed to address these things, but not before the RFP was issued."*

Several of the other Supervisors expressed skepticism about the resolution, questioning its necessity. Thomas commented that Utterback had said, *"VDOT will listen to what we say."* Boyd *"asked what good it does to study something they do not have the money to do."* Dorrier suggested writing VDOT a letter to *"ask them if they can consider these items."* Board members finally agreed with Boyd's repeated suggestion to revisit the resolution at the following week's meeting.

At its meeting on September 14, the BOS reconsidered the resolution with two changes – that the Board make the requests of VDOT before awarding a contract instead of before issuing a request for proposals and with an additional request to VDOT to *"consider a reduction of the design speed for the bypass from 60 mph to 50 mph,"* according to the minutes. During the Board's discussion, Mallek and Rooker voiced support for the change in design speed, which they said Utterback thought *"was a good idea to consider....that VDOT had considered it as well and was glad to hear the Board was contemplating it."* However, Thomas disagreed, stating that *"the road is being built to move traffic."* Thomas further – and incredibly – stated that he *"doesn't like these items to be requested prior to a contract being done."* After Thomas made several more statements that VDOT is *"going to do it the right way anyway. They are not going to do it improper,"* Rooker noted that *"this Board has an obligation to the County to see that our citizens are taken care of."* Mallek commented that Rooker and she *"are actually speaking up for County citizens who need a voice to make sure they [VDOT] are doing the best job they can"* and that the resolution *"is a formal recognition of some of the things VDOT has already said they are going to do."*

During the discussion, it became apparent that Boyd, Dorrier, Snow, and Thomas were attacking the resolution from many angles. They were not interested in the public's concerns. They understood the urgency of getting the bypass under construction during McDonnell's term. Perhaps Dorrier best summarized their efforts when he declared that *"the Board shouldn't jump into the middle of a train that's going down the road. A design build process is a faster way of building a highway. If this Board gets in the middle of their [train], they [the Board] are going to run over by it."* Rooker responded that he was bothered by *"people sitting here and acting like the County has no responsibility at all. He thinks County citizens want to understand how much impact that train is going to have on them and have a little input into what is coming toward them before it's built – before it is irretrievable, exactly how it is designed and exactly where it is located..."* Mallek concurred, emphasizing that *"the proper order of things is to first do the environmental*

impact statement and find out what the obstacles are, then do the design to meet those obstacles, and then do the RFP to get the price.” She continued that she “understands the stampede because VDOT wants to get it done fast, but that does not negate the fact that they do have environmental issues that need to be addressed, and they do have design issues for County neighborhoods and schools that need to be addressed. The County is not being well-served by just looking away and letting the state do whatever it wants with this very questionable design-build thing....she is very concerned for the effect of it for a long, long time on the County....It is up to this Board to encourage [VDOT] to do the very best job they can and to ensure they have the information needed to do the best job they can.”

Despite these compelling statements of the County’s responsibility to its citizens, Dorrier questioned “*having a public hearing before the RFP,*” and Boyd expressed “*concern about the validity of the science used in raising health concerns.*” The motion failed on a 2-4 vote, with Boyd, Snow, Thomas, and Dorrier voting against it.

Not to be deterred, Mallek and Rooker made one last attempt to salvage something of the original resolution. Rooker made a motion, which Mallek seconded, to adopt a resolution that made the same requests of VDOT, but the requests were to be addressed before the awarding of the design-build contract instead of before the issuance RFP. That motion failed on the same 2-4 vote.

Snow then revised the resolution to state that the Board’s requests to VDOT would be addressed not before the issuance of the RFP or the awarding of the design-build contract, but only before construction began. When Thomas expressed concerns about possible “*delay factors,*” Snow reassured him that “*there is no language in this resolution that is compelling VDOT. Also, this is not a binding document.*” This toothless, meaningless resolution was approved on a 6-0 vote. Mallek and Rooker supported it because there was nothing else left to do. Dorrier’s train had run over the Board.

Cooking the Books?: September 21, 2011

Despite VDOT’s presentation to the CTB on July 20 of a construction cost estimate of \$118 million for the bypass, documents received by CATCO through the Freedom of Information Act on September 20 and immediately released to the media showed that the cost was probably much more than had been made public. According to an article in “The Daily Progress” on September 21, “*An unofficial estimate for construction of the Western Bypass of U.S. 29 is more than double the amount members of the Commonwealth Transportation Board were told by the Virginia Department of Transportation officials in July before they voted to resume funding of the 6.2 mile highway.*”

Internal documents released under the Freedom of Information Act reveal that VDOT engineers calculated a cost estimate of \$436 million in late June, several weeks before CTB members voted to allocate \$197 million to the project.

