Albemarle County Planning Commission
February 8, 2011

The Albemarle County Planning Commission held a public hearing and meeting on Tuesday, February 8, 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, Don Franco, Russell (Mac) Lafferty and Calvin Morris, Vice Chair. Julia Monteith, AICP, Senior Land Use Planner for the University of Virginia was absent.

Other officials present were Gerald Gatobu, Principal Planner; Elaine Echols, Principal Planner; Judy Wiegand, Senior Planner; Eryn Brennan, Senior Planner; Claudette Grant, Senior Planner; Glenn Brooks, County Engineer; Ron Higgins, Chief of Zoning; Sarah Baldwin, Senior Planner; Amelia McCulley, Director of Zoning/Zoning Administrator; Wayne Cilimberg, Director of Planning; and Greg Kamptner, Deputy County Attorney.

Call to Order and Establish Quorum:

Mr. Zobrist, Chair, called the regular meeting to order at 6:00 p.m. and established a quorum.

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.

Committee Reports:

Mr. Zobrist asked for committee reports from the Commissioners.

- Mr. Morris reported the Pantops Advisory Group met the last week in January. All fifteen members were there with two staff members. The group talked about development the Commission had looked at along Route 250.
- Mr. Lafferty reported PACC Tech met at UVA and got an update on their building program, total maximum daily load (TMDL) regulations, and the sustainability grant that the Thomas Jefferson Planning District Commission is managing for the area.
- Ms. Porterfield reported the Historic Preservation Committee met. Members looked at the stone wall on Pantops the Commission talked about. She hoped the Commission would use the committee in the future since it generated a lot of good knowledge.

There being no further items, the meeting moved to the next item.

Mr. Zobrist noted a change in the order of the agenda. He asked Mr. Cilimberg to report on the Board of Supervisors meeting. Then he would like to hold a discussion on some of the comments that the Board of Supervisors asked them. The Commission would ask for public comment on the same. He noticed there were several people here that want to speak on that issue.

Review of Board of Supervisors Meeting – February 2, 2011.

Mr. Cilimberg summarized the actions taken by the Board of Supervisors on February 2, 2011.

Mr. Loach asked about the Board's action on the interstate interchange.

Mr. Cilimberg replied that there was some interest at least with one Board member that they come back and provide information on how the interstate interchanges may be addressed in their Comprehensive Planning process outside of the general Comprehensive Plan review. That was the request. He continued to summarize the Board's actions, as follows.

- At the end of the meeting last week the Board was aware of the Commission's work session on January 18, 2011, regarding the noise from outdoor amplified music at farm wineries. The Board

had some discussion about that and were interested in trying to have those noise ordinance regulations based on decibel readings. The consensus of the Board, as discussed last week, was that they felt it was appropriate to use readings such as they now use for other rural area uses.

- He told the Board he would convey that message to the Commission since the Commission directed the Board to go a somewhat different direction at the work session they had. If there is any change this Planning Commission feels in the work they want staff to do or the preparation they would like for staff to bring information to the Commission differently than they directed in January, staff would need to know that. Board members did have some feeling that the rural area decibel standards now in place were potentially appropriate and might be the direction to be headed in. There was some sense of urgency that they are seeing because they were getting closer to at least the seasons when the wineries are active and weddings may be held.

Mr. Zobrist noted he would like to get everyone's thoughts on if the Commission wants to change their direction with respect to the staff on what they asked them to come back and do. He asked to restate what he thought the Commission did.

- The Commission felt that more work needed to be done before they were prepared to make a recommendation. He sensed there was not a consensus since at least two Commissioners felt they have not given the current ordinance enough time to see whether it was working or not. It uses an audibility standard. Mr. Kamptner said he thought that an audibility standard was enforceable and would not be set aside if there were a legal procedure entered into.
- His sense was that most of the Commissioners felt the neighbors should not have to hear it. They should be able to come up with a way to measure the amplified sound emanating from the farm and figure out how to enforce that once it leave the property with technology. The Commission got the impression from Ms. McCulley that when they take readings at decibel levels they have to balance their machines and take the ambient noise. They discussed figuring out what the ambient noise level is and using that as the number. Staff was asked to get with the engineers to obtain more technology since the Commission did not want to go through the process of setting something that is unenforceable.
- Staff was asked to come back to the Commission with staff's recommendations with whether or not the police could be informed. They have an answer to that question that the police cannot be involved unless they change it to a misdemeanor. It will remain a civil zoning infraction and the penalty will be enforced through the civil procedures as opposed to the criminal procedures unless they change it to a criminal offense. He asked what he missed.

Ms. Porterfield asked when he said "we change it," does that mean the ordinance has to be changed.

Mr. Zobrist replied that the ordinance would have to be changed to make the offense criminal as opposed to civil. In the discussion they had at the last meeting, they were told it had previously been a criminal offense and zoning had requested it to be a civil offense and just come under the zoning ordinance. Currently it is a civil offence to violate the zoning ordinance and it can only be enforced by zoning and not by the Police Department.

Ms. Porterfield asked if it was in the ordinance that says it is to be enforced that way.

Ms. McCulley replied that zoning violations are civil violations or procedure. Under Mr. Kamptner's assessment of the enabling authority, they can't authorize the Police under a civil process. This particular violation would have to become a criminal violation.

Ms. Porterfield said that part of the ordinance would have to be rewritten whether it was an audibility standard or the decibel level.

Ms. McCulley said to get the Police to enforce it at a decibel level, the Police do not have the equipment.

Mr. Zobrist asked if the Commission wanted to hear from the public.

Mr. Franco noted it would be helpful for the Commission to hear from the public and then come back to the equipment.

Mr. Zobrist invited public comment regarding the Noise Ordinance. The Commission will then come back to other matters not on the agenda.

Mr. Schornberg, owner of Keswick Vineyards, made the following comments.

- The Commission is currently reviewing the sound ordinance as it applies to outdoor amplified music for the purposes of changing a subjective ordinance to an objective method that can be measured and recorded. It depends on who is doing the listening. The intent of the existing ordinance was well meant. No one could foresee the problems they have since encountered. When they incorporate well meaning standards without quantifying them where possible they leave themselves open to abuse and misinterpretation. That is what has occurred here.
- An objective metric of 60 decibels until 10:00 p.m. and 55 decibels thereafter, as it is outlined in Chapter 18.4.1.8.04 of the County Code, for all noises in rural areas except agriculturally related which has no limitations would be acceptable to the farm wineries. It is easily enforced and easily complied with. This does not have to be a complex problem. Most communities have sound ordinances using those same decibel measurements for regulating outdoor amplified music. This only appeared to become more complex when folks, many of whom don't even adjourn the property, state their position for being against outdoor amplified music even if they can't hear it.
- Several Planning Commission and Board of Supervisor members came out to their third and last wedding in 2010. By that time, they had already made significant improvements by installing a sound system that automatically controls the maximum decibel output and cuts it off if that maximum level is exceeded. That system also focuses sound directly on the dance floors so that other people at the wedding reception sitting at tables can actually have conversations. The music is loud enough on the dance floor for people to dance to, but quiet enough that people can talk. It also prevents the music from disturbing neighboring property owners. If they take a reasonable approach and assume that farm wineries want to stay in business and, therefore, will willingly meet and even exceed at meeting lower level decibel ratings to ensure their future will meet with success.
- Finally, he asked that they come to a timely resolution. Many folks are planning their weddings now and a cloud of uncertainty hangs over Keswick Vineyards with an unresolved sound ordinance issue that has created a certain amount of risk that no wedding couple should have to or want to face.

Mr. Loach asked if he said the equipment put in mitigated the noise to the point that when the two Supervisors went out they did not hear any noise from music at a designated distance, and Mr. Schornberg replied that is correct.

Mr. Loach said essentially they would have met the current standard at this time, which is one of sound and not measurement, and Mr. Schomberg replied that is correct.

Mr. Loach asked if in order to meet the decibel requirement, if in fact they are put in place, if he was saying there should be technology in parts of the ordinance that is required by wineries.

Mr. Schomberg replied that he presently owns that technology and records every event in the sound decibel and produces reports. It is not an expensive technology. It is not the tens of thousands of dollars they were told at the last meeting. He thought that every winery that wants to have outdoor amplified events should have equipment like that to defend themselves.

Mr. Page confessed that he came to the Commission this evening unprepared. This is the first he learned that the subject was going to come up this evening even though there had been a previous inquiry. He made the following comments.

- He asked to go to the earlier statements regarding the third wedding, which was conducted at the Keswick Vineyards. That was the wedding at which there was an inspector from Ms. McCulley's office present. The inspector and he stood together in his driveway and listened to the music coming from the wedding. His house was approximately 400 to 500 feet from their property line. The current standard is 100' from the property line. The County inspector informed him that what he was hearing constituted a violation and that he planned to issuing a citation. He later went to one of his neighbors and had a similar experience. There were two witnesses to the effect that the last wedding did not rise to the levels required by the current ordinance.
- The problem with the current ordinance and current standard is one of application. There is no technology required other than a set of ears and a tape measure about 100' long, which everyone has. It is not subjective. It is very objective. Either it can be heard or not. In his judgment the standard set by the general noise regulation for the county, which is designed to protect the

health and welfare of all members living in this County, is a audibility standard. That is the same standard that should be applied for noise coming from wineries or any other source because they have the same effect. Whether noise is intruding into his property causing a potential health hazard for his family does not matter whether it is coming from a noise from a wedding at a winery or some other source. It presents the same hazard.

- He would appeal to the board to consider the ramifications of what they have before them. The only reason that the wineries are extended this consideration is because somebody has manipulated the meaning of agricultural activities so that weddings can be considered an agricultural activity. He has had two daughters married and he knows what weddings are. He also has been farming for a long time and is familiar with an agricultural activity. He can assure them that a wedding is not necessarily an agricultural activity.

Mr. Zobrist noted that the only audibility standard in the noise ordinance is in the farm winery ordinance. It is not in the general noise ordinance of the County. Therefore, at this time anybody in the County is limited to 60 decibels until 10:00 p.m. at night. At 10:00 p.m., it goes down to 55 decibels.

Mr. Kamptner clarified that he was speaking to the general noise standards in the Zoning Ordinance.

Mr. Zobrist agreed that this was the zoning standards. The farm wineries come under special exemption under State law and they can only regulate one little part of their activity, which is outdoor amplified music. Farm wineries are special and they can only regulate one little smidgen of their activity, which is outdoor amplified music. The audibility standard was chosen when the ordinance was adopted by the Board. The audibility standard apparently is not satisfactory to everybody. He asked how he felt about the 60 decibel. When the inspector was on his property, did he measure the sound or did he just listen.

Mr. Page replied that the inspector listened because that was the only thing that was required under the current regulations.

Mr. Zobrist asked if he knew the decibel level, and Mr. Page replied no.

Mr. Zobrist asked if he was at the Planning Commission meeting when staff gave the decibel level presentation.

Mr. Pace replied yes, but that just gave an example of the problems associated with trying to use that system.

Mr. Zobrist noted the problem the Commission and Board were confronted with is that everybody in the County can have 60 decibels except farm wineries.

Mr. Page said his understanding of the general noise ordinance is that it operates under an audibility standard not a decibel standard.

Mr. Zobrist replied that was not correct and asked Mr. Kamptner to explain that.

Mr. Kamptner clarified there are two noise ordinances in the County Code. One is in the Zoning Ordinance, which is the noise ordinance that applies to land uses. In another chapter of the County Code is the general noise ordinance based on an audibility standard, which applies to a specific number of noise sources. The County's noise regulations in the Zoning Ordinance are based on the decibel standard with the thought being the land uses regulated under the Zoning Ordinance are more static in nature and will be there. It is feasible to measure those with the decibel meter. The general noise ordinance, which is based on an audibility standard, addresses things like music from certain locations such as sound coming out of cars and things like that.

Mr. Zobrist asked if that is still an audibility standard, and Mr. Kamptner replied yes.

Mr. Zobrist asked if they have had any enforcement under the audibility standard besides what is before the Commission tonight.

Ms. McCulley replied for farm wineries sound complaints staff has only had one, which relates to this one particular winery. For the general noise standards that the police enforce, she understands audibility standard works for them.

Mr. Zobrist asked if that is a misdemeanor, but does not comply to farm wineries.

Mr. Kamptner replied that it is correct.

Mr. Zobrist noted they now have the information.

Mr. Morris pointed out he spoke with one of Mr. Page's neighbors who had turned up his radio to overcome the noise from the winery. It was just normal manufacturing noise. The Police came out and told him that he would be arrested if he did not turn his radio down. He was very concerned about a double standard.

Mr. Zobrist agreed that it sounds like they have a double standard not just in farm wineries, but in the general noise ordinance. It is an audibility standard except by different regulations that are regulated by a decibel standard.

Mr. Kamptner said that generally considered land uses are regulated under the Zoning Ordinance's decibel standards. Non-land use related type noise sources are regulated under the general noise standard, which is based on an audibility standard.

Mr. Page asked to demonstrate one item. Hypothetically, if a winery next door, as it has happened, used extreme noise to the extent that he can hear it in his house and they were cited, then they might get a couple hundred dollar fine. It is kind of the cost of doing business. The winery has no incentive to comply with even the current standard so long as it is not a criminal offence. That has been admitted. On the other hand, if he was creating noise with a radio or a stereo on his property and it crossed his neighbor's property line by more than a 100' he could be held liable for a violation of the general noise ordinance. However, if the winery turns up the amplifier, which is a potent weapon, they would not be liable. An example is a car coming up to an intersection with powerful amplified music shaking the pavement. That is what they are up against. In this particular situation, the winery restricts its activities to DJ's who have amplifiers that are extremely powerful and create a serious problem. Just to show the contrast and the double standard in action, if he uses his stereo too loud the winery can charge him with a violation of the general noise ordinance.

Mr. Zobrist noted it was a criminal violation. He acknowledged that the Commission had the picture.

Mr. Loach asked since the winery put in the equipment has things improved. He asked if he had a chance to see under the new technology that has been implemented that there is not a problem.

