Albemarle County Planning Commission
January 18, 2011

The Albemarle County Planning Commission held a public hearing on Tuesday, January 18, 2011, at 6:00 p.m., at the County Office Building, Room #241, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Duane Zobrist, Chair; Ed Smith, Thomas Loach, Linda Porterfield, and Don Franco. Absent was Russell (Mac) Lafferty and Calvin Morris, Vice Chair. Julia Monteith, AICP, Senior Land Use Planner for the University of Virginia was present.

Other officials present were Lindsay Harris, Budget Analyst; Trevor Henry, Manager of Office of Facilities Development; Amelia McCulley, Director of Zoning/Zoning Administrator; Elaine Echols, Principal Planner; Glenn Brooks, County Engineer; David Benish, Chief of Planning; and Greg Kamptner, Deputy County Attorney.

Call to Order and Establish Quorum:

Mr. Zobrist, Chair, called the regular meeting to order at 6:02 p.m. and established a quorum. He noted there would be no presentation on Willow Lake tonight since it would be heard next week. Two Commissioners Mr. Lafferty and Mr. Morris were absent. Mr. Morris gave his input to him on tonight's items.

Other Matters Not Listed on the Agenda from the Public:

Mr. Zobrist invited comment from the public on other matters not listed on the agenda. There being none, the meeting moved to the next item.

Work Sessions:

Capital Improvements Program: FY 11-15 CAPITAL IMPROVEMENTS PROGRAM & FY 16-20 CAPITAL NEEDS ASSESSMENT (Bill Letteri)

Trevor Henry, Manager of Office of Facilities Development, and Lindsay Harris, Budget Analyst, distributed copies of the PowerPoint presentation (Attachment A) and the Proposed Statement Regarding Apparatus Replacement Policy dated November 16, 2010 from the CIP Oversight Committee (Attachment B).

Mr. Henry presented a Power-Point presentation to explain the CIP Oversight's Committee recommendations for this year's Capital Improvements Plan (FY 12 – 16).

No formal action was taken.

Mr. Zobrist thanked Mr. Henry for his presentation.

ZTA-2010-00008 Farm Winery Outdoor/Amplified Noise Regulations
Work Session - Discuss Farm Winery Regulations Relating to Outdoor Amplified Music.
(Amelia McCulley)

Purpose of Work Session: A work session was held to discuss the farm winery regulations relating to Outdoor Amplified Music.

Ms. McCulley noted staff was informed this afternoon that a letter written by Patrick Crushing, Director of Virginia Wine Council, was left out of the staff report packet The letter suggests elements of the farm winery noise ordinance including they need to address where it is measured, when it is measured and that it needs to be objective. Staff has noted the letter in tonight's presentation and has provided extra

copies on the table. (Attachment: Letter from Patrick Crushing) (PowerPoint Presentation - ZTA 2010-08 Farm Winery Sound Regulations Planning Commission Work Session)

At the end of the presentation staff is going to do a very quick demonstration generating some sound and measuring it so they can have a sense of what different decibel levels sound like. It is something abstract unless one really knows what numbers are associated with that sound level.

She presented a Power-Point presentation, as follows.

Background

- May 5, 2010 – Board of Supervisors amend zoning regulations relating to farm wineries to be in accord with Virginia Code;
  - Sound standard is also amended and relates only to **outdoor amplified music** (per Virginia Code). (If sound is not outdoor and amplified and music – no sound regulation applies).
  - Sound standard is changed from the decibel-based standard for RA and Residential districts to audibility. This change was: a) to be consistent with Chapter 7 of the Code for similar uses and sources, and b) to allow citizens to swear out summons and take action.
- Issues relating to sound levels arose last summer with an Albemarle winery's wedding events. To determine the extent of interest in the issue, staff sent a letter to wineries and interested public soliciting their input.
- The input led to a public roundtable held on December 2, 2010. Participants requested that we revisit the standard, its implementation, and enforcement.
- On January 5, 2011, the Board adopted a resolution of intent to revisit the zoning sound regulations. That is what staff is doing in this process.

Discussion - Intro

- Sound standard must consider the needs of the farm winery industry to preserve its economic vitality **and** the effect of outdoor amplified music on residents living nearby.
- Sound standard must be reasonable, effective, and efficient in its administration and enforcement.
- Sound rises to a nuisance based on how loud it is, not based on if it is heard.
- There is a practical expectation that we will hear some sounds generated from off-site, including sound generated by our neighbors. However, neighbors should not have to hear unreasonably loud noises generated by farm winery events.

Discussion – Sound Standard

- Staff recommends that we (amend the ordinance to) impose the decibel-based maximum sound levels that currently apply to the Rural Areas (60 dB day 7 a.m. – 10 p.m. and 55 dB night measured at property line). This standard has already been established as one that is reasonable in the RA and Residential districts.

Discussion – Proposed dB Sound Standard

1. Establishes an objective standard rather than subjective and debatable standard;
2. Better addresses nuisance noise;
3. Allows wineries to self-enforce by checking compliance on their property;
4. This is a longstanding standard deemed appropriate for the RA district. Other RA uses, such as sawmills, must comply.
5. Uses a time-based standard for lower levels allowed during nighttime;
6. Measured at property line. Current standard could arguably require someone to get permission to go onto adjoining property to determine compliance.

Discussion – Sound Enforcement

- Currently problematic and frustrating to public. Based partly on when these events are held – nights and weekends. Also based on fact that Police are not currently authorized to enforce these regulations and cannot take enforcement lead.

Zoning will continue to partner with Police on these. Farm winery events, such as weddings are recurring and not one-time events. Zoning will plan to be present, even on a night or weekend, to make observations and take action in the case of an unresolved sound violation.

- Also frustrating to some members of the public is that zoning violations, such as this, are pursued through civil penalties. We have received input suggesting that to be more of a deterrent, these should be made criminal violations.

In 2000, we switched from criminal to civil penalties for zoning violations. The criminal process (previously used) led to a protracted compliance timeline with numerous court dates and limited fines The use of civil penalties has proven to be a more expedient means for penalty and compliance with zoning violations.

Summary and Recommendation

- While we recognize advantages of the current sound standard, it does not appropriately address nuisance noise and is not easily self-enforced by wineries.
- We recommend imposition of the maximum sound standard (per Section 4.18.04) for farm winery events using the decibel levels that are currently established in the Zoning regulations.

Recommendation

- Proceed to public hearing with an ordinance amendment.
- Tentative dates: PC on February 8th and BOS on March 2nd.

Staff did a brief sound demonstration with the assistance of J.T. Newberry, Code Enforcement Officer I and John Jones, Code Enforcement Officer II. The purpose is to generate some sound and to tell them the decibel level they are hearing that sound at. They are at a very short distance from the sound source, which is typically not the case in an event at a farm winery in a tent or outdoors. This is not realistic in that respect. In order to meet the ordinance and properly measure the noise they need to take a five minute long measurement and average the decibel levels. They are not going to take the time to do that tonight. Staff took two brief readings with the sound meter and advised the public when they were at 55 decibels and 60 decibels. Staff has a sound meter to enforce the sound regulations that are in the ordinance for all kinds of uses.

A member of the audience asked if there were 200 people talking with music what would be the noise level, and Mr. Jones replied that was not amplified music.

Ms. McCulley noted that was not music, so it does not apply. It has to be outdoor. Tents are considered outdoors by staff's interpretation. It has to be amplified and it has to be music. If any of those three components do not exist, then the sound regulation does not apply. This is how our legislators adopted the law and our hands are tied.

Mr. Zobrist invited questions from the Commission.

Mr. Loach asked if the County adopted locally Virginia Code Section 5.1.25.

Mr. Kamptner replied that reference is to the County Code. Our ordinance was adopted to comply with the State Code Section 15.2-2288.3.

Mr. Loach asked if the State Code was adopted at the same time they adopted the ordinance for the wineries,

Mr. Kamptner noted what Section 5.1.25 of the County Code implements is the State law that deals with farm wineries and locality limitations on how they are to regulate them through their zoning regulations. It is all encompassing and includes how localities regulate outdoor amplified music. It is really the one area where localities have some discretion as to how they are going to regulate. The standard that was adopted in the County Code mirrors the standard that is in Chapter 7, which is the general noise ordinance that deals with audibility.

Mr. Loach said when Ms. McCulley first started she was talking about a noise ordinance that would apply to loud parties. This morning in court he spoke with one of the deputies that was a police officer and he asked what would happen if there was a loud party. The police officer said that they would go and give a warning, but after the second time they had the authority to shut down the loud party. However, later in the discussions it sounded like the Police don't have the authority to enforce, which was confusing.

Ms. McCulley replied that a private party that is not a farm winery event is subject to Chapter 7 that the Police enforces. A farm winery event that involves a party is subject only to the sound regulations that are in the Zoning Ordinance. It is considered an agricultural use, and therefore is exempt from the Chapter 7 sound regulations that the Police enforce.

There being no further questions, Mr. Zobrist opened the matter for public comment. He invited the first speaker on the sign-up sheet, Mr. Burt Page, to come forward and address the Commission.

Bert Page, adjacent property owner, made the following comments.