VDOT spokesman Lou Hatter has confirmed the validity of this information. In an email, Hatter said the current official estimate in the Six-Year Improvement Program is \$244.6 million, including funding allocated in previous years....The CTB vote included \$7.4 million to finish preliminary engineering, \$71.7 million to complete right of way acquisition and \$118 million to complete

construction. Virginia Secretary of Transportation Sean Connaughton has announced he hopes VDOT can advertise bids by the end of this month for a contractor to complete the design and build the project. However, the released documents call into question whether enough money has been allocated to the project because internal estimates are much more detailed than those on which the CTB vote was based....

VDOT engineer Mohammad Mirshahi, who works in VDOT's central office, wrote in a June 20 email that he was 'uncomfortable' with the cost estimate developed by engineers in the Culpeper district.

[VDOT consistently used this construction cost estimate of \$118 million in all of its presentations.] 'There is no back-up information to support it,' Mirshahi wrote. A second preliminary cost estimate by engineers in VDOT's central office raised the unofficial cost estimate to \$273 million....In early summer, the project was further scrutinized.

An estimate developed by VDOT's central office in late June raised the estimate to \$436 million....None of this information was made available to members of the CTB."

At subsequent meetings of the CTB, the BOS, and the MPO, VDOT never presented this stunning difference in cost estimates, and no action was taken on this new information.

MPO meeting: September 28, 2011

MPO meetings traditionally begin with a time for public comment. According to the minutes of the September 28 meeting, Morgan Butler, senior attorney at the Southern Environmental Law Center (SELC), "expressed concern at the pace at which the Route 29 Bypass project was moving forward. Mr. Butler stated that the SELC had issues with how this project was pushed in the public process and how assurances for other projects in the area have not been fully articulated..." Voicing other concerns about the design-build approach, and outdated traffic modeling information and environmental assessment, Butler "urged the MPO Policy Board to request that the State complete modeling analyses and environmental assessments before sending the project to bid."

Later in the meeting, City Council representative Szakos made a motion "to call on the State to wait until previous studies are reviewed and environmental review is complete and traffic modeling is conducted before proceeding to contract [to] build any portion of the Western Bypass project." City Council representative Satyendra Huja seconded the motion. In response to the motion, Snow commented "that he thought having the resolution worded to halt the process for awarding the contract slowed down progress on the project unnecessarily," but CHART committee representative Russell Lafferty stated "that he thought it a reasonable request that VDOT not award a contract until all the appropriate studies regarding the project were complete....[and that it was] problematic to hire a contractor without knowing the full extent of the project." Lafferty further stated "that he was concerned that the MPO Policy Board heard public comments regarding this project but did not address any of the public concerns before voting to include the project in the TIP and the LRTP.... [and] that he did not believe this project showed good faith." Despite the concerns once again voiced by members of the public, City Councilors, and the CHART committee representative, Szakos' motion failed on a 1-2-1 vote, with Snow and Thomas once

again in the majority to make sure that the bypass proceeded as quickly as possible. (Szakos voted in support of the motion, Utterback abstained, and Huja left before the vote.)

On September 30, an article in “The Daily Progress” reported on the meeting, stating *“Snow said he saw no reason for the MPO to weigh in and that VDOT engineers will work with the selected contractor to lower the impact of the road and make the interchanges more palatable to the community. ‘Everything I’ve seen is moving in the right direction. As far as I’m concerned, as the MPO, I think we let things go the way they’re going.’”*

2011
Sep

Several elected and appointed officials, media watchdogs, and many residents continued to disagree.

After the decisions – Media watchdogs: November 2011 – January 2012

The months of June, July, August, and September had been tumultuous ones for the Albemarle County Board of Supervisors, the Charlottesville-Albemarle Metropolitan Planning Organization, and thousands of area residents. The county’s longstanding transportation policy had been drastically changed through a series of political maneuvers, midnight votes, and undocumented “promises,” while enormous public opinion, indignation, and outcry, along with reasonable arguments and factual information presented by professional staff and by elected and appointed officials who opposed the bypass, were ignored.

Throughout the fall, officials and members of the public continued to voice their concerns about and opposition to the bypass in whatever opportunities they had – commenting at public meetings, writing letters to the editor, emailing local, state, and federal officials. And, throughout it all, the media continued to follow the story, reporting on events and updating information as it became available.