Mr. Page replied the winery claimed they used the new technology at the last wedding. There was the first incident where the zoning inspector confirmed it was a violation. Later that evening after he had gone to bed somewhere around 9:30 to 10:00 p.m. he was rousted out of bed by the noise from the wedding. The one problem in trying to monitor noise from an event like that from whatever standard is that the noise is constantly fluctuating. It has been their experience in three weddings that it has been a fairly consistent practice that as get they toward the end of the wedding they get huge outbursts, which if you are trying to sleep it becomes a problem. The other thing he asked the Commission to consider was the frequency of the events. The frequency they were looking at for the coming year according to the winery's own statement is that they are fully booked, which means every weekend this coming year to include three weddings on Memorial Day weekend. That is normally a time that they like to have some time for reflection of the meaning of Memorial Day without having to put up with constant noise from weddings next door. He would have no objection to them continuing with this practice so long as they would do it in accordance with the current standard.

Ms. McCulley asked to make two points of clarification. In staff's observation at the third wedding in which the winery had used a new sound system that directed the sound differently and did other types of things, there was a substantial improvement in the overall sound levels from the first to the third and the second to the third. Secondly, even under a civil process, it is not just a single fine and they were done. Every event that subsequently occurs in violation racks up additional fines. They can go to an injunction at some time. It is not just a cost of doing business from a single fine.

Mr. Franco asked if the inspector measured the sound level.

Ms. McCulley replied no, because there was not a sound measurement standard. The winery took measurements, but staff did not.

Mr. Page noted there was no doubt about the audibility level.

Ms. Porterfield noted they have a double standard as pointed out by Mr. Morris. If she had a party and her party exceeds the audibility standard, it becomes a criminal penalty. If it is the winery with the same audibility standard, they fall under the other and it is not a criminal penalty. That is a definite double standard.

Ms. McCulley noted they may recall this kind of thing came up when the Commission talked about home businesses. She thought Mr. Franco said you mean to tell me my neighbor can have this hobby of working on cars or whatever and he can junk up his yard and do all kinds of activity related to that hobby, but if he was doing it as a business he has all these regulations. It is really in her mind that same type of thing private activity versus a land use, which they do regulate. The party is a private activity. Any way they cut it between the general noise regulations that the Police enforce and the current noise regulations that zoning enforces, as a land use under the Zoning Ordinance for industrial and commercial uses there is a double standard there, too. She thinks it works well. Staff is able to get certified engineer's reports about incoming industrial uses saying they can meet the maximum noise levels and things like that. Therefore, there is a real value for a decibel based sound standard.

Ms. Porterfield asked they keep in mind that zoning is a 9:00 a.m. to 5:00 p.m., Monday through Friday operation. The industrial uses probably are also. They are not talking about that here. They are talking about things that primarily happen on the weekends. It appeared at the work session that the big problem was the enforcement because no one was available to enforce it at the time it is happening. If the Police can enforce it at her party on Saturday night, it would seem logical that the Police would be able to enforce a winery situation at the same time on Saturday night. That is the double standard. Regardless of what ordinance it is, they have to be enforced the same way.

Ms. McCulley said she understands and appreciates what she is saying, but she was just making the point that maximum sound levels are enforced differently now and always have been in the County. Maybe the initial event where the particular farm winery is having an event that has really loud noise they can call the Police. However, later events the zoning staff can be at. It is just the initial time that it creates a problem. It is not a onetime event for winery events such as weddings. Zoning staff can plan to be available, be present to witness, and deal with the other ones. Nobody will be able to stop that wedding. Neither the Police or Zoning staff will be able to make them physically turn the music down. They will all have to witness it and take action from there.

Mr. Loach asked when does it change from what they are talking about to disturbing the peace under a different ordinance.

Mr. Kamptner replied that he was not familiar with the standards for criminal disturbance of the peace. He was not sure when it changes.

Mr. Lafferty asked if they could have a criminal offense without having something measurable other than they could hear it. Db is a measure of sound and whether one can hear a sound depends on the weather, fog, how close you are, and how good your hearing is.

Mr. Kamptner noted that the non-zoning noise ordinance is criminal in nature and it is simply based on the audibility standard.

Mr. Morris noted that radio was exactly that since it did not have any decibel reading. It was just obviously a noise violation.

Mr. Loach said the problem was the double standard with the enforcement as Ms. Porterfield stated. They were still dealing with the Police who were going to be the enforcers of this for the most part when called late at night. The Police would not have the equipment for the decibel determination to do it. So essentially the practice at 100' would be they either hear the noise or not. Unless they were going to give the Police the equipment that would be the easiest way to enforce it. They need to go back and come up with a methodology that would satisfy the neighbors so that enforcement could be measured in a fair way at the time it occurs and not have to go through this time after time again to make arrangements.

Mr. Zobrist invited other public comment.

Neil Williamson, with The Free Enterprise Forum, noted on January 11th he spoke to the Commission about this issue and warned them he was going to miss the 18th meeting. He was struck by the rural area's economic sustainability that these wineries do draw on events to make that happen. That being said policing good neighbors is an important thing and being good neighbors in the rural areas is important. They are talking about amplified music and not about anything else such as if there is a refrigerator or anything else running to keep the fruit cold outside. They are talking about amplified music generally at weddings. It seems as though an objective standard is necessary. The amount of revenue that this locality generates from tourism activity and winery weddings is not insufficient. The fact that this locality might have to spend money to invest in decibel meters is something that this County might have to look at. There is an urgency to this. He did not think there is an easy solution. He thought that a objective standard needs to be set and it will be a decibel meter beyond audibility. To that end, he would encourage the Planning Commission to direct staff differently than they have previously and direct them to come forward with an ordinance. Right now, they were talking about a lot of stuff that is in the ether. There are many questions. An ordinance should be brought forward to a public hearing that everyone on all sides of the issue can look at and say that number is too high, too low or whatever. However, it is an objective standard. It can be measured against other localities objective standards and other standards within this locality. He asked the Commission to move forward with an ordinance of some sort immediately.

Mr. Loach asked if he was saying that the technology has to be there to measure it on the part of the winery.

Mr. Williamson replied that he did not think that would be an unreasonable request. However, he would have great difficulty from a fairness standard to rely the public good on the winery's decibel meter. He did not anticipate that it would be inaccurate, but the County should have some responsibility to having such a thing. Any business in business for doing this activity should. He knows of wineries in Albemarle County that have already purchased decibel meters. However, the County should be the final say in that way just like our radar guns are certified. The decibel meters could be certified and there would be no question about it. If there was a discrepancy between the private decibel meter and the County's, then there could be some reconciliation to that.

Jeff Werner, with Piedmont Environmental Council, said there is no organization out there that is going to work harder to protect agricultural activity than the PEC. However, what they are talking about is amplified music at weddings. He wanted to make that distinction. He made the following comments.

- The question is whether there is a simple answer. David King already shows a simple answer and that is to build an indoor facility. That is why so many people are pleased with what he has done. To respond to what Mr. Page is saying, the current regulations says if he can hear it, then it exceeds that level. So essentially whatever that ambient noise level is if that is exceeded, then it is audible. He was concerned with hearing the arbitrary amounts of 60, 65, and 55 decibels. If the ambient sound of Mr. Page's property were 5 for whatever reason, then 6, 7, 8, 9, and 10 he would hear. They have to be very careful about establishing thresholds and base it on what is that ambient sound. That certainly can be determined.
- Because he was the one who commented on how expensive it could be to get the equipment, he wanted to respond to Mr. Schomberg's comment. His comment was based on talking with other individuals in other counties in Virginia who have dealt with this and who suggested they were talking about several thousand of dollars. He did not make it up and had no reason to doubt what they are saying. The reason they said that is whether the County spends $50, $5,000 or $50,000 on equipment what they are going to need is equipment that is defensible in court. Presumably, that is where this will end concerning disputes between decibel meters. The County needs to invest a little time in what will that take. Fauquier County has studied this. He suggested staff give them a call to get their findings. Mr. Williamson is right that it needs to be something people can rely on, but they still need machinery that is reliable. He worries about the acoustical shadows. Noise does funny things in rural areas when it has mountains to bounce off. The Commission needs to do something, but needs to do a little more homework on what it would cost to do what he heard most people say they want done.

Mr. Loach asked what he was hearing that the rural residents feel should be the level of noise they should have to undertake to support farm wineries.

Mr. Werner replied that one thing he heard was the good neighbor since for the most part people know if something happens, they can call their neighbor. They write regulations not because everyone follows the rules, but for those who don't follow rules. That is what concerns the people out there. There is a lot of land in the rural areas protected consisting of large parcels where people have moved to that area. Ms. Spacek was very eloquent in talking about why she moved to that part of the County. The concern of these folks is that wineries are going to go out next to their properties they have invested in to have loud amplified music two or three nights every weekend. They don't want to be jerks to their neighbors, but they are not sure how to make sure that their neighbors are respectful of what they are hoping to get out of the rural area. That is what he is hearing.

Mr. Loach asked if it was his feeling that this is a different entity than the noises that are created and allowed under the right to farm act.

Mr. Werner replied absolutely. If someone were to call and say the guy next door has his tractor running at 5:00 a.m. he would say that is the sound of the rural area. However, this is amplified music at weddings. There may be a difference of opinion about what the General Assembly did and why they did it particularly for farm wineries. They did what they did. However, people are unhappy with that. What he generally hears from people is they want to be fair and reasonable, but when it is night time, they don't want to be listening to a concert essentially next door. He thought that was reasonable. That is where he goes back to starting with the ambient sound as the starting point as a reasonable place to be. He personally felt that the hours of operation should be taken into consideration, such as going to 1:00 a.m.

Mr. Zobrist asked if there was anyone else present to speak.

Ms. Schomberg pointed out from the discussions she thought the Commission could see why there needs to be some measurable level of sound. She made the following comments.

- At their place at the third wedding, they could not hear from a high point of their land, which they felt was level with their neighbors. However, they are hearing their neighbors did and perhaps some other neighbors. It is hard for them to believe that because they couldn't hear the music on their own property right next to it. They had two Board of Supervisors there who witnessed it also. So they thought that they were in compliance and not audible. Next thing they know there is a call complaining. They are trying to record decibel readings so they can prove their innocence. She thought it was just a hear say that a neighbor heard the noise. It could be personal, they don't like wineries, or they don't like commercializing the property. To survive in the economy the farm winery weddings and events are necessary for their survival.
- She felt when the farm winery ordinance was changed that the County was behind them to do that. She thought they might have overlooked what was coming down the road in regards to the sound. It was mentioned about a neighbor's radio. That happened years ago. There is plenty of legal documents regarding that. Zoning was called in because it was a continuous nuisance sound that he was playing all throughout the night every day. She would not get into that because it was separate.
- The third wedding John Jones went to their neighbor's house. This is the first she has heard that they were in violation. That has never been told to them. They were told instead that John Jones heard it, saw the improvement and said to their neighbor he could live with this. There is a conflict as to what was really said that night. She knows they are focused on weddings at night, but there are also events during the day. To be competitive with other counties for survival they need these events. Other counties do arts on Sunday, jazz festivals, or something to get customers to come in to get sales with the tax dollars going to the community. They are focused at night, but this also affects day time activities that they need for survival. She hoped that it would not be focused on one area. She thought just a measurable level is needed so they can self regulate themselves just like they do with other aspects of their business.

Mr. Zobrist noted that the Planning Commission would take a five minute break and decide if there was anything they want to do.

The Planning Commission took a five minute break at 6:53 p.m. and the meeting reconvened at 6:56 p.m.

Mr. Zobrist asked for a proposal.

Motion: Mr. Smith made a motion to support using the audible standard and making it a criminal offense.

Mr. Zobrist noted the Commission was giving direction to staff.

Mr. Cilimberg asked to clarify if in that being the direction if that is something the Commission would want staff to codify and bring to them in public hearing. He asked if that is part of what is being recommended. That is the quickest route to make sure they are addressing it, and then they send it on to the Board. If that is the direction given, then that is pretty straight forward and staff can get it scheduled for a public hearing.

Mr. Loach asked if they have to go back and work with the Police Department in how they are going to do this. He understands what Mr. Smith is saying, and agrees to some degree. He thought that technology is available today to help mitigate this. They have already seen this to the point where two Supervisors did not hear the noise. If they were going to go to a strict decibel level, first they have to determine what that decibel level is above ambient. Frankly, he could not have lived with the 60 decibels they heard in the room. However, there might have been other mitigating factors in the room that made the noise louder. Secondly, they have to come up with a methodology for enforcement. As Mr. Williamson said, it could be by the Police using decibel levels. He agreed with Mr. Smith that barring a fair methodology of enforcing this at all hours and weekends, they drop down to the standard they are using now where the Police says they either hear it or don't hear it.

Ms. Porterfield seconded the motion based on that.

Mr. Morris agreed.

Mr. Lafferty said that it has to be measureable. He thought that 60 to 70 decibels is normal conversation at 3 to 5 feet. He was not present at the meeting on the 18th. If they are going to make some kind of ruling, they have to be able to quantify it. The decibel level is a measure of sound.

Mr. Zobrist noted that there was a motion on the table with a second. He asked if there was any further discussion.

Mr. Franco asked that the motion be repeated.

Mr. Zobrist reiterated that it had been moved that the audible standard be retained and the offence be made criminal.

Mr. Cilimberg added that would be put in the form of an ordinance amendment to be brought to the Planning Commission for public hearing.

Mr. Zobrist agreed that it would be an ordinance amendment and brought back to the Planning Commission for public hearing.

Mr. Franco agreed that a standard is needed. He has a problem with audibility. Even the speakers talked about how the sound fluctuated and it was hard sometimes to measure it. He knows if they are dealing with ambient noise that there are going to be things they can pick out within the ambient noise. The music could still be just as loud or at the same level as the ambient noise and still be heard. It does not have to be above ambient. He had a problem with it being at the same level as ambient yet being regulated. He would prefer to see a standard that is closer to ambient than the 65 decibels to recognize the neighbors, but have a standard out there closer to 45 decibels or something like that.

Mr. Zobrist asked if he could support an amendment to the motion that states ambient sound is 45 to 60 decibels and under the ordinance the night time level to be 50 decibels. He asked if he would support a motion to change the audibility to 50 decibels and Police enforcement.

Mr. Franco replied yes.

Mr. Cilimberg pointed out that the level at night was 55 decibels.

Mr. Franco said he was comfortable being at or below the other noise levels for land uses within the rural area. If that is 55 decibels, he was happy to be at 50 or 55 decibels. There should be a decibel standard.