- He noted that the Planning Commission met last year in February on this same issue. Mr. Kamptner was at that meeting and noted that if there were violations to the noise standards that were adopted at that time that the Police would respond. At that very same meeting, he stated if somebody heard outdoor amplified music, they could complain to the Police Department and get it stopped. His point is as they discuss the standards, audibility, decibels or whatever, if they do not have an effective enforcement mechanism in place, then the standard will be meaningless as it has been for them during the last six months. He lived next door to a winery. He has been subjected to repeated violations of the ordinance.
- The Zoning office took jurisdiction of the matter and was able to accomplish relatively little. The fines passed out were insufficient costs of doing business and the sound violations continue. When they tried to call the Police as reflected in last year's meeting the Police told them that they were not allowed to respond only because it was a winery involved. If it had been anything else, they would be able to. What they were saying is that if he was to produce noise at the same level that his neighbor did he would be able to call the Police and they could respond and cite him with a criminal offense. Yet when his neighbor creates the noise, because he is a winery hosting a wedding, he would have no recourse. That does not sound like a consistent standard. Furthermore, what is happening in the process is that he and his family are being deprived of their protection, which is afforded to every resident of Albemarle County by Chapter 7 in the Noise Ordinance. They are being deprived of that protection simply because they live next door to the winery. He asked where is the justice to that.
- He proposed that serious consideration be given to an enforcement mechanism, which serves as a detriment to the offender and should be at the same level, as it exists in the Noise Ordinance. If it is good for the Noise Ordinance, it should be good enough for the wineries. Perhaps that will serve as a deterrent. Absent any deterrent the winery in question will continue. At the last wedding around 10:00 p.m., there was a tremendous noise that brought him up out of bed to make another telephone call to the Police to get the same answer as he got before.
- He would ask that the Planning Commission give some consideration to equity and to the legitimate interest of adjacent property owners of these wineries who are insisting on holding these events. The other factor that is germane is these events happen on such a recurring basis and are a business. The event holders are going to hold as many events as they can possibly pack into their calendar. That means the adjacent property owners are subjected to this, not like the samples that were shown, but on a recurring basis weekly. At the present time, the winery next door is planning on scheduling or holding three weddings on Memorial Day weekend.

Phillip Strother, legal counsel for Keswick Vineyards and the Schornberg family, said his practice based out of Richmond focuses mainly on land use and zoning law with a particular emphasis on Virginia wine

law. He was involved in the development of 15.2.22.88.3 in the General Assembly and helped draft part of the language. His client agrees with the well thought out recommendations of the staff and believe particularly that when they are talking about amplified music that by the very nature of the term amplified they are talking about how loud it is. He made the following comments.

- This is an issue of determining how loud the amplified music is that can be regulated. They would concur that a reasonable standard is the 55-60 decibel level that is applied to other uses in the rural district. That is fair and equal. Farm wineries should not be treated any differently. His clients, contrary to what the last speaker said, have been very proactive in their efforts. He went to the site today and looked at some of the locations and the state of the art equipment that they are putting in place by having their sound engineer design a decibel breaker system. This is a system that will cause the sound to shut off if it goes above the said decibel level. They have proactively had members of the Planning Commission and Board of Supervisors come out to the site and walk the ground to listen to hear what an acceptable sound level is. Contrary to what is being presented, they are being very proactive. They are very aware they live in a community with neighbors nearby and want to make sure they live in a peaceful environment.

- In terms of the language of the previous ordinance, he would bring to the Planning Commission's attention that there is a Virginia Supreme Court case. It is a recent case decided in 2009, which is out of the Virginia Beach area, that takes issue with a sound ordinance. That particular ordinance the Supreme Court struck down as being unconstitutionally vague. The language that was in that particular ordinance dealt with a reasonable person's standard. If a sound were so unreasonable as to disrupt the quietude and tranquility of the neighbors, then that would be something that would violate the ordinance. The Supreme Court found that was unconstitutionally vague. He would suggest to the Board that a standard that is simply based on audibility is equally as vague.

Al Schornberg, owner of Keswick Vineyards, noted there were a few things he would like to point out about the sound demonstration. One, his iPod was registering about ten decibels higher than Mr. Jones. Secondly, a true test has to take place in a field where they have the ambient sound or at least they do based on the sound studies they have. He had a report he could give to the Commission. It was a low of 37 decibels to a high of 60 decibels if there is a breeze. When there is no breeze with just crickets and tree frogs, it is at 47 decibels. When they have an ambient noise of 47 decibels and they hear music at 55 or 60 decibels, it is not going to sound as loud as it did here tonight. The other point he wanted to make was that some Commissioners visited their site when they were testing the new in-house system. They stood at the property line and listened to it and everybody agreed they could not hear amplified music. That system was being monitored by a BOSE engineer and he should have come to the hearing to testify that he kept it at 82 decibels on the dance floor, which was not audible at the property line. Therefore, whatever his neighbor heard was not amplified music.

Cindy Schomberg, owner of Keswick Vineyards, pointed out in regards to the third wedding, it stopped at quarter to 10. So for their neighbor to say he was woken up at 10 o'clock the party had already stopped at 10. There were a few guests left who were vacating their possessions. By quarter of 10 the music had stopped. They had Supervisors out to the site so they could witness the steps they had undertaken to try to fix the problem. They agreed it could not be heard at the property line. At times when traffic was not going by they could faintly hear it. Again, it is the ambient noise outdoors such as the crickets, birds, airplanes, and cars that affect their neighbor's ability to hear any sound projecting from their property. They are trying to fix the problem by working with their neighbor and communicating with them what was going on. They already had booked the three weddings and there was nothing they could do. The weddings could not be cancelled since there had been such a large investment made to it. She thought the County weighed who was going to have the greater damage. That was why they did not shut down that event that night. They did come out and let them know they were in violation, which would be dealt with later. However, they never asked them to shut down the music or party. They continued the party and never meant to offend anybody. Regarding the cost of business, they have invested over $50,000 already to fix this problem. Therefore, she felt they were going way out of their way to fix it and make it something that everybody can live with as part of their business. They are trying to work with their neighbors in many different ways.

Art Beltrone**,** an adjoining landowner for over 25 years, made the following comments.

- Eight years ago, Al Schornberg wrote the surrounding neighbors saying, "Keswick Vineyards intends to be a good neighbor in all of its future practices. Our current plans call for the winery to include a limited tasting room for a small number of visitors. We do not anticipate to be create a disruptive increase in traffic throughout the neighborhood. Keswick Vineyards is not planning any activities that will in any way violate the tranquility of the neighborhood." Several years ago the vineyard began utilizes loud outdoor amplified music at the winery building. This is before the 2010 change. This was just 125' from their joint property line. In May 2010, they were relieved when the outdoor amplified noise restriction, which was developed by the Planning Commission and the Board of Supervisors, was approved. The Virginia Wine Council on May 11 posted the changes including amplified music is permitted, but not be audible 100' from the property line. The County had the right to regulate outdoor amplified music and did so. The Virginia Code states in authorizing outdoor amplified music at a farm winery the locality shall consider the effect on the adjacent property owners and nearby residents. They did that to safeguard.
- A Keswick Vineyard official, Mr. Bernard, commented after that posting by the Wine Council they were really excited by this passing. In fact, in anticipation of this passing they started looking into putting up a semi-permanent events tent to begin hosting weddings and other events at Keswick Vineyards. Now that this is passed, they are officially going ahead with their plans and have already booked their first wedding for the summer.
- Three weddings that they have heard about plus several other events were held and during all three, the outdoor amplified music noise was heard by adjacent neighbors at more than 500 feet away. Noise violations were reported to County officials and the Police. The Vineyard received a citation from the County for being in violation. The Police told them they could not respond. Now just 7 months after the enactment of that amplified noise ordinance the Keswick Vineyard owner has asked for a change in the ordinance that will diminish its strength and make enforcement more difficult. The suggestion that the winery monitor itself using its own decibel meter is not viable.
- They just learned that Keswick Vineyards is offered for sale by the Piedmont Office of Frank Hardy Realtors. This raises further questions and concerns about how the vineyard will continue to be operated during these events.

John Henry Jordan said his property was 500' or more away from the property. He had been able to hear music from events at Keswick Vineyards on more than one occasion. Several things are troubling with this entire discussion, as follows.

- First, these proposed revisions are being pushed by one industry, wineries. They want permission to be louder than anybody else in the County. He was not sure why the Zoning Department notified the Police via email not to respond to noise complaints at vineyards, but to refer them to the Zoning Department. It is troubling since it smacks a preferential treatment to one industry at the sufferance of all of the surrounding neighbors.

- The second issue is enforceability. The current standards are perfectly enforceable. It requires no interpretation, it is not subjective, and it needs no special equipment. It takes two ears and a measuring tape. If the noise can be heard 100' over the property line, it is too loud. The amplified music issue is not new either. As they have heard, it has been addressed numerous times prior and supposedly, language was put into the May 2010 ordinance to protect them from the amplified music. However, that protection has not been forthcoming. Interestingly, the noise ordinance itself specifically states, "these supplementary regulations are in addition to all other requirements of this chapter, the Code, and all other applicable laws. He asked what grounds and what authority does the Zoning Department have to instruct the Police not to respond to noise issues at vineyards. Why are the Police not already enabled to respond to that under existing Code.
- The proposed change to the winery ordinance being discussed tonight is to go to a self regulating standard decibel meter measurement. Personally, he finds that ridiculous. What makes the County think that someone who is already chosen to disregard a theoretical enforceable regulation will attempt to comply with self regulation. Zoning is only open from 8 to 5 p.m. on

Monday through Friday. He asked who is going to verify compliance. Still the proposal being considered is to change the current enforceable ordinance to an unenforceable self regulation ordinance. He lived in the County because he likes the peace and quiet of living out in the County. He has a right to quiet enjoyment of his home. The County through its past and proposed actions has effectively placed the rights of a business above the rights of a land owner and has permitted the taking of the right of quiet enjoyment from dozens of its rural citizens. Keswick Vineyards can have an event that blasts the doors off the homes that surround it and nothing can be done. He can have a party with 50 people at his house and he can be arrested for it. Somehow, the balance is out of skew here. He asked that they leave the ordinance alone, enable the Police, and enforce it.

Sissy Spacek, nearby landowner, said she would not repeat the things her neighbors have so eloquently talked about. She moved here in 1978 to get away from noise pollution. She very carefully chose a location 25 miles outside of Charlottesville in a place they could occasionally hear a train and usually just bugs, birds, frogs, and geese. She loved to walk outside at night, look at the stars, and listen to the natural sounds. She appreciates so much Ms. Schornberg's position. She loves Virginia wine. The Schomberg's have done a beautiful job with the winery. She sends Virginia wine to all her California friends every Christmas just so they know what great industry they have here. She feels their pain, but it feels like there should be some kind of compromise so that they are not at odds with each other. She appreciates their willingness to listen to their concerns and complaints. She hoped that they could continue to do that. She finds it unfair that there is a double standard between a private citizen and business. She has paid taxes here for more than a quarter century. They build barns for our cattle and horses. Why can't they put build some kind of sound proof buffer to protect the neighbors from outdoor weddings, particularly those right across the property line. It seems like they should be able to work something out where they can all live harmoniously in one of the most beautiful counties in the country.