One member of the media in particular, Jim Bacon, wrote an in-depth article on the bypass in which he delved into the politics which caused its resurrection. The lengthy article was published online on “Bacon’s Rebellion” on November 5 and entitled “In the Dark” (and reprinted online on December 15 and entitled “How the McDonnell administration revived a dead road”). In it, Bacon took to task VDOT’s various internal disagreements about the project and its cost as well as VDOT’s omissions and misrepresentations to CTB members when Utterback presented the bypass to them for their approval on July 20. The article stated, *“In other words, the McDonnell administration omitted highly germane information – that the design and cost estimates of the project were uncertain and in flux – when it asked the CTB to approve the \$197 millions allocation [for the bypass].”* According to the article, the Culpeper district representative to the CTB, Jim Rich, commented, *“Deliberately providing incomplete information would prevent the board from fulfilling its statutory responsibilities to the commonwealth and to taxpayers,”* adding that deliberate omissions should have consequences. In its analysis of the politics that caused the resurrection of the bypass, the article stated that *“One of the governor’s priorities was the Charlottesville Bypass. Business and civic leaders in Danville and Lynchburg regarded U.S. 29....as a transportation lifeline for their manufacturing-based economies. They wanted badly to see it built....[state Senator Steve] Newman says he met with Bob McDonnell before he was elected governor to make the case for funding the bypass. Then, during this year’s General Assembly*

session, he met with the transportation secretary and his staff to press again for the project....It is not clear exactly when the McDonnell's administration made the decision to pursue the bypass, but the subject began popping up in VDOT emails as early as November 2010....By early April [2011], however, the thinking within the McDonnell administration had solidified to the point where Connaughton could broach the subject in a meeting with Albemarle Supervisors Duane Snow and Rodney Thomas. The two supervisors were planning to discuss funding for transportation projects related to Places29 but Connaughton asked them if they would be interested in revivifying the bypass. According to Snow's brief account several days later at an April 6 board of supervisors meeting, he and Thomas responded that their top concern was funding a widening of U.S. 29 north of the South Fork of the Rivanna River and a bridge for the Berkmar Extension in the same area, both of which were integral to the Places29 plan. Snow's account to his fellow supervisors was somewhat abbreviated. According to a subsequent interview Thomas gave to 'Bacon's Rebellion,' the two supervisors also pushed for funding of other projects, two of which were also tied to the Places29 plan, and one a bridge of importance to the City of Charlottesville. Connaughton gave assurances that he could help them with the Places29 projects and fund the bypass as well if they got the Albemarle board to reverse its opposition. Connaughton may have played hardball with the two local politicians. Later, in a September meeting of the regional MPO, Snow revealed important details of the discussion that he had not make public earlier. 'If you don't move forward with the bypass, all the other things (Places29 projects) are off the table,' he quoted Connaughton as telling them. Although Connaughton had tipped his hand to the two Albemarle supervisors, he tried to keep the project under wraps.... 'The Secretary wants this project accomplished through 'design-build' and wants it to go out this Summer for \$200 Million,' wrote Fiola. At that stage, Connaughton was not willing to have the information go public, she continued. Utterback was sharing information 'as necessary' only with Connaughton and other senior VDOT executives. 'Jim [Utterback] cautioned that this is very confidential,' she closed."

**2011
Nov**

The article continued, "On June 1, Rodney Thomas formally broached the topic with the Albemarle board, moving to reverse a 1997 resolution instructing the county's representatives on the regional Metropolitan Planning Organization to oppose the bypass. That motion failed by a vote of three to three. But Connaughton did not accept defeat. He called Supervisor Lindsay Dorrier to persuade him to change his vote....On June 8, the Albemarle supervisors met again. Dorrier expressed his wish to change his vote. In a controversial series of parliamentary maneuvers that infuriated bypass foes, the board voted to reverse its previous opposition and to direct its two representatives to the MPO, Thomas and Snow, to remove language blocking the state from allocating money to the bypass. The Albemarle board's decision to reverse its previous opposition bulldozed aside the major obstacle to the bypass. Getting the MPO's approval was a mere formality. The five-person MPO board included not only Thomas and Snow – Thomas even chaired the organization – but Jim Utterback, a VDOT employee. The three of them constituted a majority of the five-person board. The bigger challenge would be persuading the Commonwealth Transportation Board to allocate \$197 million to a project that a large, vocal segment of its intended beneficiaries did not even want."

The article explained, "Even though Gov. McDonnell had appointed a majority of the board members on the CTB, there were no guarantees going into the July 20 meeting that a majority would vote for the bypass. Jim Rich, a McDonnell appointee who represented the Culpeper district, had emailed impassioned pleas to fellow board members to deny the funding. As the representative of the district impacted by the bypass, his view carried some weight...."