Mr. Loach noted that it has to be enforceable. If they say they are going to measure something at 55 decibels, then there has to be a way to measure it.

Mr. Franco pointed out the question he has is what do they mean by enforceable. It is enforceable now, but it is just not happening at the pace that the neighbors are satisfied with. It is being enforced by the Zoning department, but being a civil matter it takes time to go through the civil process. A lot of that time is spent trying to improve the situation to prevent it from occurring. He thought that the winery has done some of that. Part of the problem is the concept of being a good neighbor in the rural area. There were problems at the first couple of weddings and the noise levels were well above what it should have been. He thought they were working to improve the situation. However, right now there is just no general work amongst the neighbors to solve this problem. He would rather see them work it out.

Mr. Loach said what he means by enforceable is that at the time of the occurrence the neighbors can get some relief if in fact the decibel level is above that being measured.

Mr. Franco said he thought that was what they were talking about with making it criminal. It is being able to walk out there, measure 65, 50, or 55 decibels, and say okay it is in violation and then they can go shut this down. If it becomes criminal, they can't.

Mr. Kamptner said if it remains a zoning regulation there are still the protections that are put in. For a first violation the notice of violation is issued, there is the time to appeal it, and if it is appealed, it is put in place.

Mr. Franco said what he hears from the rest of the Commission is to move it outside of the Zoning Ordinance.

Mr. Zobrist agreed they did not want it in the Zoning Ordinance. That was what he was hearing.

Mr. Franco agreed.

Mr. Lafferty said having it a civil offense is saying let's do it good neighborly.

Mr. Zobrist disagreed.

Mr. Lafferty said if they have the accelerated penalties, then at some point as a business they can't justify continuing to irritate their neighbors.

Mr. Zobrist said if it was a criminal offense, they could be fined. With criminal offenses, it moves faster. As long as it stays in the Zoning Ordinance, it becomes a civil offense and it takes civil enforcement that does not take the priority in the courts. Criminal enforcement takes priority. In the courts, the criminal cases are heard before the civil cases. What he was hearing from everyone is they want a methodology of enforcement that has teeth in it. Nobody wants to have misdemeanors. The criminal offense has more teeth in it. Secondly, he personally thinks they need an objective standard for this if they are going to do it. He is convinced in talking with staff that they can measure it. Staff has noise meters and a way to do it. They are going to have battles whether they go to court or not, which is the way the system works. He suggested they need a lower standard. He lived in a development area and he did not have that kind of noise in his area. He lived in a nice quiet place.

Mr. Loach said if they bring it back as enforcement with the Police, they also have the ability to go to the neighbor and enforce the good neighbor policy first and say turn the noise down or else. Usually that is going to resolve the situation. They need that ability to be able to do it rather than in the current situation where they are telling them not to do anything.

Mr. Morris agreed, but that they also have the audibility standard and not the decibel standard.

Mr. Loach agreed with Mr. Franco that he could live with the 50 decibels being measurable. They were going to have to do something to let them measure the 50 decibels and then make their decision. He trusts the Police enough to do that.

Ms. Porterfield noted that it became very clear when they had the work session that they had one situation in this County. She did not think that is enough to throw everything out. The motion simply says they stay with the audibility standard, which is what the Porterfields would be judged on if they had a big party. The motion would also make it a criminal enforcement instead of civil enforcement. Then they will see how it runs. At this point, they only have one winery with a problem. Therefore, the other wineries have figured it out.

Mr. Loach noted the motion was to maintain the status quo, but to change the enforcement.

Mr. Zobrist said the motion was to move the enforcement from the Zoning Ordinance to the general noise ordinance where it can be criminally enforced.

Mr. Lafferty said it was an audible standard with a criminal offence.

Mr. Franco asked for a recap of the Board meeting. He asked if the Board sent it back to the Commission.

Mr. Cilimberg replied that the Board did not send it back. There was a sense of urgency because of the coming season. The Board believed that a decibel measure was appropriate or several members stated that, which was where they were. He told the Board where it stood with the Planning Commission and that he would convey what they said to the Commission. In addition, they should talk to the Commissioners of those Board members.

Mr. Franco asked since that is the direction the Board is leaning towards is there a way to create a motion that has a decibel standard in it that would make the Commission comfortable.

Mr. Morris noted that there was a motion on the table.

Mr. Zobrist noted he could make a motion to amend the motion to add 50 decibels.

Mr. Loach noted the other option would be to ask for a joint work session with the Board.

Mr. Franco said he did not think the urgency was going to be there. He thought that it is still back to why are they doing something that they know is going to fail. He would rather find a way to create direction for staff and create an ordinance that is supportable at the Board level. If a decibel standard was what they need, that is what he would rather promote.

Ms. Porterfield asked how do they know it will fail since they only have one situation. She would say what they have currently is working. It is just that when they do have a situation, there is no way to get enforcement on it at that time because the Zoning Department does not work on Friday nights, Saturdays, or Sundays. All they are suggesting is that they keep what they have, which seems to be working for 90 percent. It is working. The audibility standard is easily heard and it is the same standard that would apply to an individual resident who is going to have the same kind of party. Therefore, they are looking at parties. All they are trying to do is make it reasonable; and if the enforcement comes out and they look at it, they can make the determination whether it meets the standard or not and issue a citation if necessary.

Mr. Zobrist said they in effect removed the double standard by taking the standard away that is more lax. He noted that the question has been called.

Mr. Kamptner asked to make a couple points. First, their direction takes this whole issue away from the Planning Commission. The Planning Commission does not regulate non-zoning matters. Therefore, the Planning Commission would not be making a recommendation on the ordinance that they are recommending the County pursue. However, a resolution of intent was adopted which directed the Planning Commission to hold a public hearing and make a recommendation on the zoning regulation. So staff has to come forward with some kind of zoning regulation for the Commission to act on and make a recommendation that will ultimately go to the Board of Supervisors. Regardless of the Commission's action there will be a zoning text amendment coming before them. The Commission can make a recommendation as they choose. That is the direction of the resolution of intent.

Mr. Morris asked if staff would set a work session or just go directly to a public hearing.

Mr. Kamptner replied no, it could be set for public hearing.

Mr. Cilimberg noted based on the motion on the floor the amendments being looked for would occur in the general Code of the County. He believed there would be one zoning text amendment, which would be to drop the audibility out of the Zoning Ordinance. That is basically the noise reference now in the Zoning Ordinance that would have to be removed or some way refer to the general ordinance. That would be the amendment.

Mr. Zobrist agreed that would work.

Mr. Kamptner said they created the dilemma though because the Chapter 7 noise standards have to be amended, which would be initiated by the Board of Supervisors in deciding to set an amendment for public hearing.

Mr. Cilimberg said what he was saying was the Planning Commission's public hearing would be centered around whatever is done to the Zoning Ordinance. Then they would make a recommendation regarding the general ordinance. That is all in the Board's hands at that time.

Mr. Zobrist noted if they drop regulation of farm wineries from the Zoning Ordinance, then the general ordinance applies. Right now, they are under special exemption.

Mr. Kamptner said right now agricultural activities under Chapter 7, the general noise regulations, that agricultural activities are exempt from any noise standards. Therefore, that section without the farm winery regulation would apply. Farm wineries could generate as much noise through outdoor amplified music as they chose.

Mr. Zobrist noted that the State Legislature has redefined a farm winery wedding to be an agricultural activity.

Mr. Kamptner replied that would be the activities at farm wineries that are accessory, customary, and subordinate. Basically, if it is an accessory activity it is deemed to be an agricultural use under the State statute. The County's regulations follow that direction.

Mr. Zobrist noted what they were talking about adding to the regulations is that farm winery noise regulations will be governed by the general noise ordinance of the County.

Mr. Kamptner said that could be what the zoning text amendment looks like.

Mr. Zobrist asked if everyone was okay with the motion. Basically, the zoning text amendment being proposed if they adopt this motion is that they would add language that would say amplified sound would come under the general noise ordinance. He asked what was the section.

Mr. Kamptner replied it would be Chapter 7, Noise Ordinance.

Mr. Cilimberg pointed out the Commission does not have to direct staff into the specific language just as long as staff understands the general direction.

Mr. Zobrist reiterated the motion that it had been moved and seconded to request the Zoning Ordinance be changed to make farm winery amplified music activities subject to the general noise ordinance of the County.

Mr. Smith asked Mr. Kamptner if they were talking about same thing as being audible.

Mr. Kamptner replied yes, the zoning text amendment would merely cross reference the applicable Chapter 7 section.

Ms. Porterfield noted the Commission was talking about audibility and criminal enforcement.

The motion was approved by a vote of 4:3. (Franco, Loach and Lafferty voted nay.) to request the Zoning Ordinance be changed to make farm winery amplified music activities subject to the general Noise Ordinance of the County to support using the audible standard and making it a criminal offense.

Mr. Lafferty voted nay because it was unfair to the wineries. To make it a criminal offense and not make it measurable is not very good.

Ms. McCulley noted the Commission was telling staff that this item would proceed directly to public hearing with no work session. Staff will inform everybody on the mailing list who was informed about the last meeting so they will be brought up to speed once they have a date set.

Mr. Morris asked that this be moved along as quickly as possible.

Mr. Loach noted because of the scope of this and the fact that Mr. Page said the word really did not get out that he would have preferred holding a joint work session with the Board of Supervisors. However, the Commission has moved past that.

Mr. Zobrist thanked everyone for their comments. The matter will be back before the Planning Commission for a public hearing with a proposed zoning text amendment.

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.

Consent Agenda:

ZTA-2009-00016 Monticello – Resolution of Intent (Joan McDowell)

Personal Wireless Service Facilities – Resolution of Intent (Bill Fritz)

Mr. Zobrist asked if any Commissioner would like to pull an item from the consent agenda for further review.

Ms. Porterfield questioned what an unlicensed provider meant on the second item. Under the current ordinance "unlicensed providers must submit a special use permit for every site . . .."

Mr. Fritz replied the FCC has a category of use as "unlicensed providers." If they want to provide wireless broadband internet service they can do it as an unlicensed provider and not have to go get a FCC license. It is just a different category and treated differently. It is staff's opinion that they ought to be treated the same with similar technology. That was the basis for the change.

Motion: Mr. Franco moved and Mr. Lafferty seconded for approval of the consent agenda.

The motion carried by a vote of (7:0).

Mr. Zobrist noted the consent agenda was approved to adopt the following two resolutions.

ZTA-2009-000016 Monticello Historic District

RESOLUTION OF INTENT

WHEREAS, Monticello is one of the preeminent historic sites in the world, as evidenced by its listings as a National Historic Landmark by the National Park Service's National Historic Landmarks Survey and as a World Heritage Site by the World Heritage Committee of the United Nations Educational, Scientific and Cultural Organization; and

WHEREAS, the Thomas Jefferson Memorial Foundation (the "Foundation") is engaged in uses and activities within the Monticello Historic District under County Code § 18-11 that are related to research, preservation, restoration, public education and the interpretation of Monticello; and

WHEREAS, it is desired to expand the uses and activities within the Monticello Historic District to allow certain types of festivals and events, either by right or by special use permit.

NOW, THEREFORE, BE IT RESOLVED THAT for purposes of public necessity, convenience, general welfare and good zoning practices, the Albemarle County Planning Commission hereby adopts a resolution of intent to amend County Code § 18-11 and any other regulations of Chapter 18, Zoning, of the County Code deemed appropriate to achieve the purposes described herein; and

BE IT FURTHER RESOLVED THAT the Planning Commission shall hold a public hearing on this resolution of intent, and make its recommendations to the Board of Supervisors, at the earliest possible date.

* * * * *

Personal Wireless Service Facilities

RESOLUTION OF INTENT

WHEREAS, County Code § 18-3.1 defines "personal wireless service facilities" and the definition does not include facilities that provide wireless internet broadband access; and

WHEREAS, by declaratory ruling of the Federal Communications Commission, wireless broadband internet access facilities that are commingled with a provider's personal wireless service facilities would be "personal wireless service facilities" under relevant provisions of federal law and County Code § 18-3.1; and

WHEREAS, under current zoning regulations, facilities that provide wireless internet broadband access that are not commingled with a provider's personal wireless service facilities require a special use permit as "radio-wave transmission towers"; and

WHEREAS, County Code § 18-5.1.40 establishes the regulations for reviewing applications for personal wireless facilities, and these regulations impose standards designed to protect the public health, safety and general welfare but also provide for an efficient and economical review of such applications; and

WHEREAS, the regulations and standards in County Code § 18-5.1.40 were developed from research and practical experience, and it would be reasonable for those regulations and standards to be applied to all facilities that provide wireless internet broadband access; and

WHEREAS, it is desired to amend the definition of "personal wireless service facilities" to include facilities that provide wireless internet broadband access in order to allow applications for those facilities to be reviewed and acted upon under County Code § 18-5.1.40.

NOW, THEREFORE, BE IT RESOLVED THAT for purposes of public necessity, convenience, general welfare and good zoning practices, the Albemarle County Planning Commission hereby adopts a resolution of intent to amend County Code § 18-3.1 and any other regulations of Chapter 18, Zoning, of the County Code deemed appropriate to achieve the purposes described herein; and

BE IT FURTHER RESOLVED THAT the Planning Commission shall hold a public hearing on the zoning text amendment proposed by this resolution of intent, and make its recommendation to the Board of Supervisors, at the earliest possible date.

* * * * *

Deferred Items:

SP-2010-00033 Four Seasons Learning Center
PROPOSED: PROPOSED: Amend special use permit to increase maximum number of children in daycare from 40 to 64. No residential units proposed.
ZONING CATEGORY/GENERAL USAGE: PUD Planned Unit Development which allows residential (3 - 34 units per acre), mixed with commercial and industrial uses
SECTION: 20.3.2.1, which allows for child care facilities

COMPREHENSIVE PLAN LAND USE/DENSITY: Urban Density Residential (6-34 units/acre) in Neighborhood 1.
ENTRANCE CORRIDOR: No
LOCATION: 254 Lakeview Drive, at the corner of Four Seasons Dr. and Lakeview Dr.
TAX MAP/PARCEL: 061X1-00-00-00500
MAGISTERIAL DISTRICT: Rio
(Elaine Echols)
DEFERRED FROM THE JANUARY 25, 2011 PLANNING COMMISSION MEETING

Ms. Echols presented a PowerPoint presentation and summarized the request.