James Kelly said he had nothing to add.

Nanette Derkac, adjoining landowner, said her concern was the long term. The gentleman representing the wine industry noted that all of the other counties are looking to Albemarle as the example. Here they have an opportunity to show what they are all about. They can work together and find a compromise. There is no reason the land owners have to give up their quality of life. That is why they all moved to that area. They want the ability to go outside and listen to natural sounds. They all love music, but she did not think there was anyone here this evening who could actually live with the thought that every day of the year, as the law is written, that the wine industry has the ability to have as many functions as they want on any day of the year. She would hate to think that they would have to live with the fact that every weekend they would have to endure this. All they are asking is to be treated fairly. She agreed with Ms. Spacek they have done a wonderful job of trying to work this out in the wine industry. What is going to happen with the other ones that might not be willing to go along to make the changes to deal with the neighbors. In addition, it was obvious it was not just the matter of the amplified music, it is the matter of the noise. They were listening to songs. What happens when everybody starts singing and talking. That is the kind of noise that will be carried, which she thinks needs to be addressed. It can't just be amplified music since obviously it is the noise factor.

Stephen Barnard, winemaker at Keswick Vineyards, said that first they have done everything possible to appease the neighbors and work with them. When they did the three events, the barrier was not up. They have gone to great expense and length to ensure that they are within a compliance standard whatever that may be. If they want to talk about noise pollution, they live next to Art Beltrone who over the years has done nothing but try to aggravate. He was threatened when he went to his property. What stops a man from putting up plastic chairs and a wood chipper and running a chipper until 6 or 7 p.m. or firing a gun or playing Rolling Stones music throughout the night. He knows the neighbors are playing a sympathy card. As a winery, they just want to conduct business and want to do it in a fair way for everybody. They are taking into account their thoughts and processes. They have approached several neighbors, but he did not think it would go anywhere. They have spent a lot of money.

Kathleen Jump, former neighbor of a winery, said she had spent most of the last decade living next to a winery in Albemarle County. She made the following comments:

- She was surprised when she saw the old alfalfa field at her property line replaced by a winery. Events there included weddings, auctions, raffles, and benefits all held in an open air tent in the

evenings and on weekends. There is nothing more crushing than coming home on a Friday evening after a week of work and finding several hundred people under an open air tent at your property line having an open air party. What changed her situation was that the winery built an event barn. This is not that hard for wineries to do. They are not required as an agricultural business to submit plans or seek permits. They can build a barn. This made a world of difference to the amplified sound noise that she could hear. Basically, after that she heard none.

- There are other ambient noises that come with these gatherings. In 2007, the State gutted all the authority that you have as a locality to regulate wineries, except for amplified music. Changes that occurred with that legislation in 2007 included no restrictions on the number of events that a winery can hold or on the number of persons who can attend these events. Neighbors from this county, Fauquier and others throughout the state fought very hard to maintain the amplified music component. This is the one aspect of wineries that they can help regulate. She asked the Commission to consider the impact and the noise associated with these events, including noise of the cars, etc., to consider the effect of outdoor amplified music on adjacent property owners and nearby residents in the context of the noise, that is already a part of this agricultural industry. She hoped that they would use the one piece of enforcement that is left to them with wineries.

Barbara Lundgren, of Keswick Vineyards, clarified that at Keswick Vineyard they have not had any events beyond 200 guests. They are not allowed to have more than 200 guests and will not be hosting any events over 200 guests.

Pierce Derkac, son of Nanette Derkac, asked to speak on the facts he had heard from the meeting in December and tonight. It says in the packet that there is a need for a standard that is reasonable, effective, and efficient. It is being proposed that wineries are self enforcing bodies. There is no Police enforcement and nobody can close down a winery event, which is how it is stated in the law. Police don't have sound meters, but wineries do. He questioned how much training is really needed and how much do the sound meters cost. He asked if that is really a problem for the Police Department. His high school had a sound meter for a competition to see how loud certain groups could be for a pep rally. He did not think it was that hard to be used from his point of view. However, as has been said before how do they separate the amplified music compounded with 200 people talking, screaming, and having a great time. It should not be just music because it is noise that can be a nuisance. Albemarle County is being looked at as a standard as his mom said. In the last meeting in December, there was a man from Richmond who talked about bordering counties, such as Louisa and Fluvanna, that are looking at how Albemarle County is doing this. Then they are going to react accordingly. Therefore, they should recognize it should be treated with a greater sense of responsibility. It is not just Albemarle County, but the Commonwealth of Virginia that is being affected. The problem is they now allow it to be less enforced and there should be a result that it is reasonable, effective, and efficient for all parties involved. It is obvious who wins in the recommendations being proposed currently. He did not doubt that wineries are being proactive with putting in decibel regulators. However, members of the Planning Commission are not at the actual events. He believed that most winery owners are treating the law in the correct manner. Nevertheless, the County needs to protect its citizens from those who do break the law. A law is a law and people can spoil and break it. It needs to be addressed. The issue is that it should not just be amplified noise. If any noise is a legitimate nuisance, then it should be enforced as such. It needs to be taken seriously that there has to be an enforcement body. Right now, there is no way of enforcing it. There should be a compromise that is reasonable, effective, and efficient.

Judith Sommer, nearby landowner, noted that most of her comments had already been stated. With regard to the decibel meter, she would like to know when measuring the noise level if it can separate out the noise of the music versus the noise of the conversation and anything else going on. From the neighbor's point of view, there is a total amount of noise. Her experience has been that as the noise level rises from conversation the level of the music rises, too, in order to compete. Also, as people have a few more drinks and the evening wears on the music tends to get louder. Therefore, if they measure the noise at 7 p.m. and at 10 p.m., it could well be different. She was appalled that enforcement of the noise ordinance if she had a private party the farm winery next door can call the Police and send them to her house. However, if the winery has a loud party she cannot call the Police and have them sent to the winery. In regards to the bride and groom enjoying their wedding event, she did not think loud music is necessary at a wedding. If the party is indoors, they can turn up the volume as loud as they can stand, and she would care less. However, as a homeowner and farm owner she asked if she had to build a little

cidery on her property so she could blast back at them. She did not think they should all build cider facilities or wineries in order to blast our neighbors. She did not believe that Albemarle County wineries have to cave to every demand of respective clients to operate successfully as event menus nor did she believe that all events will go elsewhere and wineries will fail simple because Albemarle controls outdoor amplified noise for the benefit of local county residents. By informing respective clients that Albemarle wineries operate in a climate of mutual respect with their neighbors and by promoting civility in this segment of the hospitality industry, not the agricultural industry, she believed that wineries can prosper. If Albemarle County is to set the precedent for noise control at Virginia wineries, then she suggests they keep in place the very simple audible outdoor noise standard.

Jeff Werner, of the Piedmont Environmental Council, said tonight the Commission was discussing an ordinance that will affect the entire County. His comments were about that and not just the specific situation in Keswick. He made the following comments.

- The proposal is with some subjectivity and certainty that can be achieved by definitely measuring the decibel level of amplified music coming from the activity at a winery. Piedmont Environmental Council believes it is important to have regulations that protect the interests of rural residents. They also understand that the wineries are looking for some criteria that they can rely on. Reasonable people on both sides of the discussion will agree that it is important Albemarle be proactive in keeping the rural area rural. That is why people come to wineries for weddings.
- The problem with the proposal for an objective measure of decibels is it sounds easy, but it is nothing of the sort. He was not a sound engineer. Today he spent some time talking to two PEC colleagues who have dealt with this in other counties. Two of them said the exact same thing. The equipment to do this is extremely expensive. They are talking tens of thousands of dollars. There needs to be someone qualified to use that equipment. The equipment has to be regularly calibrated. The first thing a lawyer will ask County staff in a court room are they qualified to use that and if so, when was the last time the equipment was calibrated. There will be a cost involved to enforce this. That needs to be discussed not just in measuring this but in upholding the enforcement in courts. Given the level of attorneys already involved in this, he would have to assume that is where some of these will go. March 11, 2009 was when the Central Virginia Grinder came to the Board of Supervisors. The first reading for the ambient noise level without the machine on was 4 to 6 decibels. When it was running various at places, it was between 65 and 78 decibels.

- Someone indicated that the ambient noise out there was 47 decibels. In Chapter 7 of the County Ordinance under 7.100.d it describes how the County sees these things and describes certain decibel levels above ambient noise and whether they are intrusive, which is 5 to 10 decibels above ambient. Very noticeable is 10 to 15 decibels above the ambient. They are talking about a 60 decibel at night and 55 decibel during the day standard, which is something to think about with the ambient at 47 decibels. The cost of enforcement is a big consideration.

Tim Hulbert, of the Charlottesville Regional Chamber of Commerce, noted that out of 1,000 enterprises there were about ten wineries. They very much support the growth and development of the wine industry in greater Charlottesville. They support staff's recommendation that there needs to be a reasonable measureable standard by which this group of enterprises can comply. They have an industry saying they want to comply. They have some irate neighbors, which he understands. He grew up on a commercial horse farm. He remembers those wonderfully quiet nights with 25 below weather. He also remembers the noise that 30 teenage girls can do when they have an equestrian school. Back then, it was a different time and they did not check with neighbors, but tried to be good neighbors. He thought that was what this industry was trying to do to be good neighbors by saying give them a standard and they will meet it. There should be some reasonable enforcement. Zoning can do some spot enforcement. He acknowledged that zoning and planning staff do work 8 a.m. to 5 p.m., but they can have some spot enforcement. It is a reasonable thing. They are trying to come to a compromise here. He applauds staff's effort and analysis.

Joe Hall, resident of Albemarle County for 21 years, said he had learned to keep things very simple, but unfortunately, things change. Albemarle County has changed a lot in that time with some good and some bad. However, with change there have to be rules. He thought that the wineries from what he had heard tonight want a rule and to have something measurable. To go to a property line, listen, and say that is too loud he would disagree with. He thought that coming up with a measurable standard makes sense.