But the McDonnell administration was not about to take any chances with CTB approval of this project, no matter how controversial it was or how many questions there were about its impacts, cost, or need. As the article stated, *"Sean Connaughton left nothing to chance. When he walked into the Commonwealth Transportation Board meeting July 20, he had lined up near-unanimous support for the bypass. Following a public hearing in which 50 to 60 Charlottesville-area residents came to Richmond to plead their case during the public hearing -- most of them opposing the bypass -- Rich renewed his plea. In the desultory discussion that followed, a handful of board members expressed support for the project, most notably Mark Peake representing the Lynchburg district. But for an issue so contentious and involving so much money, board members had remarkably little to say and they were remarkably incurious as to details. Sitting sphinx-like at the head of the board table, Connaughton said almost nothing at all. He didn't need to."*

**2011
Nov**

"The Hook" also covered the bypass issue in a December 15 article entitled "Ken Boyd – King of the Road...and the Midnight Vote." Characterizing Boyd as a "slow-and-steady tortoise," the article stated that *"...when the opportunity arose earlier this year, [he] maneuvered and rammed through a late-night vote on the controversial Western 29 Bypass, a highway that had been presumed dead for more than a decade. In seizing the reins of power after the public had gone home, Boyd helped overturn long-established opposition from the Board of Supervisors, sent shock waves through the environmental community, and launched a permanent change to the landscape of Albemarle County."* According to the article, *"Boyd credits Thomas and Snow for doing the heavy lifting that got the Bypass back in play again. They were the ones who met with Secretary of Transportation Sean Connaughton in April, and that's when they learned money would be available – if they could get the votes. And there was the rub. Even with Boyd, Snow, and Thomas in favor of the bypass, Ann Mallek, Dennis Rooker, and Lindsay Dorrier were not. A June 1 vote to remove the board's opposition failed 3-3; that's what made the midnight vote a week later such a shocker. '[Boyd] engineered the four votes,' says [Charlottesville mayor Dave] Norris.... 'Clearly, it was orchestrated by those four,' says Dennis Rooker. 'Ken was very supportive. He had no problem suspending rules at midnight and voting.'"*

**2011
Dec**

Indeed, Boyd, Thomas, Snow, and Dorrier had no problem suspending rules at midnight and voting, ignoring public opinion and factual information. With no notice to the public, no public hearing, and no notice to two of their fellow Supervisors, they had no problem completely reversing Albemarle County's longstanding opposition to the bypass.

After all, they were enacting the will of their Republican Governor whose appointed Secretary of Transportation had been tasked with resurrecting the bypass. Why should they be concerned with making sensible, cost-effective, fact-based transportation decisions for the people of the county that they were elected to represent?

**2012
Jan**

Perhaps "The Daily Progress" summarized it best in its scathing editorial of January 18, 2012. The editorial stated, *"First, a reminder: This newspaper supports the U.S. 29 Western Bypass....But this newspaper is also concerned about the manner in which the bypass is debated and decided upon, and supports transparent government in this, and all, decisions....last year's bypass decision was itself a politicized maneuver that reversed a board position of some 10 years' standing. The board took its vote just before midnight after much of the public had left for home, and it had to approve*

a suspension of its own rules of procedure in order to cast that vote.” Even supporters of the bypass, like “The Daily Progress” realized that the actions of four members of the BOS were seeped in politics in a non-transparent series of political maneuvers, outside of the public eye, and planned, orchestrated, and directed by the highest levels of government in Virginia. Those four members had changed Albemarle County’s longstanding policy on the bypass by the narrowest of margins – one vote on the BOS and one vote on the MPO.

As “The Daily Progress” had noted in its June 14, 2011 editorial, those actions were indeed “an end run around the public” and “contemptuous in the extreme.”

PUBLIC OPINION:

Summary of Bypass Public Comment* – 1990-2012

DATE	TYPE MEETING	PURPOSE OF MEETING	<u>PUBLIC OPINION</u>		
				FAVOR	OPPOSE
6/26-28/1990	Location Public Hearing	Bypass Alternatives	<i>Any Bypass -----</i>	51	3,212**
2/25/1997	<i>Design</i> Public Hearing	<i>Bypass Design</i>	<i>Build the Rt.29 Bypass</i>	1,101	7,108**
7/13/2011	BOS Hearing	Albemarle Co. position to support constr. of Rt. 29 Bypass	<i>Alb. Co. position to support the proposed construction of Rt. 29 Bypass</i>	33	70**
7/14/2011	MPO Public Hearing #1	Amend CLRP & TIP to incorporate Bypass	<i>Incorporate Bypass into MPO Plans & Programs</i>	19	33**
7/27/2011	MPO Public Hearing #2	Amend CLRP & TIP to incorporate Bypass	<i>Incorporate Bypass into MPO Plans & Programs</i>	35	69**
9/27/2012	Citizen Information Meeting	Comments on Draft Environmental Assessment (EA)	<i>Need to Prepare a full Supplemental Environmental Impact Statement (SEIS)</i>	3,194**	63

*Information on 1990's meetings & 9/27/2012 Citizen Information Meeting from VDOT documents.

**Shaded figures reflect opposition to the Bypass.

These figures of 1990 – 2012 public comment indicate:

- a total of **13,686 (91%)** oppose the Bypass, and
- a total of **1,302 (9%)** support the Bypass.