This is a request to increase the number of children at the Four Seasons Learning Center located at Lakeview Drive and Four Seasons Drive. The increase would be from 40 students to 64 students.

Background
There has been a use in operation at this location since 1974 although the building was constructed in the late 1960's. There have been several special use permits and changes in activities that have taken place since 1974. There was a special use permit request in 2002 to increase from 32 to 40 children. Then there were some site plan issues that was successfully dealt with. The request to increase to 64 children was denied by the Board of Supervisors. Two years have come and gone, which is the time period to wait before being able to present the same request. Before the applicant submitted a request they asked for a Neighborhood meeting. Staff held a Neighborhood meeting with mostly the adjacent and nearby neighbors at the County Office Building in October. Right after that the applicant made their request.

- 1969 – Four Seasons Development Approved; building approved for office use
- 1974 SP 412 Day Care approved for 32 children
- SP- 89-023 Amendment to reduce sign setback
- SP-02-06 Amendment to allow for 40 children
- SDP-00-72 -- Changes to circulation approved
- SP-07- 01 – Request for increase to 64 children
- Dec. 2007 – Violations abated and conformity achieved
- Oct. 2008 – BOS denied request
- October 2010 – Neighborhood meeting at COB

Changes since 2008
There have not been a lot of changes taken place since 2008. There appears to be less conflict between the staff parking on the street and the neighbors. However, the Commission may hear differently from the neighbors. There were many concerns back in 2008. There seems to be additional on-street parking by the residents just because of the nature of the activities on the street. However, the applicant has tried to deal with some of the on-street parking issues that were occurring back in 2008 by securing three (3) additional parking spaces at the apartments across the street for staff to use.

Issues that Have Not Changed
It is basically the same request and the following issues have not changed since 2008:

- Increase in students will mean an increase in traffic;
- Turns at intersection can be tricky; and
- Driveway into day care center is very close to intersection

Staff has talked to VDOT about whether the stop bar is in the right location. VDOT has gone out, checked, and said this is the best location. It does meet all of VDOT's requirements. Everything is in conformity with what VDOT requires.

Factors Favorable

- There is a need for child care facilities in Albemarle County.
- The addition of 24 students and associated parking requirements can be accommodated on-site, on-street adjacent to the site, or across Four Seasons Drive. There are no outstanding site plan issues that need to be resolved.

Factors Unfavorable

- Additional traffic from the 24 students will have a negative impact on the neighborhood due to the increase in vehicles and opportunities for traffic conflict at intersections.
- The enlarged day car enrollment will create a use that is out of scale with this part of the Four Seasons development.

The conclusion the Board came to last time and staff also agreed with is that the enlarged daycare enrollment just creates a scale that is out of proportion with the rest of the neighborhood and where it is not is the appropriate scale.

Recommendation
Staff recommends denial of the request for the factors unfavorable.

If the Planning Commission wishes to recommend approval, staff recommends the conditions in the staff report.

Mr. Zobrist invited questions for staff.

Mr. Smith asked what criteria was used to establish the number that was appropriate.

Ms. Echols replied that the number the daycare started with was 32 students, which was the request in 1974. When it was increased by 8 students up to 40 staff looked at what the site could contain and at the level of traffic that would generate at the time. This is a subjective activity and not something staff can say at this number something changes. Last time the Planning Commission thought staff recommended incorrectly. In the Commission's opinion there was a threshold that was higher than 40 students that was appropriate. Staff's threshold was based on what they saw now and if it appeared to be able to accommodate it without adding any additional traffic. However, adding more traffic was going to be a problem.

Mr. Lafferty asked if that is what staff means by scale.

Ms. Echols replied yes, that when they start adding more students and more activity at the site that the level of activity increases and the scale of that activity the way it is now.

Mr. Lafferty asked if it was like when ACAC took over the swimming pool they had more people coming.

Ms. Echols replied yes.

Mr. Loach said the parking problem they had last time has actually been somewhat improved by additional parking spaces across the street.

Ms. Echols replied that she did not know if they were using those additional parking spaces yet. However, her impression is that the issues related to parking in front of the mailboxes has been resolved. There is still on-street parking by employees, but it is not as much of a problem as it was before.

Mr. Loach asked if 40 children was the number staff is comfortable with or is there some threshold above that below the 24 that is appropriate.

Ms. Echols replied yes.

Mr. Morris asked what is staff's opinion of the property itself, excluding the traffic, but including the building to handle the additional children.

Ms. Echols replied that Social Services evaluated the property and said the physical property or building can accommodate more children than are there now and the daycare can license up to the 64 children. There may even be a higher number that they can license to.

Mr. Morris said he was hearing staff saying the daycare facility itself is fully able to handle the additional children. Therefore, they are only talking about traffic.

Ms. Echols replied yes, that is what staff was told by Social Services.

Ms. Porterfield said if the Commission recommends this request, staff did not include a condition asking the applicant to maintain the three additional parking spaces across the way.

Ms. Echols replied no, because the applicant can meet the requirements right now and having the other parking spaces across the street just helps.

Mr. Porterfield suggested that a condition be added because the three additional spaces across the street would free up three spaces for people who are picking up and dropping off children, which would keep them from parking on the streets. She asked if that was doable.

Ms. Echols replied that she would ask Ron Higgins of Zoning to come and speak to that since Zoning would be enforcing the parking.

Ron Higgins, Chief of Zoning, confirmed that the parking requirement based on the ordinance is 13 with 7 staff and less than 65 children. The parking across the street would be enforced by marking the spaces, but it would be a very difficult thing to enforce on a daily basis. They would be requiring staff to park in three spaces every day across Four Seasons Drive. Therefore, he did not know exactly how it would be enforced.

Ms. Porterfield noted it would be more of an enforcement issue on their end rather than if they can maintain them. The applicant can self enforce to just free up some spaces.

Mr. Higgins agreed that would help the applicant to maintain the parking spaces, which would make it easier. He did not know if staff would be going out there every day and checking license plates.

Ms. Porterfield pointed out she was not expecting staff to do that. She was just trying to see if that could be a condition of approval because that was not offered the last time, but was an additional good point.

Mr. Lafferty asked what was the general reaction when they had the meeting at the County Office Building.

Ms. Echols replied that the general reaction was that the residents who were here believed that 40 students was enough. Some people thought 40 students was over the limit of what was acceptable in the neighborhood. There were no residents present who could support any additional children at the center.

Ms. Porterfield asked on what did they base the 40 students? She asked if it was on the operation of the daycare or the traffic.

Ms. Echols replied she believed it was on the traffic, but they are in the audience and they will be glad to provide that information.

Ms. Porterfield asked if staff felt it was the traffic and not that the daycare was operating with too many children.

Ms. Echols replied that was correct.

Mr. Franco noted in the staff report it talks about 120 additional trips are expected from the 24 students. He asked where the 120 comes from since it seems like a lot of traffic generation. On page 4 of the staff report, it says staff expects another 120 vehicle trips per day.

Ms. Echols replied that there are 24 trips if they had 24 students and each had a parent, which would be 48 trips each direction. They would come and go in the morning, which are 2 trips, and come and go in the evening, which are 2 trips. That gets them close to 100 trips. Then there are the employees who come and go. She questioned if something was missed.

Mr. Franco said it sounds like many trips being generated.

Ms. Porterfield noted it says another 120, which would be in addition to what is already there.

Mr. Franco noted that would put another 22 trips for staff during the day.

Ms. Echols agreed that 32 trips was probably more than should have been attributed to staff. Therefore, it would be less than 120 trips.

Mr. Franco asked if ITE has a code for this.

Ms. Echols replied that staff went through all of that last time. The applicant also presented a traffic study, but she did not have that information in front of her. The applicant hired someone to do the traffic study to ascertain whether any road improvements might be necessary. Mr. Brooks, County Engineer, is present and can answer other traffic questions.

Mr. Brooks noted that he did not remember the traffic study results.

Mr. Zobrist opened the public hearing and invited the applicant to address the Commission.

Barbara Kalemba-Sliwinski, Director of Four Seasons Learning Center and joint owner with her husband Krzysztof Sliwinski for the last 12 years of the 36 total years of business, made a presentation as noted in **Attachment A.** She noted that no new items would be presented since she only wanted to correct a few items that have been said incorrectly. She requested the Commission approve the request to increase the maximum number of children in daycare from 40 to 64 because of the reasons stated in Attachment A.

- SP-2002-006 is not valid. She referred to Attachment A pages 1, 2, and 3. Four Seasons has SP-412 from 1974 Zoning PUD R-6 with 8 conditions. One of the 8 conditions give Four Season Learning Center the right to 64 children. In addition, she referred to Attachment B pages 1, 2, 3, 4, 5, 6, 7, and 8, On top of this, the Department of Social Services has approved 79 children to attend FSLC. She explained the parking study and traffic situation. Their parking study by Hurt and Proffit shows no problems with the amount of spaces on Lakeview Drive and there still are many extra spaces to share.
- She presented the site plan of the property and explained the parking situation. She pointed out the parking location for employees and parents parking for student pickup and drop off. Just for reference the total number of available parking spaces is 13, six (6) for parents one for every 10 children and 7 for employees. The site plan was received on August, 2008. They also have an agreement with Northwood Apartments for the use of extra parking spaces in case they need even more. This agreement was given to staff on October 9, 2010. (Attachment G)
- In closing, she asked to make one final statement as noted in Attachment A.
  "I am a first generation American citizen born in Poland. I have been lucky enough to find individuals who want to share my passion for the education of children, with the support from our neighbors and parents. Please see copies of notes from neighbors and parents that could not be present at the Planning Commission Public Hearing. Today I ask you to please grant me the ability to pursue my passion with the children. I believe in local businesses and that creating new jobs it's critical for us in our county and city. I have spent my full American citizenship in Albemarle County for the last 21 years. I truly hope that your parents and grandparents who started their lives in this country at one point in time did not have to endure the things we have had to for the durance of these proceedings for the last 5 years. I would like you to know that based on the way we have been treated and today's staff report, I feel discriminated against."
  (See Attachment A for full presentation and letters of support from parents.)

Mr. Zobrist invited questions for the applicant.

Ms. Porterfield asked of the 40 children currently enrolled, how many have siblings attending the daycare.

Ms. Sliwinski replied that they have a lot of children and most of the time a family has two children and sometimes even three. Probably around 15 percent have siblings and some have three children. It is a lot right now and maybe about one-half of the enrollment have two children and a couple have three children.

Mr. Zobrist invited public comment. He passed around a list of multiple signatures of parents of students and neighbors that said they love the school and support the request.

Martha Wood, of 264 Lake View Drive, noted her home is three house lots from Four Seasons Learning Center a business located at the corner of Lake View Drive and Four Seasons Drive. She asked the

Commission to deny the request now before them for consideration. This is not the first special use permit request for this business and it sets a poor precedent of granting variances for the zoning plan in large residential area. The issue is not how good the business is, how great the need since the business exists, or how much the client values the service delivered. The issue is granting another deviation from zoning and the impact on the residential neighborhood immediately adjoining. Site lines for exiting Lake View Drive are short in both directions. Four Seasons Drive is used heavily in the morning and evening. There are several large townhouse and apartment developments in the area. Others using Four Seasons Drive as a cut through from Route 29 along with the daycare traffic creates a safety problem for the residents. Granting additional capacity to this business would add to an already difficult situation. The exit and entrance to this business are very close to that busy intersection. The narrow street with on street parking along with the increased number of children would create a safety problem for the residents. She urged the Commission to follow staff's recommendation to deny the special use permit request.

Courtney Watson, parent of three siblings at the Center, said she had never had a problem with parking at the center and supported the request.

Mr. Sasha Ismailov said he lived across from Four Seasons Learning Center. In the past three years he has never had a problem with the traffic. He has not seen any accidents at the intersection. He had a child and would need daycare in the future. He fully supports the request for 65 children at the Center.

Cindy McCormick, President of the Four Seasons Homeowner's Association, said this issue impacts not only the residents along Four Seasons Drive but the entire community. When the last increase was approved for an additional eight students, the impact on their community was substantial. She could not imagine what 24 additional students would do to the traffic and safety of the neighborhood. She appreciated the Commission's consideration of that when they take this under advisement.

Ms. Porterfield asked what specifically she meant by substantial impact.

Ms. McCormick replied that the traffic increase was substantial. She will allow that having the parking off site has been helpful. The folks are probably on their best behavior so this matter can be approved for them. It has been helpful and they appreciate them being good neighbors and appreciate the service provided. However, it is a narrow street and it is difficult to go up and down Forest Lakes Drive now without seeing the increased traffic. Folks are coming in quickly and dropping off children. The neighborhood was not built to handle this amount of traffic and the comings and goings she could not imagine an increase of this magnitude.

Ms. Porterfield asked if the traffic specifically for this applicant has been helped somewhat by having the additional parking spaces.

Ms. McCormick replied that the parking on the street has improved somewhat. However, it has not had an impact on the traffic. Additional parking spaces do not improve the traffic situation.

Ms. Porterfield said the fact the parents can actually find a place to get in and stop and drop off children is helpful.

Mr. Lafferty asked if they took a vote or poll of the homeowners.

Ms. McCormick replied that they put information about this in their newsletter. Their community is aware of it. They have requested comments and input. The people they hear primarily from are residents of Lake View Drive, which was about eight households. They have 164 residents in Four Seasons.

Mr. Lafferty asked if she received any positive comments from neighbors.

Ms. McCormick replied she had not heard any positive comments from any of their residents.

Mr. Zobrist invited other public comment.

Mr. Sliwinski, owner of Four Seasons Learning Center, noted his wife and he have decided to change their request or application from 64 to 54 children in consideration of the neighbors and the traffic.

Lauren Root supported the Four Seasons Learning Center.

There being no further public comment, Mr. Zobrist closed the public hearing to bring the matter before the Commission.

Ms. Porterfield supported expansion of the Learning Center and felt it was good the applicant indicated they would like to drop the number being requested. Most people who use daycare have more than one child. Therefore, there was probably less traffic now than when the 40 children were approved. She suggested that the daycare be allowed to be expanded since there was a great need for childcare and the closer to home the better. She liked the fact the applicant is willing to take the request down to 54 children.