Coming up with enforcement makes a lot of sense. That is one of the issues they need to be talking about tonight. He thought that many of the things being talked about are not relevant to the issue. The emotions being expressed by the land owners and wine makers is an issue. However, ultimately everybody wants to solve the problem. They don't want noise interfering with their regular lives and the wine makers don't want their events imposing on them. They want to come up with a measureable standard so they know how to enforce it. Once they get beyond the emotion that is the Commission's job to think about. He wanted to see the County move forward in the right direction, which is with rules that are measureable and punishment for people who break the rules. He asked that they make the rules objective and not subjective to enforce and the punishments for enforcement.

Kris Schornberg, of Keswick Vineyards, said that they really do want to comply as wineries in Albemarle County. That really is their goal, which is the only reason they are asking for an enforceable standard at the property line so they don't have to intrude on their neighbors to do that. They are not asking to self regulate, but just to be able to make sure themselves. Someone else can come out to check it. However, they need to be able to check on their own property whether or not they are in compliance. Otherwise, they don't know. They just want to have a standard that they can check.

Charlotte Shelton, of Albemarle Ciderworks, said the way they got the Ciderworks is they live in southern Albemarle County, which once was the center of orchards throughout. They got interested in applies. She asked what do you do with apples. They have about 1,500 apple trees. If they are going to have a sustainable farming operation in southern Albemarle County, one has to be able to generate some income from it. That is where wineries came from. Tonight's discussion is focusing on one situation. She just would like to hope they wouldn't generalize from that particular winery. They don't have a single issue about noise and she did not expect to. This is something when they tried to justify the expense of the hundreds of thousands of dollars that it takes to produce a wine or a cider, which is the same process, that she realized some kind of support for that investment is important. That is where these events came from. This is an ancillary product of the farm wineries, but it is a legitimate business for that. However, keep in mind that what this does is justifies planting grape vines and apple trees instead of subdivisions. When you get back to that point, they could have a little less grief and a little reason. She appreciates the Commission's consideration.

There being no further public comment, Mr. Zobrist closed the public hearing. He thanked everyone for their comment. The Planning Commission would take a break and come back for further discussion.

The Planning Commission took a ten minute break at 7:36 p.m.
The meeting reconvened at 7:46 p.m.

Mr. Zobrist called the meeting back in session noting this matter is before the Commission. He would like to make a couple of comments for the benefit of those present. First, this is a work session and the Commission will not take any formal action tonight. The Commission will study this matter and continue doing so until the Commission feels comfortable to make a recommendation to the Board of Supervisors. The Commission's job is to make a recommendation to the Board of Supervisors. The Commission will do their very best to work through these very difficult issues. One thing he wanted to point out to the adjacent property owners is that the County is bound by a State statute. They are allowed to regulate one thing with farm wineries, which is outdoor amplified music in general. That is the only thing they can look at in the statute. They recognize that people are looking at Albemarle County to see what they ought to do. He was a part of this Commission back when they were allowing 12 events a year at wineries, etc. The wineries did not like it and they went to Richmond and got their own statute passed. Many of the complaints they heard tonight are matters that they cannot do anything about because they can only do something about the amplified sound. The Commission are willing to take the time and work their way through the issue. They had heard the public comment and now would discuss the matter.

Mr. Franco asked Ms. McCulley to explain Chapter 7, the Police Enforcement Code that was being referred to earlier. What is the standard in that applied to.

Ms. McCulley replied that is the same standard that currently applies to farm winery events, which is an audibility standard within 100 feet of the property line or within a dwelling on an adjoining property. That

applies to events that are not land uses covered under the zoning regulations, which covers mostly private events. Mr. Kamptner can fill in any missing pieces.

Mr. Kamptner said the Chapter 7 regulations were amended in December 2009 in response to the Virginia Supreme Court decision in Virginia. That county had a standard like most other Virginia localities that based their general noise violation on noise that is to a level that would unreasonably disturb, annoy, or harass the individual. They moved this ordinance in Chapter 7 that establishes a more objective audibility standard. That ordinance is very specific to several different types of noise sources. Generally, they are noise sources that may be either transcend in nature, noises from loud music coming out of cars, loud parties, and things like that. The general standard in short is if it is audible 100 feet from the property or within a dwelling unit. Those are the Chapter 7 noise standards. When the farm winery regulations were being developed the one area where localities do have authority is to establish a standard for outdoor amplified noise. The original drafts of that ordinance, including the version that went to the Planning Commission in February 2010 really cross reference to a corresponding provision in Chapter 7. That was eventually changed. By the time it went to the Board of Supervisors it became purely a self contained standard in the farm winery regulations of the zoning ordinance. That standard was the 100' from the property line or audible within the dwelling unit. One reason why that standard was selected was so that citizens would have the ability to enforce under Chapter 7. If they had the ability or they were a victim of the noise, they could go to the magistrate and swear out a summons. With the standard in the zoning ordinance because they recognize that some of these activities happen after normal business hours for the county, the citizen may not be able to go to swear out a complaint for a zoning violation. However, they would at least be able to be the witnesses and could testify if there was a zoning enforcement action. Then they could contact zoning and say they had heard this noise inside their house at such and such time on such date. That was one of the reasons that standard was selected.

Mr. Franco said for example the standards that would apply for concrete manufacturers would not be applicable. If this was a farm activity, such as tractors running, he asked if that would apply or not apply to this.

Mr. Kamptner replied generally both the Chapter 7 noise regulations and the Zoning Ordinance noise standards for agricultural activities are exempt. By State law the activities that take place at farm wineries, including weddings and receptions are deemed to be agricultural in nature. The outdoor amplified music standard is an exception to the otherwise applicable exemption for agricultural activities.

Mr. Franco asked to make sure he was clear. There was a lot of comment about crowd noises and conversations and that background. There is nothing they can do about that because the State has said there is nothing they can do about that.

Mr. Kamptner replied from a farm winery standpoint that would be correct. However, both the general noise regulations and Zoning Ordinance regulations exempt protected expressions. Therefore, people talking and yelling don't violate the noise ordinance as long as it is unamplified.

Mr. Franco said if he had a private party next door to the winery and they have loud conversations going, then they are under the same rules. That is where he got confused.

Mr. Kamptner replied there is a distinction. If he had loud blasting outdoor amplified music at his house and and he was at a farm winery he would probably fall under the Chapter 7 noise standard. If he was a farm winery, outdoor amplified music is connected to a land use activity. It is different and subject to the noise standards that would apply in this case. Right now it is the audibility from 100'.

Mr. Franco asked what would happen with a party next door with just loud people.

Mr. Kamptner replied that would not be a noise violation, but disturbing the peace or something like that. He was not a criminal lawyer and did not know what the standards are. It would not be a violation of the noise ordinance.

Mr. Franco said regarding the enforcement process Chapter 7 is something the police can enforce. However, the zoning is similar if he had too many trucks parked on his land or something like that, the police don't respond to that and don't have the authority to do anything about too many trucks even though it is a zoning violation.

Ms. McCulley replied that is correct.

Mr. Franco noted that is what makes this a challenge that it stays in the zoning. There is really not a shared responsibility with the Police force. It will strictly be a zoning action in this type of situation.

Mr. Kamptner replied that is correct, but staff will look at that to see if it becomes an issue as far as getting the police to respond. They have done a preliminary check a couple of months ago and it looked like the Police could not step in and enforce the zoning ordinance. They will look at that again as they work through this ordinance. If somebody does call 911, even if it is a zoning violation, the Captain, since retired said that they do respond because they are required to respond if dispatched. They won't enforce the ordinance. In the one situation where that did happen, there was a zoning inspector that was called and was also on site.

Ms. Porterfield noted when the Commission did the original ordinance they were told that the Police were going to respond. She asked why they are not responding.

Mr. Kamptner replied at the time he told the Commission that the Police would be responding the draft ordinance referred to in the noise standard in Chapter 7, which is enforced by the Police. The ordinance was amended after that and by the time it was adopted by the Board it was a zoning standard that was within the farm winery regulations itself.

Ms. Porterfield asked if the Police couldn't respond unless it is a 911 call.

Mr. Kamptner replied they may respond and may talk to the alleged violators, but they don't enforce the Zoning Ordinance. The zoning inspector would have to process the complaint.

Ms. Porterfield asked if that is true with the current and potential new ordinance.

Mr. Kamptner replied yes.

Ms. McCulley replied that is something staff can look into with the County Attorney's Office. What she was talking about is specifically adding language that would delegate authority to the Police to work on their behalf in a case so they could take a call, be a witness, and follow through on a violation relating to sound. Therefore, it is something staff will look into. It would take an ordinance amendment.

Mr. Zobrist said that it seemed like an incorporation of Chapter 7 ordinance, which she was proposing, into this ordinance that would allow the Police to intercede.

Ms. McCulley noted actually staff was proposing referring to the standards in Section 4.

Mr. Franco said several speakers referenced that this is self regulating. The idea is that wineries would have the ability to understand where they are in compliance, but it is not up to them to regulate themselves. He asked if they would have zoning authority to regulate it.

Ms. McCulley replied absolutely.

Mr. Franco said he heard a lot on the measureable standard. He asked if it had come out in the discussion of the ambient noise. He thought Jeff Werner was the one who referred to the 10 to 15 decibels above background that is out there. If background is 47 decibels it sounds like at night time that 5 to 10 above that at 55 decibels sounds reasonable. He asked what happens when the ambient is less.

Ms. McCulley replied that there is a correction factor based on how high the ambient level is. They have to start by taking a reading of the ambient level. They were taking readings for the new quarry on the west side of 29 near the Reservoir Dam first. The ambient noise was so high because of the planes that staff had to take the correction level in consideration. It is set up in the ordinance that if there is a high enough ambient then they correct the final reading for the ambient.

Mr. Smith asked if staff is qualified to take reading from the noise meter.

Ms. McCulley replied that every code enforcement officer is trained to and expected to take sound readings with the sound meter. They get it calibrated as frequently as they can. It is supposed to be calibrated every year and it is calibrated before they use it. It costs almost $200 to calibrate it. Before they go to court, they would have to calibrate it. Before they go in the field, they would have to use the self calibrator that comes with the kit.

Mr. Smith asked if the testers have some kind of certificate that says they are certified.