Mr. Morris said he had heard this a couple of times. He had been in favor of it every time. They have to take a look at traffic in the same way they did in approving daycare for the church on Route 250 just beyond 64. At that time, even though he opposed the request, someone stated correctly that if VDOT says that it is not a problem, then the traffic is not a problem as far as VDOT. VDOT provides their expert advice. He appreciated they have reduced the request and was in favor of the request.

Mr. Loach noted in the documentation dated February 7, 2011 regarding traffic that the conclusion was that the 2008 traffic study indicates sight distance is adequate and the addition of 24 students will not substantially impact it. He asked if that was consistent with staff's view.

Ms. Echols replied there is a difference between what a street and neighborhood experiences. The traffic studies were done to determine if there were any traffic improvements needed. There were no traffic improvements that were deemed necessary, and the County Engineer agreed.

Mr. Loach noted the second point is that Ms. Wood talked about changes. However, there is a letter dated 11-4-1974 where the condition was 32 children at any time or 35 feet of floor space. Therefore, would they meet that condition.

Ms. Echols replied that there have been different conditions set since that time and she did not know.

Mr. Zobrist said it was the condition of the original approval.

Mr. Loach supported the request.

Mr. Lafferty asked if bringing it down to 54 would bring it into scale.

Ms. Echols replied staff did not think so, but it was a subjective determination. If the Commission feels 54 children is right, then staff respects that.

Mr. Lafferty supported the request at the reduced level.

Motion: Mr. Morris moved and Ms. Porterfield seconded for approval of SP-2010-00034, Four Seasons Learning Center, with the recommended conditions, as amended, in condition #3 at the reduced level from 64 to 54 children.

Mr. Kamptner noted that would change condition #3.

Ms. Porterfield asked for an amendment to the motion that the applicants will keep and enforce the agreement for the three additional parking spaces at the Northwood Apartments.

Mr. Morris accepted the amendment to the motion.

Ms. Porterfield seconded the motion.

The motion passed by a vote of 7:0.

Mr. Zobrist noted that the request would go to the Board of Supervisors at a date to be determined with a recommendation for approval with the conditions, as amended.

1. This permit is approved for an office OR nursery school and day-care center.

2. The site shall be in general conformity with the Minor Site Plan Amendment dated June 26, 2000 prepared by Aubrey Huffman, approved July 18, 2000 by the Department of Planning and Community Development and later approved by Letter of Revision dated December 5, 2000 with the exception that 13 parking spaces are required and are provided on-site and on the allowable street frontage of the site.

Conditions 3 – 7 below apply to the nursery school and day-care center:

3. The number of children occupying the nursery school and day care center shall not exceed fifty-four (54) or the number approved by the Department of Social Services, whichever is less, at any time.
4. A twenty foot buffer shall be maintained between the property and TMP 61X1-AA-B.
5. The concurrent use of the property for a nursery/day care center and a residential use is prohibited.
6. All employees of the day care center, including owners and directors, shall park on-site or in other off-street spaces approved by the Zoning Administrator.
7. The maximum number of employees, including owners and directors, on-site during hours of operation shall be limited to seven (7).

Conditions #8 - #10 below apply to the use of the facility as offices:

8. The maximum number of employees shall be ten (10).
9. A twenty foot buffer shall be maintained between the property and TMP 61X1-AA-B.
10. The concurrent use of the property for an office and a residential use is prohibited.

Conditions #11 & #12 below apply to any use of the property:

11. The concurrent use of the property for a nursery/day care center and an office use is prohibited.
12. The small evergreen tree on the Four Seasons Drive frontage at the corner of the parking shall be relocated toward the building, as recommended by VDOT, a sufficient distance to prevent future line-of-sight problems.
13. The applicant shall keep and enforce the agreement for the three additional parking spaces at the Northwood Apartments.

The Planning Commission took a five minute break at 8:03 p.m.

The meeting reconvened at 8:09 p.m.

SP-2010-00020 CenturyLink Tower
PROPOSED: Special Use Permit amendment to replace three (3) existing Alltel microwave dishes and six (6) existing Alltel antennas with new antennas and dishes at various heights on an existing 250 foot tower. The applicant is also requesting use of existing mounting brackets to allow the mounting of up to twelve (12) antennas within a sectored array(which requires a waiver/modification of section 5.1.40.C.3)
ZONING CATEGORY/GENERAL USAGE: [CO], Commercial Office-; [EC] Entrance Corridor overlay, [AIA] Airport Impact Area.
SECTION: 23.2.2 (15) Special Use Permit, which allows for Tier III personal wireless facilities in the Commercial Office Zoning District
COMPREHENSIVE PLAN LAND USE/DENSITY: Office Service in Urban Area 2
LOCATION: Tax Map 61, Parcel 129C: south side of Rio Road East [State Route 631], approximately 1/8 mile east of the intersection with Route 29 North, and near Fashion Square Mall.
MAGISTERIAL DISTRICT: Rio
RELATED APPLICATION: SP2008-00012
(Gerald Gatobu)
DEFERRED FROM THE DECEMBER 21, 2010 PLANNING COMMISSION MEETING

Mr. Gatobu presented a PowerPoint presentation and summarized the request.

This is a request for a special use permit for a Tier III tower for an amendment to replace three (3) existing Alltel microwave dishes and six (6) existing Alltel antennas with up to twelve (12) new antennas and three (3) new dishes at various heights on an existing 250 foot tower.

The proposed facility requires approval of a Tier III special use permit amendment. The applicant is replacing three (3) existing Alltel microwave dishes and six (6) existing Alltel antennas with up to twelve (12) new antennas, and three (3) new microwave dishes at various heights on an existing 250 foot tower. The applicant will **replace and increase** the mounting height of the lowest existing microwave dish from a height of 46' to 75' above ground level, **replace and lower** the microwave dish currently mounted at 98' to 96' above ground level, and **replace and increase** the mounting height of the microwave dish currently mounted at 100' above ground level to 101' above ground level. Verizon Wireless will replace six (6) existing Alltel antennas with up to twelve (12) new antennas using existing mounting brackets. The existing mounting brackets will allow the mounting of up to twelve (12) antennas within a sectored array. The new antennas will have a reduced surface area compared to the existing antennas.

The existing 250 foot tower currently has five array antennas, some flush mounted antennas, a lightening rod, a beacon, a mount, and microwave dishes attached to it. **[Attachment A staff report].** The applicant's proposal requires an amendment to the conditions of the previously approved special use permit SP2008-12 **(Attachment E staff report).**

The Board of Supervisors needs to make findings on the appropriateness of the proposed changes to the tower facility. If the Board of Supervisors chooses to approve the changes to the tower facility, it will need to amend SP 2008-12 conditions, and approve the requested ordinance modifications.

RECOMMENDATION: Staff Recommends denial of the proposed co-location and replacement of Microwave Dishes at various heights based on the analysis provided herein.

If the Planning Commission chooses to approve this personal wireless facility, it will need to amend previously approved special use permit conditions. Special use permit conditions to be amended and applicable ordinance modifications are outlined below:

Zoning Ordinance Modifications

1. Subsection 5.1.40(c)(3) Flush mounting requirement
2. Section 5.1.40 (c)(4)- Requirement for a tree conservation plan to be submitted prior to the issuance of a building permit.
3. Section 5.1.40 (c)(5)- The installation, operation, and maintenance of the facility to be conducted in accordance with the tree conservation plan.

Special Use Permit [SP2008-12] Condition Modification

1. Deletion of provision [3] that only flush mounted antennas be permitted [see below].
2. Deletion of part of provision [4(b)] [see below].
3. Deletion of part of provision [4(c)] [see below].
4. Deletion of part of provision [4(d)] [see below].
5. Deletion of part of provision [8] [see below].
6. Deletion of provision [10] [see below].

SUMMARY:
Staff has identified factors, which are favorable and unfavorable to this proposal:

Factors favorable to this request include:

1. The existing monopole currently represents an opportunity site.

Factors unfavorable to this request include:

1. The proposal does not comply with the County's Personal Wireless Service Facilities Policy.
2. Increasing the mounting height of the lowest microwave dish from 46' to 75' above ground level will result in adverse visual impacts.

In order to comply with Section 5.1.40(d) of the Zoning Ordinance, the Board of Supervisors is required to provide the applicant with a statement regarding the basis for denial and all items that will have to be addressed to satisfy each requirement.

Should the Board of Supervisors choose to approve this request, staff recommends the following conditions; these conditions are the same as those approved with SP-2008-12 except as noted.

The applicant is asking for four changes. The question is raised why staff would recommend denial of the four changes requested. It is based on Attachment E of the staff report. There is a special use permit that was approved by the Board in 2008 that talks about if they go to the top level antenna, which are called an array of antennas. Each side is a sector that can have four on each side with a maximum of 12. That is as many antennas they can put on each array. The micro wave dishes are also governed by that special use permit. In #4 there are seven conditions that guide how to take some out or replace. Staff is not in the habit of ignoring conditions. Some conditions are subjective. On the road, most people don't notice the tower. However, people's opinions varies. It is quite clear in the conditions that the antennas are to be flush mounted. Condition 3d indicates in any event for replacement the antennas have to be flush mounted according to condition 3c unless the Board of Supervisors makes a different determination and decides to amend the conditions. Staff will follow their direction. The applicant will state their case.

The most important principle for towers in the County is visibility. This tower is right in the middle of the development area and in the Entrance Corridor, Route 631 and Route 29.. It is more about how the Board of Supervisors feels about visibility and how much they want them to comply with the conditions they set. The micro dish request is to move it up 29 feet, but it will be made smaller from a 8' diameter to 6'. The question is what people will be able to see. It is a question whether it is something that will be visible or if they should stick with the conditions. As technology, changes dishes tend to get smaller. Staff really does not have an objection to moving it a foot or two lower, but feels it is left up to the Board of Supervisors whether they should be allowed to remove those antennas or make them flush mounted.

One question raised by Mr. Loach was when do they have enough in terms of the tower itself because condition six says only six. A structural engineer will get involved to determine if they can put anything else on the tower because if it falls it is a liability. In most cases the structural engineer determines whether they can or can't. Staff asked the Planning Commission to provide a recommendation to the Board.

Mr. Zobrist invited questions.

Mr. Lafferty asked if they flush mounted the antennas if they could get 12 on it or would have to go up or down.

Mr. Gatobu replied he did not know how they could flush mount the antennas. In most cases for Tier III, they have three on the pole itself. It would have to be a series. The only drawback of arrays is the visibility. Flush mounted would be closer to the pole.

Mr. Loach asked if this request would reduce the number of poles needed.

Mr. Gatobu replied yes, that the alternative would be there would have to be other Tier II sites. This is right in the middle of the development area where many people use the service. This tower relays to Carter Mountain and Heard's Mountain.

Mr. Zobrist opened the public hearing and invited the applicant.

Maynard Sipe, attorney with LeClair Ryan representing Verizon Wireless, and Stephen Waller, Consultant to Verizon Wireless, presented a PowerPoint presentation to provide a good background for the requested services. The driving demand for the request is to handle the demand for capacity to handle the large volume of call and other services. He noted the many types of services provided, which has expanded since their original request. The evolution of technology is a factor, which has increased the need for services. The request will allow them to be able to provide these other services and calls faster. To provide these other services separate antennas are needed. The best way is to provide antennas on different arrays for the different services. To minimize the visual impact they have reduced the size of two micro dishes. The older antennas on the array will be reduced by 35 percent as noted on the plan. The array antennas, even though they will be increasing the number of antennas, the surface area of those antennas will be reduced by over a third. They fell this will reduce the visual impact of the tower. The proposal would raise the height to what is recommended to provide reliable uninterrupted service to Heard's Mountain in order accommodate existing buildings and trees. The engineering firm's letter was included in the packet to provide this explanation. He explained the visibility of the existing tower. Staff

noted the need or demand for the request. The proposal is not inconsistent with the Wireless Policy. The request should be evaluated under the special use permit criteria. Some of the detailed conditions imposed previously, particularly for flush mounting, are creating the problem. He noted that the staff report made many positive statements and asked the Planning Commission to consider those and recommend approval. Information from the PowerPoint presentation is as follows.

Verizon Wireless Voice and Data Services

In-Car & In-Building:
- Cell phone
- Texting
- Paging
- Email
- Wireless internet
- Downloading documents, streaming video
- 911 accessibility

- **Cellular telephone service 800 MHz band (formerly Alltel)**
- **Personal Cellular Service (PCS) 1850-1990 MHz**

- **Third Generation (3G) Standard** -- Verizon Wireless uses CDMA (Code Division Multiple Access)/EV-DO (Evolution Data-Optimized) technology -- enables data transfers 5-10x faster than earlier systems. Enables efficient web browsing, streaming video, working remotely, GIS mapping, email/video/picture sharing, downloading large files such as Power Point presentations.
- **Long-Term Evolution (LTE) Service (PCS) 700 MHz**
  Fourth Generation (4G) Standard -- Verizon Wireless uses LTE, which is approximately 10x faster than 3G and enhanced penetration; uses spectrum in the 700 mhz band.
  Antennas propagating Cellular signal must be separated to prevent signal interference.

Staff Report

- Recognizes that tower exists and is not a substantial detriment to adjacent properties (page 3).
- States no increased impact to adjacent properties is expected (page 3).
- Agrees the addition of antennas and replacement of microwave dishes will not impact the character of the zoning district (page 3).
- States the request is consistent with the purpose and intent of the commercial office zoning district (page 3).
- Admits that supposed adverse visual impacts perceived by staff are “debatable” (page 3).
- Acknowledges proposed facilities will provide much needed personal wireless communications services, including E911 call services, to citizens and businesses in the area (pages 3 & 4).

Benefits from Approval of Request

- Increasing demand for cellular phone services will continue to be met.
- New technologies can be fully deployed including 4G high speed data services and broadband services.
- Microwave network will be able to provide consistently reliable connectivity to sites in rural areas into the future.

Mr. Zobrist invited public comment. There being none, the public hearing was closed and the matter before the Commission.

Mr. Franco noted this tower was in his district Rio and he supported the request because it was there and not making the situation worse.