Ms. McCulley replied no, they don't have a certificate, but have read the manual and worked with the senior officer before doing it on their own.

Mr. Smith noted he had a problem with what the word audible means. He asked what is the definition and if that means they can't hear it.

Mr. Zobrist noted that last May when the ordinance language was drafted that the Commission was comfortable that the neighbor would not be able to hear the music. He questioned if that was what the Commission did in May 2010 by using the word audible. The problem is audible is different to different people. Obviously, there is an issue. The winery is saying they are abiding by the word audible, but the neighbors are saying they can hear the music. He questioned how they could do this in order to comply with the State statute, even if they don't agree with it. Secondly, how do they help the neighbors with their complaint of hearing too much of this noise from this operation.

Mr. Smith asked once it is passed are there still alternatives to change it if the decibel meter is not satisfactory.

Ms. McCulley replied that there are always alternatives to revisit regulations. It is not final. There are opportunities They could reconsider and take additional input. This is a fairly short term of experience so far with this new regulation.

Mr. Zobrist pointed out Ms. McCulley noted this is the only complaint in the County since the regulation was adopted.

Ms. Porterfield noted her basic problem was they have only had one bad situation and the ordinance as it stands has not had enough time to test to see if it works. At this point, they only have one complaint. It is only one winery and one segment of the population. She has a problem with rewriting an ordinance after only one year. She was concerned with the current ordinance and suggested they need to look into the enforcement of it. She was concerned unless there is going to be an on-call person from Zoning for all the days that the staff is not working, which in this last week was four (Friday through Monday), She felt they need to figure out how to enforce this. Then it stops a "he said/she" said because there is actually enforcement at the time that there is a complaint. Personally, she would like to see this ordinance as it stands simply to start being enforced, let it ride for the time being and see if it really isn't broken.

Mr. Loach agreed with Ms. Porterfield. First, if they ask most citizens in the County if the way the enforcement is set up is equitable they would probably say no. The Commission has heard that from the citizens. He was not sure that most citizens in the County would think amplified music at a wedding is an agricultural use. In some ways the winery industry has become a victim of its own success because now they can hold as many events as they can and they are getting into the practicality of how the industry itself is going to implement the use of amplified music. The enforcement needs to be looked at. If it goes to the same degree as driving under the influence, it will become more of a problem. It would be good if

they could agree on a general standard. The winery would bring out their decibel meter and show it to the police officer that it is compliant. If there were no decibel meter, the police officer then could use the 100' rule and his ability to hear the amplified music. He thought the 55 decibels was fairly loud for his own taste. He agreed they have one situation and hopefully it has been rectified and they stay with what they have currently. In the mean time, they should look for a better solution than staff has come up with.

Mr. Franco asked to follow up with one thing he heard earlier that in Virginia Beach having a subjective standard was hard to defend in court. So if this were to go to court is our standard harder to defend versus a decibel level.

Mr. Kamptner replied that if he had answered that question a year ago he would have said the unreasonable noise standard has been upheld across the country. However, the Virginia Supreme Court has struck that down. The audibility standards as well has been upheld throughout the country as objective. Audibility is based upon a person with normal hearing and the range of normal hearing is very broad. So just about anybody could testify whether or not they could hear something and that would satisfy that particular standard. He thought Mr. Loach's point about decibel meters and what has happened with drunk driving tests in bringing in experts to testify about equipment has some merit. The audibility standard would be defensiveable.

Ms. McCulley noted she wanted to make sure the Commission recognizes if they make no amendment to the current regulations, even to add the authorization to the Police Department to enforce it, they will still be stuck in the enforcement concern they are hearing from the neighbors. Therefore, it may be that they would like them to go forward, explore that one amendment, and take that forward to public hearing. They have the option of imposing an even lower decibel level. That is something they have not explored here tonight. They have decibel levels in the ordinance that apply to all the land uses that come before them in special use permits and other applications. Those are things they are currently enforcing with the sound meter through the decibel regulations and ordinance. Adding this would not be new and they have the option of imposing a lower standard if they wish.

Ms. Monteith agreed that enforcement is an issue here. However, also having dealt with some of these things personally in other places she thought timeliness is a real issue. The fact that one could be disturbed but really can't get any enforcement on that in the same sequence of time seems like a real issue. They have not come up with a resolution for that, but she thought that was part of what should be looked at.

Mr. Zobrist asked to make a few comments. When the ordinance was passed originally the Commission's discussion and intention was that the neighbors would not have to hear it. That is where the audibility standard came from. He did not think they should abandon that because it was a good standard. He lives on a farm and doesn't appreciate the neighbors putting a boom box on the swimming pool since the noise carries a long way. He was at the winery event with two members of the Board of Supervisors and they could not hear anything at the property line. However, the property line is at the bottom of a hill. He thought that sound travels by the line of sight. Mr. Page's house may be in the line of sight as opposed to where they were standing was not. However, he did not know because there was a decent level of noise. The partiers did not seem to be concerned about the noise level. At the border, the noise level seemed to be fine. What they need to do is translate this into an objective standard if this really is an issue. Not acting because enforcement is difficult is not relevant to him. Litigation is an option. He would guarantee they could build a building with sound controls cheaper than they litigate this. He questioned how much it would cost to take this to the Virginia Supreme Court. He asked Mr. Strother to respond to his question.

Philip Strother, attorney for Schornbergs, replied that they had serious concerns with the constitutionality and there were serious problems. The current ordinance as written requires the winery to trespass onto somebody else's property in order to determine whether or not they are in violation. It needs to be changed.

Mr. Zobrist noted that it is expensive to litigate. It is bothersome the way it is now because he did not think the neighbors should have to hire a lawyer and go in to try to get a nuisance complaint. He knows

what that costs. The Planning Commission's job is to come up with a recommendation. The Board of Supervisors has spoke and wants the Commission to come up with an objective standard. He agreed with Mr. Franco and Ms. Porterfield that they don't have a lot of experience with this, but have a very nasty situation right now. By letting it percolate and boil longer would not be helpful to them. The Board of Supervisors has moved this very quickly by requesting a recommendation from the Commission so they can think about it. The Commission should do that if they can. He would like to see a decibel level set at a lower level and the enforcement capability given to the police. He would like to see that enforcement have enough teeth in it so it is not putting an onerous burden on the neighbors to have to hire counsel and go to the court to do it.

Ms. Porterfield suggested that they keep the current ordinance and add in the ability for the Police to enforce it. Then they can see how that runs because they have never had that opportunity with this ordinance.

Mr. Loach agreed, but that what he had heard was that the police do not have that ability.

Ms. Porterfield said she understood from staff that they could write an amendment to the current ordinance that would give them that ability.

Mr. Kamptner noted that staff would have to look at that. Another thing they need to know about is the speed in which enforcement takes of any zoning violation. The process is set up in a way that it just takes time for the zoning enforcement for these types of violations. There is a Notice of Violation issued and the violator has 30 days to appeal that decision. If an appeal is filed by State law the enforcement stops until the Board of Zoning Appeals considers the appeal unless there is an imminent threat to the public health or safety. An example would be if there was a spill that required immediate clean up or something like that. Therefore, the standard may change. Who actually is in the field citing the violation or telling people to come into compliance may change, but as long as it is a zoning standard it will have to go through this process.

Ms. Porterfield asked if it is a zoning violation either way in the new or old ordinance.

Mr. Kamptner replied it would be if only the standard is being changed.

Ms. Porterfield asked if he was saying if they went from the current one to the decibel standard.

Mr. Kamptner replied that was correct.

Mr. Zobrist said to get the police out there only gives them a uniform on the spot as an assistance to the zoning.

Mr. Kamptner replied yes, it is still going to be a zoning violation.

Ms. McCulley noted that was true unless they amend it by referring to Chapter 7 as they originally intended to do and don't put the standard within the zoning ordinance.

Mr. Kamptner noted there had been a Board decision not to have that particular standard enforced that way.

Mr. Zobrist suggested they go back to the Board and tell them it is time since it did not work that way in taking it out. He noted it is not working now. There is no resolution for either side right now and neither side knows what to do.

Mr. Loach pointed out the vineyard noted they added sound equipment. He suggested they could go the other way to say they would have to add these sound measures to produce this effect at the property line. They could use those values to look at it another way to see what they would have to do to comply technically. Since those abilities are there they could include it in the ordinance as far as being compliant for the outdoor amplified music if it was different than the King Vineyard where the music was inside.

Mr. Zobrist noted the problem is the statute only applied to the outdoor amplified music. The vineyard could put it inside a building. He asked if it was the consensus among the Planning Commission that neighbors should not have to hear it or some of it

Mr. Franco noted that in the music being heard there are peaks and valleys. It was difficult for him to say the neighbors should not be able to hear anything at all.

Mr. Loach questioned what the expectation was inside the house.

Mr. Franco noted he lived next to or near an airport. He would prefer not to hear the noise, but preferred not to see a subdivision come in next door. If they preserve the agricultural use, he would be willing to put up with some nuisance. He was willing to give some on his side in order to preserve that use. He questioned if they could have a lower decibel standard. He asked if they could have a standard that was different for different places. Is there a way to monitor what background noise is and then establish that as a standard.

Ms. McCulley said that would be difficult because they would have to say they could not exceed the ambient. The ambient varies so much based on transient sounds and things like that. They would have to take many readings, which would vary depending on the time of day and the activities in the area.

Mr. Zobrist noted that the only time they would measure the noise is at the time of the complaint.

Ms. Porterfield asked how they would get someone out there at the time of the complaint. That seems to be the crux of the issue.

Ms. McCulley said that is actually the crux of the problem with any zoning violation that occurs on nights and weekends. They really have to work with many things later and plan to be there the next time it happens.

Ms. Monteith said it does seem in terms of timeliness to Chapter 7 they ought to be thinking about this differently. Timeliness is important or otherwise it is not enforceable.

Mr. Franco said that he did not think it was any less enforceable than any other zoning ordinance they have. There is a time aspect in being able to see the violation.

Ms. McCulley said she could ask someone with an engineering background, such as Mark Graham or Glenn Brooks, to come and talk further about the use of ambient sound as a decibel level to measure by.