Action on SP-2010-00020:

Motion: Mr. Franco moved and Mr. Morris seconded for approval of SP-2010-00020 CenturyLink Tower with staff’s recommended conditions.

The motion passed by a vote of 7:0.

Action on Waivers (3) Identified on Pages 5 and 6 of Staff Report:

Motion: Mr. Franco moved and Mr. Morris seconded for approval of the modifications for Sections 5.1.40.c.3, 5.1.40.c.4, and 5.1.40.c.5 as recommended in the staff report.

The motion passed by a vote of 7:0.

Mr. Zobrist noted SP-2010-00020 would be forwarded with a recommendation for approval to the Board of Supervisors with conditions, as follows.

Special Use Permit [SP2008-12] Condition Modification

7. Deletion of provision [3] that only flush mounted antennas be permitted [see below].
8. Deletion of part of provision [4(b)] [see below].
9. Deletion of part of provision [4(c)] [see below].
10. Deletion of part of provision [4(d)] [see below].
11. Deletion of part of provision [8] [see below].
12. Deletion of provision [10] [see below].

1. The tower shall not be increased in height;

2. All antennae, dishes and their replacements attached to the tower shall be used for personal wireless service providers;

3. Not more than six (6) satellite or microwave dishes may be attached to the tower at one time, and only as follows.
    a. The existing six (6) foot diameter grid dish that is subject to this request may be replaced by the specified six (6) foot diameter High Performance dish at a height that is not more than 95.5 feet;
    b. Other existing satellite and microwave dishes may be replaced on the tower by the same type of dish, provided that the diameter of the replacement dish does not exceed the diameter of the dish being removed, **and** the color of the replacement dish matches the tower.
    c. Other existing satellite and microwave dishes may be replaced on the tower by a different type of dish if **the mounting height is not more than 1 foot above that of the dish being removed. The lowest microwave dish located at a height of 46 feet above ground level can be replaced and mounted at not more than twenty nine (29) feet above its current location on the tower.** The diameter of the replacement dish does not exceed that of the dish being removed, and the color of the replacement dish matches the tower;
    d. Other existing satellite and microwave dishes may be replaced by a different type of dish if the proposed mounting height of the replacement dish does not satisfy the height requirements of condition 4c with the written approval of the Zoning Administrator. This approval shall only be granted after the submission of a microwave path survey indicating that the proposed replacement dish will be mounted at the lowest possible height that allows the system to function. In such a case, the path survey shall demonstrate the reason(s) why the proposed height is the lowest possible height.
    e. All replacement satellite or microwave dishes shall be mounted as close to the face of the pole as structurally and mechanically possible and, in no case, shall the distance between the back of the dish and the face of the pole be greater than eighteen (18) inches; and
    f. Prior to the issuance of a building permit for replacing a dish, the applicant shall provide engineered drawings demonstrating the dimensions of the existing dish to be removed and its replacement dish, and additional information demonstrating the mounting distance between the pole and the dish to the Department of Building Code and Zoning Services.

4. The current owner and any subsequent owners shall submit a report to the Zoning Administrator once (1) per year, by not later than July 1 of that year. The report shall identify each user of the tower and that each user is a personal wireless communications service provider;

5. The permittee shall comply with Section 5.1.12c of the Zoning Ordinance;

6. The facility shall be disassembled and removed from the site within ninety (90) days of the date its use for personal wireless communications services purposes is discontinued. If the Zoning Administrator determines at any time that surety is required to guarantee that the facility will be removed as required, the permittee shall furnish to the Zoning Administrator a certified check, a bond with surety satisfactory to the County, or a letter of credit satisfactory to the County, in an amount sufficient for, and conditioned upon, the removal of the facility. The type of surety guarantee shall be to the satisfaction of the Zoning Administrator and the County Attorney.

~~7.~~ All work shall be done in general accord with what is described in the applicant's request and site construction plans, entitled **"Collocate Monopole Tower", with an issued elevation view drawing submittal date of 10/15/2010.**

8. The following shall be submitted to the agent after installation of the antenna and microwave dishes is completed and prior to issuance of a certificate of occupancy: (i) certification by a registered surveyor stating the height of the antenna and microwave dishes, measured both in feet above ground level and in elevation above mean sea level, using the benchmarks or reference datum identified.

The Planning Commission approved three (3) modifications from the following sections of the Zoning Ordinance as outlined in the staff report. The modifications do not require Board approval.

Zoning Ordinance Modifications

1. Subsection 5.1.40(c)(3) Flush mounting requirement
2. Section 5.1.40 (c)(4)- Requirement for a tree conservation plan to be submitted prior to the issuance of a building permit.
3. Section 5.1.40 (c)(5)- The installation, operation, and maintenance of the facility to be conducted in accordance with the tree conservation plan.

Ms. Porterfield asked if there is a way when Mr. Gatobu takes this item to the Board that his recommendation does not have to be in the negative since the applicant has worked with the ordinance, the changes in technology and the needs and considering the fact that it is an opportunity site.

Public Hearing Items:

SP-2010-00027 Nichols/Peck Crossing
PROPOSED: Rehab an existing concrete culvert bridge with an engineered bridge that spans the Moormans River.
ZONING: RA Rural Areas-Agricultural, forestal and fishery uses; residential density (0.5 units/acre in development lots).
SECTION:30.5.5.2.d.6.
COMPREHENSIVE PLAN LAND USE/DENSITY: Rural Area in Rural Area 1- preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/density (0.5 units/acre in development lots).
ENTRANCE CORRIDOR: No, [but is in the Scenic Stream Overlay and Flood Hazard Overlay].
LOCATION: 6094 Sugar Hollow Road in Crozet.
TAX MAP/PARCEL: 02500-00-00-01800, 02500-00-00-018A0, and 2500-00-00-018B0.
MAGISTERIAL DISTRICT: Whitehall
(Glenn Brooks)

Mr. Brooks presented a PowerPoint presentation and summarized the request.

This is a proposal to build a private bridge at an existing crossing in Sugar Hollow. He presented photos and explained the proposal. It will be a concrete crossing with a driveway. The culverts currently back up frequently. The applicant's plan proposes a standard bridge typically, what would be seen on a public highway. It will be comparable to what was seen on Rio Road. The bridge will be considerably higher than the previous crossing. It will have a lot less obstructive to the river. The river bed should be restored below it. The changes to the flood plan have been supplied, which is specific to what the ordinance speaks to. This is a complicated spot in the floodplain because the FEMA mapping is not very accurate. The computed darker blue line has topography that is more accurate and their study. He reviewed the information and found the information to be accurate. It shows changes to the flood plan

that are more attributed to the inaccuracy than the bridge itself. The bridge should help the flooding in this area.

Mr. Zobrist opened the public hearing and invited the applicant to address the Commission.

Michael Nichols, owner of property, said they were trying to get rid of something bad that is in the river.

Mr. Loach asked what the rating was.

Mr. Nichols replied that it would be built to military specs so it would take any fire truck, concrete truck, or things like that.

Mr. Zobrist invited public comment. There being none, the public hearing was closed and the matter before the Commission.

Motion: Mr. Loach moved, and Mr. Franco seconded for approval of SP-2010-00027, Nichols-Peck Bridge, with the conditions recommended by staff.

The motion passed by a vote of 6:1. (Lafferty voted nay)

Mr. Zobrist noted that SP-2010-00027, Nichols-Peck would go the Board of Supervisors on a date to be determined with the following conditions.

1. The applicant shall obtain approval from FEMA for changes to the floodplain, and update the FEMA maps.
2. The applicant shall obtain County Engineer approval of plans for the bridges and abutments.
3. The applicant shall obtain Program Authority approval for an erosion and sediment control plan, and obtain a land disturbance permit according to the Water Protection Ordinance requirements, regardless of whether the project exceeds the minimum disturbance limits.
4. The applicant shall obtain all necessary federal and state agency approvals prior to construction (Army Corps of Engineers, Department of Environmental Quality, etc.).
5. The applicant shall obtain Program Authority approval of a mitigation plan, and provide mitigation according to the Water Protection Ordinance.

SP-2010-00048 Music Festival
PROPOSED: Five year extension of existing Special Use Permit (SP200900016) to continue allowing an annual special event at the Misty Mountain Camp Resort
ZONING CATEGORY/GENERAL USAGE: RA Rural Areas - agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots)
SECTION: 10.2.2.50 Special events
COMPREHENSIVE PLAN LAND USE/DENSITY: Rural Areas - preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/ density (.5 unit/ acre in development lots)
ENTRANCE CORRIDOR: Yes
LOCATION: 56 Misty Mountain Road, approx. three-quarters of a mile west of 64E junction
TAX MAP/PARCEL: 07100000000300
MAGISTERIAL DISTRICT: Whitehall
(Eryn Brennan)

Ms. Brennan presented a PowerPoint presentation and summarized the request.

SUBJECT/PROPOSAL/REQUEST:
Extension of the existing Special Use Permit (SP2009-16) to continue allowing an annual special event at the Misty Mountain Camp Resort

SP-2009-16 was approved by the Board of Supervisors on September 9, 2009 allowing one three-day music festival per year at the Misty Mountain Camp Resort. (See Attachment A, Board Action Letter, Attachments B and C, site characteristics and event layout, and Attachment D, prior staff report.) The applicant is requesting a five year extension of this special use permit. One of the conditions of approval in 2009 was that the special use permit would only be valid for two years to allow for a trial period for the event (Condition 17).

DISCUSSION:
For the last two years, Misty Mountain Camp Resort has been the venue for an annual music festival. The 2009 and 2010 three-day events featuring live music and local food and wine vendors were held without incident. The number of persons in attendance averaged 400 each year; hence, the events have not exceeded the 500 person limit stated in Condition 9 of SP2009-16. Tickets were sold in advance to ensure that the number of people on the site at any given point for the special event would be managed.

The applicant obtained all required permits and approvals from the Police Department, Fire and Rescue, and the Heath Department prior to each event and complied with all of the conditions of approval for SP2009-16. As a safety measure, the Rescue squad was set up on the site for the duration of the event each year; however, no incidents required their services. County staff conducted baseline sound measurements during the October 2009 event and confirmed that the levels complied with the conditions of approval. No complaints from adjacent neighbors were received throughout the duration of the events in either 2009 or 2010.

As the request to allow 500 people exceeds the number of participants allowed by special use permit for a special event in the Rural Areas, the applicant has again requested a waiver for Section 5.1.43-(e.1) of the Zoning Ordinance (Attachment E). Condition 9, however, should be retained to continue to limit the number of persons allowed for the special event to 500.

As the noise would exceed sound levels allowed in the Rural Areas (60 dBA during the day and 55 dBA during the night), the applicant has also again requested a waiver for Section 4.18.04 of the Zoning Ordinance (Attachment E). Again, Condition 14 should be retained to continue restricting noise levels to no higher than 65 dBA during the event as measured from an adjacent property.

RECOMMENDATION:
Staff recommends approval of Special Use Permit 2010-48 Music Festival with the conditions of approval associated with SP-2009-16, except Condition 17 (conditions listed below). The applicant has requested a five year extension, but staff supports eliminating an expiration date for the special use permit as the music festival has operated without incident for two years. Staff also recommends approval of waivers from Section 5.1.43-(e.1) and Section 4.18.04 of the Zoning Ordinance.

Mr. Zobrist invited questions for staff.

Mr. Morris asked how was the compliance with the sound level determined.

Ms. Brennan replied the base line measurements were taken from the property lines. She asked Mr. Higgins to answer that question since she did not attend the music festival.

Ron Higgins, Chief of Zoning, replied that Code Enforcement Officers went out and took base line measurement from several adjacent property lines. It was under the 65 decibel level right behind the stage on the adjacent property. At the time the new equipment had been calibrated, which has to be done each year. They have a base line in case it came up in the future.

Mr. Zobrist opened the public hearing and invited the applicant to address the Commission.

Mike Leo, owner and manager of Misty Mountain Resource, noted one correction that the festival has ran for three years without incident. The first year they ran under a zoning variance and the second two years under a special use permit.

Mr. Zobrist invited public comment. There being none, the public hearing was closed and the matter before the Commission.

Mr. Loach supported the five-year extension so it can be looked at again. He thought it is better to have something out there that they can relook at it again and maintain the good neighbor status.

Motion: Mr. Loach moved and Mr. Morris seconded for approval of SP-2010-00048, Music Festival with the recommended conditions, as amended, to add the condition for the five-year extension.

Mr. Cilimberg asked to clarify that was also inclusive of the condition that Ms. Brennan read that is referencing the waivers, which was not in the report.

Mr. Loach and Mr. Morris agreed.

The motion was approved by a vote of 7:0.

Ms. Brennan noted that the next issue was the waivers. The first request is to allow 500 people, which exceeds the number of participants allowed by special use permit for a special event in the rural areas. Approval of the waiver Section 5.1.4.3.(e-1), which the applicant has requested is required. Condition 9, however, does limit the number of people for the event to 500. Only 150 is allowed. The applicant is requesting a waiver, but condition # 9 has already put a cap on the maximum number of people to attend the event to 500. In addition, the noise would exceed the sound levels allowed in the rural areas, which is 60 dba and 55 dba during the night. Approval of the waiver Section 4.18.04, which the applicant is requesting, is also required. Condition 14 of the special use permit restricts the noise levels to no higher than 65 dba during the event as measured from adjacent properties. So again, conditions have been put in the special use permit conditions of approval that address, cap and limit these waiver requests. However, none the less the waiver requirements are required. Staff recommends approval of the waivers of these sections of the Zoning Ordinance.

Action on Waivers:
Motion: Mr. Loach moved and Mr. Morris seconded for approval of the two waiver requests for Sections 5.1.4.3.(e-1) and 4.18.04 as stated by staff with conditions.

The motion passed by a vote of 7:0.

Mr. Zobrist noted that the matter had passed.

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SP-2010-00043 Brown Collision Center
PROPOSED: to permit an auto body shop in a Highway Commercial District, no residential units proposed.
ZONING CATEGORY/GENERAL USAGE: HC Highway Commercial - commercial and service uses; and residential use by special use permit (15 units/ acre)
SECTION: 24.2.2 (17) auto body shops
COMPREHENSIVE PLAN LAND USE/DENSITY: Regional Service - regional-scale retail, wholesale, business and/or employment centers, and residential (6.01-34 units/acre) in Neighborhood 1.
ENTRANCE CORRIDOR: Yes X No
LOCATION: 1590 Seminole Trail, approximately 600 feet north of Berkmar Drive on the west side of Seminole Trail (US 29)
TAX MAP/PARCEL: 061000000120E0
MAGISTERIAL DISTRICT: Rio
(Claudette Grant)

Ms. Grant presented a PowerPoint presentation and summarized the request.