Mr. Zobrist agreed with the 100' within the boundary line. He suggested they could add as a condition of enforcement that neighbors have to grant permission to come over to check the noise level. That is a problem with the existing statute. The only way to check for compliance is to go on the complaining party's land.

Mr. Smith questioned if they could lower the level.

Ms. McCulley noted that staff's recommendation or suggestion was to stick with the current standards. They could go lower than the standards of 55 and 60 decibels, but it had to be higher or at ambient..

Mr. Kamptner noted in regards to the question of whether the County could grant a license that they can't do that through their regulations.

Mr. Zobrist asked if a County officer could go on the adjoining property and measure.

Mr. Kamptner replied only with permission can they go on the adjoining property if the property was occupied. They follow the 4th amendment standards. It is measured form 100' on which the device is located on the other side.

Mr. Smith asked why would the adjacent property owner object to someone coming on their property if they are making the complaint.

Mr. Zobrist pointed out the issue raised by the winery was in order for them to make sure they comply they have to go over the property line to make sure they were measuring correctly.

Mr. Smith said it was like letting the fox guard the hen house.

Mr. Zobrist noted that they were not talking about self regulating. The zoning regulations were regulated by Ms. McCulley's department and not by any applicant.

Mr. Smith question why the winery needed to go next door.

Mr. Kamptner noted the genesis of that idea came up at the Round Table in December. A number of the farm winery representatives said the decibel standard would allow the farm winery operators to go to the property line to allow them to determine if the beginning event was at an acceptable decibel level and then proceed with the event. If necessary, they could tell whoever was controlling the sound system to turn the volume down if necessary and then proceed with confidence they are going to be in compliance with the ordinance.

Mr. Zobrist suggested they change the 100' to be the property line of the farm winery.

Mr. Kamptner noted that is a pretty tough standard.

Mr. Zobrist replied that they have not set the decibel level, which sounds like what they have asked for.

Ms. McCulley noted the reason Mr. Kamptner was saying it was a tough standard and they were using the 100' was it is very difficult to know where the property line is located unless it is marked clearly. They could lose the case and was why it was 100' feet or less.

Mr. Franco noted that it was a work session. He asked if staff had enough information.

Ms. Porterfield suggested that they are not ready for staff to write the ordinance. The Commission is ready for staff to come back again if they want to on February 8 with the answers to some of these questions. The Commission could then possibly come up with a consensus whether to change the ordinance and what they want to change it to. It would be helpful to do the following:

- bring in the County Engineer;
- have staff find out exactly what the Police can and cannot do;
- try to do exactly what Ms. Monteith has been saying concerning the timeliness of enforcement, i.e. when somebody calls with a complaint how do they get it looked at right then and not a week or month later when another event comes up; and
- offer other pieces of that type of information.

Mr. Loach suggested staff go back and do more investigation on what that lower decibel reading would be. Staff could possibly speak to the winery people to see if enforcing that lower decibel level would be seen as something they would object to and what the result of that would be.

Mr. Franco said it sounds like it is basically better enforcement or more direct enforcement opportunities. There was also a lot of debate on the measurement standard. He thought those were the two things for staff to come back to the Commission on.

Ms. McCulley noted that input was fine, but she did not have time before February 8th to be able to seek input from the wineries. Therefore, there will be no public hearing on February 8th. She would like to have time to meet with some wineries and then bring back that input to the Commission along with answers to their other questions.

Mr. Zobrist agreed that was a good idea. This is winter time and there are not a lot of weddings going on outside. He asked that the wineries allow the Commission to work their way through this. The Commission wants to come up with something so everybody feels like they have been heard and their concerns have been responded to. That will make us a better County.

Ms. Schornburg noted that they are trying to book for this year.

Mr. Zobrist replied that he would not stop booking because nobody said that they couldn't have weddings. They know there can be music, but it just depends on how loud it can be. They will have this worked out.

Mr. Franco noted if it was amplified music.

Mr. Zobrist agreed it was just for amplified music.

Mr. Beltrone asked if they had Cal Morris' input.

Mr. Zobrist replied that Cal Morris is exactly where they all are. Mr. Morris indicated that the standards should be ambient noise and felt very strongly that they need to put teeth in the enforcement side. However, Mr. Morris can speak for himself at the next hearing.

Ms. Porterfield noted as far as this particular winery goes, there is an ordinance on the books. The secret is to try to meet the current ordinance for their scheduling and things like that.

Mr. Zobrist thanked everyone for coming. No official decision on the ordinance language will be made until a Planning Commission public hearing, which has not yet been scheduled.

In summary, the Planning Commission discussed the matter, taking into consideration the comments from the public and staff. The Commission requested staff to bring back additional information to address the following basic concerns regarding outdoor amplified music noise levels before drafting the ordinance language or scheduling the public hearing:

1. The need for better enforcement or more direct enforcement opportunities;
2. The fact that there appeared to only be a noise problem with one County winery; and
3. The appropriate measurement level.

Other suggestions made that would be helpful include the following:

- bring in the County Engineer;
- have staff find out exactly what the police can and cannot do;
- try to do exactly what Ms. Monteith has been saying concerning the timeliness of enforcement, i.e. when somebody calls with a complaint how do they get it looked at right then and not a week or month later when another event comes up; and
- other pieces of that type of information.
- Staff to investigate what lower decibel reading would be and then get input from the wineries to see if enforcing that lower decibel level would be seen as something that they would object to in being treated differently and what the result of that would be.

No formal action was taken.

The Planning Commission took a break at 9:24 p.m.

The meeting reconvened at 9:28 p.m.

ZMA-2010-00009 Republic Capital

PROPOSED: Rezoning of 20.54 acres from Light Industrial which allows industrial, office, and limited commercial uses (no residential use) to Light Industrial which allows industrial, office, and limited commercial uses (no residential use) to amend proffers. No residential units are proposed.

PROFFERS: Yes
COMPREHENSIVE PLAN LAND USE/DENSITY: Industrial Service - warehousing, light industry, heavy industry, research, office uses, regional scale research, limited production and marketing activities, supporting commercial, lodging and conference facilities, and residential (6.01-34 units/acre)
ENTRANCE CORRIDOR: Yes
LOCATION: Located on west side of Route 29N, at the intersection with Northside Drive
TAX MAP/PARCEL: 03200000002200
MAGISTERIAL DISTRICT: Rio
(Eryn Brennan)

Ms. Echols, in Ms. Brennan's absence, presented a PowerPoint Presentation and explained the proposed amendments to ZMA-2010-00009 Republic Capital.

- This is a work session on a request for an existing zoned property to modify a proffer related to a buffer area on a proffered plan. The current land use plan recommends the area for Industrial Service. The Places29 plan recommends the area for industrial use, which is scheduled for approval in the near future. The applicant's request is to change the buffer area and to modify a proffer related to the buffer area on a proffered plan. A four acre but undefined width for a building setback was proffered in 1988. In 2011, that amount of land for a proffer seems to be more than what would normally be expected in the development areas. Staff has been working on trying to make better use of their development areas, especially the Light Industrial properties to make that available for uses that are needed in the County.

The purpose of this work session is to get Commission input on several things:

- Should the buffer area be reduced from four acres to a 50' buffer?

  That actually exists right now, but the issue has to do more with the building setback. The proffer is written so there is a 50' buffer, but there is also a four acre buffer area with no buildings in that area. There could be parking in those areas. The applicant is asking to establish a 75' building setback.

- Is a building setback of 75' appropriate?
- Should the applicant provide for a future interconnection through the property to connect US Route 29 to Lewis and Clark Drive?

Ms. Porterfield asked if the 50' is included in the four acres.

Ms. Echols replied yes that it was included in the four acres. The way it relates is there is a 50' undisturbed area and then the building has to be outside of that four acres. It is basically a screening buffer. It gets a little complicated. There are three sets of proffers, which need to be cleaned up as part of the rezoning that is the mechanics of it. Staff needs to get the big questions answered first before they figure out how to do it.

- The proffered plan says a four acre screening buffer. The applicant's proposal is that 50' would be undisturbed plus a 25' berm and planting area, and that no buildings would be closer than 75'. A drawing is in the staff report in Attachment C. The applicant will provide additional information. The drawing shows an undisturbed buffer on the light industrial property, 20' of berm area, plus a 5' planting area, and the building location as the proposal. The existing and proposed are in excess of what the ordinance requires right now. Staff thinks that in order to use the development area more effectively this extent of a buffer may not be necessary.

Mr. Zobrist noted that there were single-family residences behind it.

Ms. Echols replied that was true. The current requirement is 30' for a buffer area and 50' for the single-family residence buildings. Staff recognizes this may not be something the Commission wants to do. Staff recognizes that more than likely the neighbors would prefer to have as much distance as possible.

That is human nature. Staff received a phone call today from someone who asked about what does this really look like on the ground and what is that distance like. Staff took some measurements and noted what the 75' buffer would look like as opposed to the 50'.

- The second question is whether an interconnection should be provided. Part of the Places29 Plan is to set up a series of perpendicular and parallel roads to try to take the pressure off 29 North. The way they do that is to get the interconnections from the perpendicular roads that gets them into the parallel roads. She noted that a proffer was received from the UVA Research Park to allow for an interconnection to North Side Drive. It comes pretty close to Airport Acres. This is not an exact location.
- Staff is concerned they may lose an opportunity to get an interconnection to this road. If there were a site plan for this area that was approved, then they would have no ability to get an interconnection through this property. An adjacent property is Hall's Body Shop. It would be difficult to get a interconnection through that property right now. It is an opportunity they have and things have changed since 1988.
- They now have some recommendations for parallel and perpendicular roads in their plan. Staff believes that an interconnection should be provided for it. There does not need to be a whole lot done about it other than not precluding the opportunity for an interconnection be made. There are different mechanical ways to get there, but staff thinks it is important to get that now.
- Staff recommends that the Commission advise staff and the applicant on any changes. The Commission is requested to provide answers to the questions so the applicant can then move forward to their next step and know what to do with their next submittal.

Marcia Joseph, representative for the applicant, presented a PowerPoint Presentation to explain the background of the request.