Proposal: To permit an auto body shop in a Highway Commercial District.

Factors Favorable:

1. The use is consistent with the Land Use Plan.
2. The special use permit will provide an opportunity for the auto body service to expand and accommodate additional business in this portion of the Development Area.

Factors Unfavorable:
None

RECOMMENDATION: Staff recommends approval of SP 2010-043 Brown Collision Center with the conditions outlined in the staff report.

Mr. Zobrist opened the public hearing and invited the applicant to address the Commission.

Mike Deardane, present on behalf of Brown Collision Center, said it was a use that has been in place for a number of years. This body passed resolution of intent some time ago to add the body shop as a special use in Highway Commercial District, which has been passed by the Board of Supervisors. This is the follow on the special use permit application to enable Brown to continue essentially its operation so that it can continue its operation in its existing building.

There being no questions for the applicant, Mr. Zobrist invited public comment. There being none, the public hearing was closed and the matter before the Planning Commission.

Motion: Mr. Franco moved and Mr. Morris seconded to recommend approval of SP-2010-00043 Brown Collision Center subject to staff's recommended conditions.

1. There shall be no storage of parts, materials, or equipment except within an enclosed building.
2. No vehicle awaiting repair shall be located on any portion of the property so as to be visible from any public road or any residential property, and shall be limited to locations designated on the approved site plan.
3. The site plan (SDP2010-62, Sheet 1 of 1, dated 8/2/10, and prepared by Daggett & Grigg Architects) shall be amended with a Letter of Revision to update the parking space labels and to show all of the previously approved/required landscaping on the plan, and to show the relocated area where vehicles awaiting repair are kept from public view.

The motion was approved by a vote of 7:0.

Mr. Zobrist noted that SP-2010-00043 Brown Collision Center would go to the Board on a date to be determined with a recommendation for approval.

ZMA-2010-00013 Hollymead Town Center (Area A-2)
PROPOSAL: Rezone 44.29 acres from Neighborhood Model District zoning district which allows residential (3 - 34 units/acre) mixed with commercial, service and industrial uses to Neighborhood Model District zoning district which allows residential (3 - 34 units/acre) mixed with commercial, service and industrial uses, in order to amend the existing proffers.
PROFFERS: Yes
EXISTING COMPREHENSIVE PLAN LAND USE/DENSITY: Town/Village Center-compact, higher density area containing a mixture of businesses, services, public facilities, residential areas and public spaces, attracting activities of all kinds. (6.01-34 dwelling units per acre) in Hollymead Development Area.
ENTRANCE CORRIDOR: No
LOCATION: Hollymead Town Center Area A-2, the southwest quadrant of Seminole Trail (US 29) and Towncenter Drive to the west of Area A-1 in the Hollymead Development Area
TAX MAP/PARCEL: 03200000004500, 03200000005000
MAGISTERIAL DISTRICT: Rio
(Judy Wiegand)

Ms. Wiegand presented a PowerPoint presentation and summarized the request.

Proposal: To amend the proffers for Hollymead Town Center, Area A-2 to make substantive changes relating to open space, phasing, and road improvements.

This is a follow up to the rezoning that came before the Commission last fall. Staff is working on the proffer changes that would enable this to go forward for Area A-2. The location is in the Hollymead Town Center Development. She apologized that the GIS system is putting the wrong road names on the maps. She pointed out Meeting Street and Town Center Drive.

The proposed proffer changes are in compliance with the Comprehensive Plan. The Places29 Master Plan shows Area A1 and A2. The area that is being considered is now a part of a Destination Community Center. The current zoning is Neighborhood Model District. The proposed proffer changes are in conformity with the zoning district. There are three proffers being discussed this evening.

Proffer 6 Pocket Parks
In conjunction with the subdivision plat or site plan that includes the land described in this Proffer 6, the Owner shall establish an approximately 10,000 ***4,500*** square foot pocket park (the "Pocket Park") located

on the northern edge of Block B1 fronting Town Center Drive as shown on the General Development Plan ***Amended Application Plan for Blocks B1, B2, and B4***, and shall include all such improvements, landscaping and other features identified in the Code of Development….[proffer continues]

Staff is concerned with proffer 6. There was quite a discussion at their meeting back in September when they first looked at Area A2 proffers. It was originally a 10,000 square foot pocket park. The applicant has asked to reduce that to 4,500 square feet. In addition, the title of the plan was changed.

The Code of Development Table E explains what the space issue is. The total amount of green space proposed in Area A-2 is 467,750 square feet, which is 10.7 acres that is 20 percent of Area A2. If the applicant is successful in his wish to reduce the pocket park, it will put it below 20 percent. It would mean the applicant would have to include that in his application to amend the Code of Development. Some of this information is in the staff report. If they take out the Powell Creek Greenway segments, which are a little different type of green space than the others and explained in the staff report, that leaves them with 30 percent of green space that is more useful and centrally located places. If they lose 5,500 square feet, that is about 1 percent of the 467,000. It is about 4 percent of the 137,000, which is the part that is not in the green way.

Pocket Park Numbers: 14,500 SF total in Block B
Originally 2 pocket parks: 10,000 SF one and a 4,500 SF one
Now proposed to downsize the large one to 4,500 SF
So, how big is a 4,500 SF park? She asked Staff Services and the Auditorium from front to back is about 5,000 SF. The original pocket park size would have been twice the size of this floor area. The proposed 4,500 SF would be a little less than they have in here now. That gives them some idea that the proposed Area A2 could have a little over 1,200 dwelling units in it, plus the theater and other things. It is a fairly small amount of space for the number of people.

Staff noted that because the plan was changed to include the indoor theater the location of the pocket park here actually makes it more of an amenity for the theater patrons. There will be proposed office/residential in this area, but the pocket park is in between them and it does not serve much of the rest of the area. Some of this is served by the other pocket park. Basically, staff feels if the 5,500 SF is going to come out of the pocket park in the other area, then it would be good to put it somewhere else in Block B so it would continue to serve as this area is built up. They do have a swimming pool and club house area in this area, but it is not green space.

This is the Application Plan approved for Block B in November 2010. The downsized pocket park is now more of an amenity for theater patrons—and will be until residences are constructed in Block B. Staff recommends that another 5,500 SF pocket park be included in Block B in a location that would serve more of the prospective residents.

Proffer 11 Phasing Plan
Prior to building permits that would authorize up to 75,000 square feet of commercial/office building, permits shall have been issued for at least 30 residential units. Prior to building permits that would authorize up to 200,000 square feet of commercial/office building permits, permits shall have been issued for at least 100 residential units (total). Prior to building permits that would authorize more than 200,000 square feet of commercial/office building permits, permits shall have been issued for at least 600 residential units.

This is the language that's in the current proffers—the three-tiered plan. The chart in the staff report, Phasing Language Comparison, basically shows that they have added a lower level so that the applicant could pull building permits to accommodate the indoor theater sooner for as few as 30 units. However, staff believes this number should be 25 in order to be certain that the proposed townhomes will suffice in order to get up to 75,000 SF of commercial office. It would allow the applicant to pull the permit for the indoor theater as soon as he had pulled the building permits for the 30 or 25 dwelling units. This phasing was originally put in the proffers in 2007. It was originally put in because they were really looking for a mix of uses in this area. They wanted to make sure they got some dwelling units before the commercial or they were put up at basically the same time. That is why it was in here originally. At this time they are agreeing that the applicant would be able to put in the theater sooner if he had the opportunity to pull building permits for 30 or 25 units.

The third proffer at issue is Proffer 2 for Road Improvements.

Staff expected language that would have dedicated, then constructed the segment of Meeting Street south from the intersection of the unnamed road that accesses Area A-1 and Area A-2 to the southern boundary of Area A-2

They took care of this stretch of proffers with the A-1 rezoning that came before the Commission in January. However, they are still concerned about the other part. Staff had hoped the applicant would proffer the dedication upon demand of the County and ultimately to construct either to serve development further down or if the County requested construction. It would be constructed at that time because Berkmar Drive Extended was about to be connected here.

Mr. Zobrist said he thought that was a condition of the prior change in proffers. The condition that was accepted and part of the motion was that be constructed and dedicated upon demand of the County.

Ms. Wiegand replied that was for Area A-1. It did not go all the way south, but just to the end of Area A-1.

Mr. Zobrist said as he recalled they said there was no reason to make him build a road that goes to nowhere. They agreed that he would build it upon demand by the County when there was a reason to have it built.

Ms. Wiegand said that was in the Area A-1 proffers, which only apply to the one stretch in Area A-1 and not Area A-2. Therefore, it has to be in these proffers.

Mr. Zobrist noted this had to be added to this proffer.

Mr. Cilimberg pointed out the applicant has to proffer it as part of Area A-2.

Ms. Wiegand said staff was expecting it, but it simply did not come in.

Ms. Porterfield pointed out the Planning Commission definitely discussed that. The Commission removed it from that issue to this issue. It was supposed to be part of this proffer.

Mr. Zobrist noted that the applicant was aware of that.

Ms. Wiegand continued the PowerPoint presentation.

Factors Favorable:
The change in the phasing (Proffer 11) to allow fewer residential building permits to be issued prior to issuance of a commercial building permit is more realistic in this economic climate than it was when the original zoning was approved.

Factors Unfavorable:
1. The reduction in the size of the Pocket Park removes an important amenity, which was identified by the Planning Commission at an earlier public hearing.
2. The dedication and construction of the remaining segment of Meeting Street has not been proffered.

Staff does not recommend approval of the rezoning unless the substantive and technical changes identified in this staff report are addressed.

Mr. Zobrist invited questions for staff.

Ms. Porterfield asked to go back to pocket parks and the diagram. She asked if the 10,000 SF included the pocket park on the bottom of the diagram.

Ms. Wiegand replied that it did not. In the Code of Development Chart there is 14,500 SF of pocket park in Block B, which has always been down in this area. The 10,000 SF is what the applicant is asking to reduce.

Mr. Loach asked if the applicant is asking for a reduction in the residential.

Ms. Wiegand replied that the applicant has not changed any of the Code of Development. The maximum is still the same. Staff has received a site plan for construction of 32 townhouse units along the side of Lockwood facing the Abington Townhomes. That is the 32 units that would enable the theater if they can work all of this out. Those townhomes are still in Area A-2, but not in this particular area.

Mr. Smith asked if the 10,000 SF pocket park was shown. If so, what were the amenities.

Ms. Wiegand replied that this one shows a 4,500 SF pocket park. This plan shows the reduced version. The amenities shown are trees basically with a green space.

Mr. Zobrist opened the public hearing and invited the applicant to address the Planning Commission.

Scott Collins, representing Route 29 LLC, said he would give a little history why the 10,000 SF pocket park was there and what has been changed since then.

- The original rezoning showed a 10,000 SF pocket park at the end where Lockwood Drive intersected Towncenter Drive, which was the focal point because the original application did not extend Lockwood Drive through this block. They ended Lockwood Drive right at Towncenter Drive, which was a little awkward. In the master plan they put a 10,000 SF pocket park at the end of Lockwood Drive as an amenity to create the visual effect where Lockwood Drive ended. Since then and more design on the project they have realized that it makes a whole lot more sense to actually extend Lockwood Drive through the property and tie it in with Meeting Street. That was well accepted by the County Engineer and all the staff. They are seeking a reduction in the size of the pocket park because of the extension of Lockwood Drive through the block. It has created a different effect on the whole design and development.
- The reduction of 5,500 SF actually does not affect the overall table that was outlined in the staff report. If they add the greenways between all of the blocks, they come up with 7.58 acres. They just recently dedicated 7.78 acres of the greenway parks. There is about .2 of greenway, which comes up to 8,700 SF. If they add in that with the reduction of 5,500 SF there is no reduction of overall square footage of open space. Therefore, they are still within the 20 percent of the overall Code of Development.
- Another excellent point brought up by Mr. Loach was the original rezoning called for 430 dwelling units in this block, which is not going to be achieved. It is just not feasible within the block. They called for 1,220 units across this entire A-2 area. That was very ambitious. What they are finding as they get closer into the plan and lay out the development is that they are not going to be anywhere close to 1,220 units. They are trying to design this project in a manner that makes sense as they build it and to design the amenities with the units and the development around it.
- He wanted to talk a little more about the proffer for the extension of Meeting Street. All that was very well covered last month in the A-1 proffers, as Mr. Zobrist pointed out. It says clearly that will be extended to the southern property line as requested by the County within a year. It is done and in the proffer.

Mr. Zobrist asked if he had any problem with adding it to this proffer.

Mr. Collins replied that they could add it, but it was just overkill.

Mr. Zobrist asked how many units he thought they were going to get if they are not going to get 1,200 units.

Mr. Collins replied they were looking at more or less about 200 units in a block or a total of 800 units on the project in A-2.

Mr. Zobrist said it was about a third of a reduction.

Mr. Collins pointed out in order to achieve those 1,220 units they planned on a lot of structured parking.

Mr. Zobrist invited questions for Mr. Collins.

Ms. Porterfield said proffer one talks about the fact they are dedicating the right-of-way. She asked if that is being done immediately.

Mr. Collins replied that when they dedicate right-of-way they have to bond the improvements or build them, which is what keeps them from dedicating it at this time. They have no problem dedicating it at the time, but it does not do them any good to hold on to it. They would rather go ahead and build it, try to reduce the bond, and then try to get it all accepted and taken into the County. That is what they have been working on with Towncenter Drive, which is about to be dedicated.

Ms. Porterfield pointed out last time they talked about the need to make sure that the right-of-way was there. In addition, if it needed to be constructed that at the call of the County they would construct it within a year.

Mr. Collins said he agreed to it so all of that would happen within a year. It would be dedicated in a year. At that time, it would bonded if it were not built.

Ms. Porterfield said that piece of ground would have this proffer attached to it. If someone else builds it, they carry that proffer.

Mr. Collins replied yes that is correct. It can't be developed any other way than as a road.