The property is zoned Light Industrial. The current Comp Plan calls for Industrial. The request is as follows:

- Reduce undisturbed buffer area from 150' to a 50' undisturbed buffer and a 4' high berm planted with screening trees
- Increase the height of the buildings allowed within 300' of the residential property line from 25' that was proffered in 1989, to 35' in height (current ordinance standard)

The reasons for the applicant's request is:

- The current approval removes nearly 4 acres of Light Industrial property from active use
- Albemarle County officials have voiced concern about the lack of Industrially zoned land
- Staff has been proposing changes to the zoning ordinance to reduce the required buffer area between residential and industrially zoned properties
- Discussions and meetings with residential neighbors indicated that the residents abutting the property could support the request to reduce the undisturbed buffer to 50' with a 4' high planted berm. There were two neighbors, but she noticed there is another neighbor present that did not respond. They sent letters and worked with folks over the summer to see what it was they were interested in having and whether they could support something like this.

Background

- The proffers approved in 1989 were cobbled together at the last of three Board of Supervisor public hearings. They combine three separate proffer letters. They are confusing and they render more than four acres of Industrial zoned land unusable.
- The proffers never restricted the building area (square feet) allowed on this Light Industrial property. The dimension is 150' from the property line that is shared with Airport Acres.

Mr. Zobrist asked if the parcel has frontage on Route 29.

Ms. Joseph replied that the request was for part of the parcel. This portion does not have frontage on Route 29. She continued the PowerPoint Presentation. She reviewed a table from staff that reduces setbacks in buffer areas. Therefore, they knew this was something the County had been interested in doing. They have contacted and met with the neighbors to see what their concerns were. They worked

with them to create a change in the buffer area that they could support. She viewed several illustrations of the proposed buffer area including the area shared with the residential area. She reviewed a graphic of what they plan to do. There are three residences that will be impacted by the plan. Two of the adjacent property owners met with them on site. Information was sent to the adjacent owners before they made the submittal to the County. This was something that they could support. She explained the proposal.

Staff Request #1

- Staff believes that no proffers for buffer and setback distances are necessary and the prevailing ordinance requirements are appropriate in lieu of the proffers.

Applicant Request

- Allow the residential neighbors in Airport Acres to have peace of mind knowing that any building will be buffered by a 50' undisturbed wooded area and a 4' high planted berm.

Staff Request #2

- Staff believes the applicant should provide for a future interconnecting road between US Route 29 and Lewis and Clark Drive as provided for in the UVA Research Park proffers and as shown on the Places 29 Master Plan.

Applicant Request

- If they were to make that connection the most logical thing for them to do to not bisect that property would be to come as close as they could to Airport Acres, which was what they were trying to avoid.

Applicant's Reasons to limit traffic through the Industrial Park

- Staff cites traffic modeling done to justify the Places 29 road layouts – many of the connecting roads have been removed from the plan by the Board of Supervisors, it is not likely that the traffic modeling done for Places 29 is still valid.
- The intent is to create private roads to serve the Industrial Park.
- It is important to limit passenger vehicular traffic to minimize the conflicts between truck ingress and egress and passenger vehicles.
- If a public road through this site is required, then the road will abut Airport Acres subdivision, as shown in the comprehensive plan.

Rezoning Amendment Request

- Reduce buffer area
- Increase the height of the buildings from 25' in height in the area within 300' of the residential property line to ordinance allowance of 35' in height

Rezoning Amendment Request Factors Favorable

- Allows an additional two acres to be added to the available Light Industrial Property in Albemarle County
- Proposes a buffer and berm to protect the residential neighbors
- Has support from at least two of the adjacent residential neighbors
- Allows for more flexibility for industrial use of the property
- Current Comprehensive Plan designates this area as Industrial Service
- Separates passenger vehicles from industrial truck traffic
- Neighbors support the amendment request – She noted they have a letter from the adjacent owner.

Mr. Zobrist invited questions.

Ms. Porterfield asked if she was saying they do not want to proffer the road going through.

Ms. Joseph replied that was correct.

Ms. Porterfield noted there were two things the applicant wants, but the applicant was not giving the County the proffer for the road.

Ms. Joseph replied that was correct. The only idea was to come forward to reduce the buffer.

Ms. Porterfield asked how big are the trees proposed to go on the berm. In addition, are the trees all deciduous.

Ms. Joseph replied that was correct. They are proposing that this is a 4' high berm and they would start 4' to 6' high trees in there. Essentially, to start they would have 8' total in height.

Ms. Porterfield noted it would be a 35' building eventually at 300' back.

Ms. Joseph replied that the existing proffers say that any building within 300' of the property line cannot be taller than 25'. They are asking for 35' from the start. From that point, they have the setback. There are also material standards for the buildings themselves because the neighbors were concerned that these not be big metal buildings. The neighbors wanted the buildings to be brick, masonry, or whatever as spelled out in the proffers. They have no intent of changing that.

Mr. Zobrist invited public comment.

Carroll Good, resident of 3660 Airport Acres Subdivision, said he backs up to the property. The only question he would have is would they still maintain the 50' undisturbed buffer. He was not aware that there was a four acre parcel for a buffer zone. He did not have any problem with that. He wanted the 50' undisturbed buffer there. He was really not too pleased with having the road go all the way through, which was up to the Commission as to what they will approve. That is all he had.

Johnathan Williamson said he just noticed the road tonight. He asked staff to bring up the picture of the road. He pointed out the road goes right through his property. That is a big problem. They are going from 300' to 50', but are only putting 8' in. His deck was 16' above the ground. Therefore, he would be able to see anything over there. The berm needs to be higher if they are going that low. If they go 75', then it needs to be at least a 20' berm. The reason he built in Airport Acres was it was the first subdivision and was nice and quiet. They can't hear Hall's Body Shop. He was curious about what was going in the place. He did not want any run off since he still had a well. He was concerned with the property value. He asked how the property value would be affected by building that close.

Mr. Smith asked how long he had lived there.

Mr. Williamson replied about two years. However, he had been through there all his life.

Blake Hurt, representative for the owner, noted that Ms. Joseph and he had worked on this plan in 1988. When they did the plan, which was somewhat of a sketch, their thought was also that the 300' area would not include buildings, but would allow parking. Apparently, the County has said that no parking should be allowed next to that building. He always thought the building went up to the 300' line and then parking would be allowed on the other side. Therefore, he was surprised by this. He explained their proposal.

- Their proposal was basically to change the proffer. Their idea was that the County should be more acceptable to having industrial property. It looked like the idea of having a reduced buffer would be accepted. Therefore, they suggested that they change the proffer to clean it up to make changes to a two-story building to 14' heights. Because the building sets down that would make it 35', which was within the County regulation. It would reduce the buffer to 50', which was still 60 percent more than what the County currently requires. That is what they are offering.
- They are against the interconnection on the road. What does that mean? Their original intent was if there was a connection to the University Research Park their road would quickly become the thoroughfare for traffic leaving the Research Park property coming out to Route 29. They see a potential conflict between all of those cars coming out and some slow moving truck coming out of one of the lots and having a traffic problem or difficulty getting in and out. Therefore, they are not for that second request.

- They understand the people at Airport Acres want a minimal impact from their property. Adding a road right next to the neighbors was something they would be able to object to, and they would object to it also. That does not mean that if there is a way to work with the University and there was some reason that they could find that would make everybody happy that they would not consider it. What they don't want is to be required to do it. Their proffer does not do that and they were not going to include it if it comes before the Commission.

Ms. Porterfield asked if there were going to be loading docks, and Mr. Hurt replied that the loading docks would be on the lower side.

Mr. Zobrist noted concern with the dotted lines on the plan.

Ms. Echols noted that it was a planned connection. It was in the Places29 plan and modeled. Some of the roads are no longer shown on the plan, but there are words in the Places29 plan that call for the need of a road with a starting point and ending point. She noted Mr. Benish and Mr. Brooks were present to answer questions.

Mr. Benish noted that he did not have a lot more to add. The alignment is schematic and not intended to be looked at literally. One of the benefits of these mid-block crossings is that it prolongs the viability of the at-grade road crossings. Being able for traffic to be split between Lewis and Clark Drive, Route 29 and Airport Road, based on the traffic generated in the Research Park being able to split that traffic among a number of intersections, allows for some of the other intersections to stay at grade or without as major of an improvement. It is splitting the traffic up. That was one of the benefits from this particular road connection. Looking at this site it might not be a question of whether it has to bifurcate or split the site, but other opportunities to provide for ways that at least for some point in the future when and if the road is necessary there are some options to consider. That is a way to approach it as well. He did not think the emphasis is so much it has to be built now. However, let's not foreclose on the opportunity if and when it is needed in the future.

Mr. Zobrist asked aren't they asking the applicant to develop the site around a question mark.

Mr. Benish replied they are providing for some option to provide road connectivity. Then they could go back and see how that could fit within the context of this plan. Dedication of right-of-way along the edges of the development might provide for a corridor that could be used in the future. That is just an example, so to be able not to go through the middle of the site.

Mr. Zobrist asked if they are not expecting the applicant to build it. He asked if what staff wants is a right-of-way.

Ms. Echols noted they want the opportunity to be able to have a road connection through there. They are not asking them to build it. They are not necessarily asking them to plan a public road at that location. At that location, they want to make sure that an interconnection can be made in the future.

Mr. Zobrist noted the problem he would have as an applicant is they want to build something that won't be disturbed in future.

Mr. Benish said that section is not that far away, but probably depends on how rapidly the UVA Foundation builds and North Pointe develops. The intersection of this roadway is the mid-point access to the North Pointe development.

Ms. Porterfield said it appears that two out of three residents don't have any problem with it. The point is what they are doing will affect their quality of life by decreasing the amount of land in between the buildings and their houses and the height of the buildings will be greater. The applicant is very clear they don't want to work with the County on the road alignment. She was disturbed there was not a little bit of give and take and would like to see some before being willing to change things that were done previously.

Mr. Franco said with respect to the setback he thought it was great the applicant worked with the neighbors to try to get the last person on board. The reduction in setback was still in excess of what they were talking about in general. He did not have a big problem with it. He would prefer to see that the building setback be moved to a location to make sure there is no parking on the residential side. The building could be designed to be more of a buffer from the parking. The parking is going to be more of the noise generator. He knew it was going to have to step up the hill, but would like to see the building located so there is no parking on that edge. He thought there was room to play with the berm to get consensus with all three neighbors. He would like to understand the interconnection. He knew the challenges of that site, and was not sure they can get an interconnection in there anyway. The interconnection is a good idea if they can get it. He understands their concerns if they have a private road within their industrial community.