Ms. Porterfield asked that they go back to pocket parks. They are saying they need to reduce that one location to 4,500 SF. She asked if they could pick up another pocket park in another location so they don't lose the original total amount of pocket park square footage. She worries that even if they go down to 800 residences, they still don't have a lot of outside space for residents right there. They do have a nice greenway, but it would not be able to have amenities that the people who live there need, such as a bench or playground. She asked if there was a spot where they could pick up that extra 5,000 SF possibly closer to the residences.

Mr. Collins replied that they have the plaza right there, even though it does not count into the open space area. Overall, they have an acre park right along Lockwood. That area is basically within 500' to 600' to the one-acre park. One could walk down the sidewalk and across the road to get to the park.

Mr. Cilimberg asked if he was referring to the linear park.

Mr. Collins replied yes, there is an acre linear park right there.

Ms. Wiegand noted that the linear park was listed in the table and a separate amount.

Mr. Collins said when they talk about playgrounds and amenities for children and families, there is an acre linear park right there. That is a great amenity.

Ms. Porterfield pointed out they have 800 homes potentially.

Mr. Collins replied that in that block there would be 200 homes at a maximum. Then they have 7 acres adjacent to it, which would be plenty of room for activities as well.

Ms. Porterfield said personally she would like to see him pick up the 5,000 SF somewhere else within this section. It is great the other one is there, but this is really going to be an urban type of living. It would be nice if residents could go out and be close to their homes where they could sit or be with people who live right there. She asked if it was just impossible to find the land.

Mr. Collins replied that it gets a little tight with the parking for the other uses in that block. When they start talking about another 5,000 SF, that basically equates out to about 40 parking spaces.

Ms. Porterfield noted that if the residential is coming down, then he does not need as many parking spaces.

Mr. Collins agreed, but noted they also have the other uses as well. A lot of this block is contingent on shared parking. In order to get the 200 residential units in this block they are talking about structured parking, too. In order to get the kind of density that is being asked for in the rezoning, they are talking about levels of structured parking. Currently in Charlottesville, other than right around the University, it is hard pressed to find people who will do structured parking. The only shopping center in Charlottesville attempting structured parking is Albemarle Place. That is because of the vicinity to Charlottesville.

Ms. Porterfield said she hated to see green space lost since that is one of the reasons people move to Albemarle County. She would prefer moving the green space over to the other side. She was assuming that use of what was shown as the fitness center was by membership. She asked if it was open to the entire public that was going to be there without a fee.

Mr. Collins said that it would probably be tied to people living within the development.

Ms. Porterfield asked if that would be an amenity to buying one of the residential units.

Mr. Collins said it was hard to say since many times things start off that way and sometimes open up to the public. He knew Old Trails has opened up to the outside public. However, it really depends on the program.

Mr. Franco asked how is the parking set up. In other words, he said there was some shared parking. He asked if there is already a parking reduction and to what extent is the parking reduction in there.

Mr. Collins replied they were taking the maximum parking deduction that they can within the development. They are also doing a shared parking with Kohl's across the street, which has about eight acres of parking as well.

Mr. Franco said he would probably support a reduction in parking to get some green space back. He asked how many parking spaces are depicted in the site plan drawing.

Mr. Collins replied they showed about 450 to 500 parking spaces.

Mr. Franco asked if they were talking about a reduction of 40 or 50 parking spaces, which was a ten percent parking reduction. Personally, he would support that to recover some of the green space. He did not know how the mechanics of that work.

Mr. Morris felt the 20 percent was there for a reason and would like to stay as close to it as possible.

Mr. Franco said what he heard was that they are, but it has just been moved to different places. Some of it is in the greenway. He would support a reduction to get some more of that back. If they have to eliminate parking to do it, he personally would support that.

Mr. Morris agreed and that it be in the area they were looking at right now.

Mr. Loach asked how many spaces were needed for Parks and Recreation per number of households.

Ms. Wiegand replied the Parks and Greenways standards in the County has 3 acres per 1,000 people. Part of the problem is they are talking about two different kinds of space when they talk about the green way and the rest of the space. The green way is the great amenity, but it is relatively inaccessible for a short walk from home. When they did the numbers staff felt if they were to use the standard they would have also included the fact that people from this area could go to Hollymead Schools on the other side of 29. There is public park area there that is open to the public. That is part of what would be considered as the 3 acres per 1,000.

Mr. Cilimberg noted that generally the standards they use in the Comp Plan for parks facilities are for level of facilities at schools and beyond for community, and regional type parks. He did not think they have a standard for what would be in many cases more the private pocket parks. That is really covered more through requirements of the site plan provisions and zoning actions where they are creating a community and trying to identify what pocket park or local park needs there are.

Mr. Loach asked if it was staff's position that this should not be reduced.

Ms. Wiegand replied that staff would like to see the 5,500 SF space made up somewhere else in Block B.

Mr. Zobrist asked Mr. Collins if he had a solution.

Mr. Collins said if they could pick up the extra 5,500 square feet anywhere within the B-2 block, he

thought they could make that work.

Ms. Wiegand noted that anywhere in block B in B-1 or B-2 would work.

Ms. Porterfield suggested that the two parks be spread out with different amenities in each one.

Mr. Collins noted that this was a rezoning level plan. When they design the actual plan, they will be designing amenities that work within the space.

Ms. Wiegand reiterated what she was hearing with the pocket park is the Commission would be comfortable seeing the extra 5,500 square feet approximately made up somewhere else in block B. She asked that the Commission give staff direction so they can work with the applicant and the county attorney to get the language so that it reflects what they are asking. Then staff can take that to the Board.

Mr. Franco noted there were three issues on the table: the phasing, the extension, and the greenspace. He thought they had addressed the greenspace. From his perspective on the phasing that it sounds like the applicant and staff are on the same page and in agreement.

Ms. Wiegand asked if they would be okay if they reduced it from 30 to 25 units.

Mr. Franco replied he was comfortable with that.

Mr. Cilimberg said that was to give them some maneuvering room in case the 32 starts dropping back for some reason. They did not want them falling below the 30 and then being caught again.

Mr. Franco said the question he had about the extension is if it is in this section or in A-1.

Mr. Cilimberg replied it was in A-2.

Mr. Franco pointed out it needs to be added to this because it is in this section.

Mr. Cilimberg said by getting it already in A-1 and then putting it in A-2 essentially it was the same language. He said Mr. Kamptner could speak to that.

Mr. Kamptner said there was the perception that particular language was taking it to the southern boundary of Hollymead Town Center, but it really was going to take it to the southern boundary of the area of A-1. The language staff is suggesting just takes it to the end of the boundary of A-2.

Mr. Zobrist said that is what the Commission thought they did last time.

Mr. Franco said it sounds like they are on the same page with those three issues. He asked if the applicant is comfortable with their position on those three items. He asked if they could move this forward this way. He asked if there were any concerns.

Wendell Wood , applicant, said they believe that it is written in the proffer that they proffered the road last time.

Mr. Zobrist pointed out this was a technical change.

Mr. Wood said he understands. However, along with that line since they were here and did that they are now being told that they are not going to have this land added into the southern expansion area, which means Berkmar is not going to be built. He was not sure where that puts them when they are now dedicating the road and taking the land that will never be built. He was not sure what affect that may have on it. He thinks they agreed to dedicate the land. He asked if that is what they think they did.

Mr. Zobrist replied they agreed to dedicate that road within a year upon demand of the County.

Mr. Wood asked what is going to happen. He asked did anything change with the fact that now this area is not in the master plan.

Mr. Zobrist said he had no idea.

Mr. Wood said that is what he means since he has no idea either.

Mr. Franco noted what he understands is they are going to have to find a different mechanism for funding it if they want to have it happen. It won't come necessarily from proffers for rezoning for areas that were not added.

Mr. Wood said they agreed to do it, but don't want to be the only ones sitting out there that dedicated land and the road would never get built. That is a little bit of a concern. He thought this country was in a different world right now. This plan won't happen in anybody's life time in this room where they would see deck parking in Albemarle County. In order to achieve 800 units they would need to have deck parking. This plan can probably achieve 400 units at best without deck parking. Deck parking adds $20,000 per residence. It is not going to happen. It is just an ill conceived plan done in different times. There was another thing he would like them to try to visualize. Ms. Wiegand pointed out that this room is 4,500 square feet. That is pretty massive. He questioned if they would need three pocket parks for this size development. He asked where in other shopping center that exists. He thought the math was wrong since he thought they had 17 acres of open space on this property. That is a lot of open space. Their major tenant is not pleased with what is proposed. He did not know how they would like having the pocket park in front of the theater. He asked the Commission to look at it and compare it with other things.

Mr. Zobrist pointed out that the Planning Commission felt they need that space reserved even with a reduction in the parking.

Mr. Franco said if the applicant were willing to come back with a proposal, he would be comfortable personally reducing the amount of green space in that 10,000 SF, but would like to see a like reduction in the residential units. Currently he understands there is no reduction in the residential units although they don't think they will be achieved. If he knew they were not going to be achieved, if the number was reduced, then he could consider it.

Mr. Zobrist noted that the Commission and staff was going to work with them to get this right. They have done everything they have been asked thus far. The question is do they want them to act on the park portion tonight or come back with that and let them act on the other two items. What they need for right now is the phasing.

Mr. Collins agreed they need the phasing.

Mr. Cilimberg noted they need the park also.

Mr. Collins agreed that they need the park so that it is not all on Town Center Drive.

Mr. Zobrist suggested the Commission could say they would come back with a proposal.

Mr. Cilimberg noted the problem is they are trying to get a site plan done. They need that decision made.

Mr. Morris said based upon what Mr. Collins said, he thinks he can carve out a 5,000 SF pocket park in another location closer. He would like that.

Mr. Zobrist pointed out the Commission was saying they wanted to preserve the 5,500 SF. Mr. Collins said he could find it on the other side. Therefore, they were going to have three pocket parks.

Mr. Franco asked if they are also comfortable with what he said. He did not hear anyone react to it. If they reduced the number of units that is achievable, he asked if they could reduce the total square footage based on the reduction.

Ms. Porterfield disagreed. She suggested they keep the green space. If they decide to reduce the units, that is their choice. She did not think they should get rid of the green space.

Mr. Morris said it is 20 percent of the area.

Mr. Collins said he would like to go forward with the 14,500 SF and have the flexibility to put it anywhere

within the development. If they chose to come back and reduce the number of units, then at that time they will ask for a reduction to the pocket parks and possibly get rid of one of them. This will allow them to go forward with some of the site plans already underway, and was anywhere within blocks B-1 and B-2.

Mr. Zobrist invited public comment.

Neil Williamson, with Free Enterprise Quorum, said they have no position on this particular application. However, they are concerned with the discussion about Albemarle County becoming too urban when compared with the urban structures and renderings they have seen in some of the master plans. He felt occasionally they are dysfunctional as a County under what it is they want. He had heard in this room the idea of focusing development in the development area and creating amenities that allow for that. At other times they hear let's keep it open space and open for everyone, and if they want to have an urban setting move to Washington, D.C. He considers that a dysfunctional space. The idea of pocket parks having pocket parks is great. However, their vision is a little bit disjointed right now.

There being no further public comment, the public hearing was closed and the matter before the Commission.

Mr. Kamptner pointed out the recommendation would be:

- the proposed change to the phasing plan as recommended by staff, which reduces the number of building permits from 30 to 25 as described in the staff report;
- Proffer #6 will remain as it is with the understanding that the applicant will add another pocket park within blocks B-1 or B-2 composed of approximately 5,500 square feet in size; and
- Proffer #2 for road improvement to be amended as recommended by staff.

Ms. Wiegand noted that the change in proffer #2 regarding road improvements would be they were looking for the dedication and construction upon demand of the County.

Motion: Mr. Franco moved, and Mr. Morris seconded to recommend approval of ZMA-2010-00013, Hollymead Town Center (A-2) as recommended by staff with the substantive and technical changes identified in the staff report addressed as outlined.

The following changes need to be made:

- the proposed change to the phasing plan as recommended by staff, which reduces the number of building permits from 30 to 25 as described in the staff report;
- Proffer #6 will remain as it is with the understanding that the applicant will add another pocket park within blocks B-1 or B-2 composed of approximately 5,500 square feet; and
- Proffer #2 for road improvement to be amended as recommended by staff for dedication and construction of road improvements upon demand of the County.

The motion carried by a vote of 7:0.

Mr. Zobrist noted ZMA-2010-00013, Hollymead Town Center (A-2) would go to the Board of Supervisors on a date to be determined with a recommendation for approval with the substantive and technical changes identified in the staff report addressed, as outlined.

Old Business

Mr. Zobrist asked if there was any old business.

Mr. Franco said after having heard the music concern earlier and they used decibel meters and were able to create a standard, he asked if anyone would like to revisit their earlier discussion and possibly direct staff differently.

Mr. Loach noted a substantial difference between a music festival for two or three days and a farm winery that is there every weekend and a number of weekdays during the summer. The way the law was written for the farm winery he felt it is a double standard, which was problematic. He would have been happy with the 50 decibels. Before he voted for it, he would have liked to hear from staff that they have a way of enforcing it or the police have a way of enforcing it. There has to be a method so it can be measured, as Mr. Williamson said.

Mr. Zobrist asked if anyone wanted to reopen the earlier discussion on outdoor amplified music at wineries after hearing about the music festival.

It was the consensus of the Planning Commission not to reopen the discussion on outdoor amplified music.

There being no further old business, the meeting proceeded.

New Business

Mr. Zobrist asked if there was any new business.

- Requested Commissioners to fill out distributed questionnaire and return to staff by the end of February. Staff to schedule Retreat in March for training including suggestions by Mr. Morris and Mr. Lafferty form the State Program.
- Staff encouraged all Commissioners to attend TJPDC Commissioner training next Thursday, February 17th from 7 to 9 p.m. (Register at website or telephone at 434-979-7310).
- NEXT MEETING ON FEBRUARY 15, 2011

Adjournment

With no further items, the meeting adjourned at 9:49 p.m. to the Tuesday, February 15, 2011 meeting at 6:00 p.m. at the County Office Building, Second Floor, Auditorium, 401 McIntire Road, Charlottesville, Virginia.

_____

V. Wayne Cilimberg, Secretary

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