Mr. Loach agreed with Mr. Franco on the building site with no parking on the residential side. As far as the connection, maybe it would be more plausible if they plan for the connection. There should be a connection required until the other road was finished so they would not be the first one there where everybody gets in the habit of cutting through. He agreed with staff that they should at least look at it. He thanked the applicant for working with the neighbors since he appreciated the efforts they went through.

Mr. Zobrist noted it was not the intent that anything is built there. It is the intent that it be reserved in case they can get connectivity somewhere. They have to get other property in order to get it all done. The whole idea is that they just reserve it with a dotted line. The connection would not be required until it could be done.

Mr. Franco said that they could explore that now as part of this. He was not sure if it was even possible with the grades on that site.

Mr. Smith said he was in favor of the 50' buffer and the 25' setback. He would like to see the berm raised. Since they are asking for a 10' height raise in the building, then the berm should be raised 10'. He did not see burdening the gentleman with the road.

Mr. Zobrist asked staff if they had received enough direction.

Ms. Echols summarized the Planning Commission's direction, as follows: Most of the Commission was in favor of exploring an interconnection, not requiring anything to happen right now, but in the future making sure that opportunity is not precluded as long as it can topographically be achieved.

Mr. Zobrist agreed as long as it was not feasible.

Ms. Echols noted that Glenn Brooks, County Engineer, was coming to the podium because they have actually looked at this in terms of the feasibility of it.

Mr. Brooks noted he had a question about the berm. If they were asking for a 10' berm with 3:1 on either side it is like 60' or 70'. He asked is that part of the 50' buffer.

Ms. Joseph replied no.

Mr. Brooks noted that it would be a 110' buffer at that point, and Ms. Joseph agreed.

Mr. Zobrist noted that was a nice buffer.

Ms. Echols summarized that the other thing the Commission was interested in with the interconnection is having a buffer. She was not sure if she heard anybody speak in favor of a reduced buffer from what the applicant is requesting.

Mr. Franco said if the neighbors could be convinced he was okay with it. Getting it down to where the Code is now or where the Code might be heading might give them the flexibility. Right now if it was a 4' buffer and 20' across and it has to get 40' more, then maybe some of that can come out of the existing to

raise that height up. He was happy to consider it if that is where the applicant and the neighbors want to go.

Mr. Benish noted that they also wanted the parking away from the residential.

Mr. Franco said he like the idea of using the building as much as possible to buffer. He understands that building will be turned 90 degrees from what is shown on the picture. However, trying to push that building to the edge would create a better buffer rather than having parking right there.

Ms. Echols agreed with him regarding the parking, driveways, and such. Staff did not notice the building heights. The proffers were cobbled together. Staff would be recommending that the minimum building height be what the zoning ordinance calls for right now, which is 35'. They would not be recommending less than is available in any zoning district in the County, which would be 35'. Getting rid of the proffer that deals with 25' high buildings would definitely be something staff would be in favor of. The residences could be 35' in height.

Mr. Franco said he was comfortable with that. What he did not understand is that they did not have a cross section through this site to understand where the residences set relative to these graded pads. However, getting consistent with the rest of the Light Industrial would be nice.

Ms. Echols asked if there was anything else.

Since there was no further discussion, Mr. Zobrist noted the Commission would take a five minute break and then start on the last item.

In summary, The Planning Commission provided guidance for the applicant's next submittal and responded to the questions posed in the staff report, as follows:

Issue 1: Buffer Reduction

Question: Should the buffer be set at 50' and setback be set at 75' as proposed by the applicant in the proffer amendment, or should the buffer and setback comply with buffer and setback requirements in the Zoning Ordinance?

The conclusions were:

Buffer: Two of the three abutting neighbors had been contacted and were okay with what was being proposed. The third neighbor came to the meeting and wanted a higher berm. A 10' high berm at 3:1 on either side that is not part of the 50' buffer makes for a 110' wide area in which no buildings or parking would be allowed. The PC expressed general support for this alternative proposal. Mr. Franco was okay with a reduced buffer if the neighbors can be convinced to go along with what the ordinance requires. He would also prefer parking not to be located along the edge of the Airport Acres properties, and would like a cross-section through the site to understand what the neighbors would see with a reduced buffer.

Question: Should the applicant provide for a future interconnecting road between US Route 29 and Lewis & Clark Drive as provided in the UVA Research Park proffers and as shown on the Places 29 Master Plan?

The conclusions were:

Road Connection: Regarding the road connection, the Planning Commission instructed the applicant to explore the feasibility of an interconnection. Nothing has to be built right now. The goal is to make sure the opportunity for the connection is not precluded in the future. The first step is to see whether a road can be achieved topographically on this site. The Planning Commission also expressed general support for allowing a 35' building height.

No formal action taken.

The Planning Commission took a five minute break at 9:24 p.m.

The meeting reconvened at 9:28 p.m.

Work Session:

ZMA-2010-00010 Peter Jefferson Overlook & SP-2010-00039 Peter Jefferson Overlook Offices.
PROPOSALS: Rezone 2.09 acres from Pantops Place PRD Planned Residential District - residential (3 - 34 units/acre) with limited commercial uses to PRD Planned Residential District residential (3 - 34 units/acre) with limited commercial uses and Special Use Permit for commercial offices. No residential units are proposed.
SECTION FOR SP: 19.3.2.9, which allows offices by special use.
PROFFERS: NO.
EXISTING COMPREHENSIVE PLAN LAND USE/DENSITY: Urban Density Residential - residential (6.01-34 units/acre) and supporting uses such as religious institutions, schools, commercial, office and service uses in Pantops Neighborhood.
ENTRANCE CORRIDOR: Yes
LOCATION: NE Corner of Route 250/Pantops Mountain Road.
TAX MAP/PARCEL: 07800-00-00-055A7. MAGISTERIAL DISTRICT: Rivanna (Elaine Echols)

The Commission held a work session to review a proposal to amend the Pantops Place PRD for the development commonly known as Jefferson Heights on Route 250 East in Pantops, which was submitted in November 2010. The applicant wishes to have offices on the frontage of Route 250 rather than residential units. A rezoning and special use permit are required for this change.

Ms. Echols reviewed the applicant's proposal in a PowerPoint presentation. The applicant wants to change the zoning in the PRD to allow for offices. The applicant requested a work session because staff and the applicant had different perspectives on what needed to happen. The purpose of this work session is to determine conformity with the Land Use Plan and to get the Commission's input on scale and design of the site, advise on the remains of the stone wall and hedgerow, and advise on frontage characteristics for the site. Staff requests input from the Commission so it can move forward from there. The Planning Commission held a discussion, asked questions, and took public comment.

Mr. Zobrist invited the applicant to address the Planning Commission.

The applicant was represented by Justin Shimp, with Dominion Engineering, who explained their proposal.

Mr. Loach invited public comment.

Gary Solemnize, of Westminster Canterbury, noted concerns about the road maintenance, entrance, parking, and traffic configuration.

There being no further public comment, the matter was before the Commission for discussion and feedback.

The Planning Commission provided guidance for the applicant's next submittal and responded to the questions posed in the staff report, as follows:

Is the proposed office use in conformity with the Land Use Plan?

It was the general consensus of the Planning Commission that the proposed office use does not comply with the Land Use Plan. There could be an office use that conforms to the land use plans. Some Commissioners think what has been shown is fine. Other Commissioners think there needs to be a tighter relationship between the office use and whatever use is there with the surrounding neighborhoods. One of the biggest pieces was the importance of getting community input, in particular from the PCAC.

Are the scale and design of the development appropriate?

The Commission was open to a non-residential use if it is complementary of the residential uses. A few of the Commissioners said that the corner in question might not at this time be optimum for residential use due to the traffic volume on Rte. 250. Don Franco said strongly that the applicant would have to present a compelling case for a non-residential use to get his support.

Should the remains of the stone wall and hedgerow on the easternmost side of the property be preserved and retained?

Regarding the hedgerow and stonewall the Commission needs input from the PCAC and/or surrounding neighborhood residents. Depending on the importance of these features to the neighborhood and PCAC, the applicant might be able to remove the hedgerow and stone wall, but use stones as a feature of a retaining wall.

What happens to the hedgerow and stonewall will likely impact scale and design issues. There were comments about too much building square footage and parking proposed for the site; however, it was also said that the applicant may be showing more parking spaces than are required. Input on these items was requested of the PCAC/surrounding neighborhood residents.

Input from the Historic Preservation Committee was requested by Ms. Porterfield, the Planning Commission representative to that committee.

What type of frontage characteristics should be provided along Route 250 East?

Regarding the frontage treatment, a sidewalk in or adjacent to the right-of-way is essential. There is a need for a separation between the sidewalk and the fast moving traffic on Route 250. That is what the master plan is saying. If they can get it, they need to have that separation so that the people are not right up on 250. The sidewalk should not be up next to the building. If there is a way to separate the sidewalk from the traffic with a landscape strip, it should be done. If it is possible to place trees in a landscape strip, i.e., if VDOT will approve them, then they would welcome the trees.

- The applicant needs to work with the adjacent neighborhood residents. Staff to take the request to the PCAP for input.
- No formal action was taken.

Old Business

Mr. Zobrist asked if there was any old business. There being none, the meeting proceeded.

New Business

Mr. Zobrist asked if there was any new business.

- Staff to present training on parliamentary procedures at an upcoming meeting. Mr. Morris and Mr. Lafferty have some input from a recent seminar.

There being no further items, the meeting proceeded.

Adjournment

With no further items, the meeting adjourned at 10:06 p.m. to the Tuesday, January 25, 2011 meeting at 6:00 p.m. at the County Office Building, Second Floor, Auditorium, 401 McIntire Road, Charlottesville, Virginia.

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V. Wayne Cilimberg, Secretary

(Recorded and transcribed by Sharon C. Taylor, Clerk to Planning Commission & Planning Boards)