**Albemarle County Planning Commission**
**March 1, 2011**

The Albemarle County Planning Commission held a meeting and public hearing on Tuesday, March 1, 2011, at 6:00 p.m., at the County Office Building, Lane Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Russell (Mac) Lafferty, Duane Zobrist, Chairman; Ed Smith, Thomas Loach; Linda Porterfield, Don Franco 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; Margaret Maliszewski, Principal Planner; Judith Wiegand, Senior Planner; Amelia McCulley, Director of Zoning/Zoning Administrator; Eryn Brennan, Senior Planner; J.T. Newberry, Code Enforcement Officer; Ron Higgins, Chief of Zoning; Stephanie Mallory, Zoning Assistant; Mark Graham, Director of Community Development; Glenn Brooks, County Engineer, David Benish, Chief of Planning; and Greg Kamptner, Deputy County Attorney.

**Call to Order and Establish Quorum:**

Mr. Zobrist, Chairman, called the regular meeting to order at 6:02 p.m. and established a quorum.

**Committee Reports**

Mr. Zobrist invited committee reports.

- Ms. Porterfield said the Historic Preservation Committee met yesterday and is working to do at least one activity during Preservation Week.

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

**Matters from the Public not Listed on the Agenda**

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

**Consent Agenda**

**a. <u>Review of the Hatton Agricultural and Forestal District – Referral to Agricultural and Forestal Advisory Committee</u>**: Periodic (10-year) review of the Hatton Agricultural and Forestal District, as required in Section 15.2-4311 of the Code of Virginia. The district includes the properties described as: Tax map 135, parcels 13, 13A, 13B, 14B, 15, 15A, 15C, 17, 18, 19, 22, 22A, 22C, 22C1, 22C2; tax map 136, parcels 2A, 6B, 8H, 9, 9A2, 9B, 9C, 9D1, 9E. This district, created on June 29, 1983 for not more than 10 years and last reviewed on June 20, 2001, shall next be reviewed prior to June 29, 2011. (Eryn

Brennan)

**b. <u>Review of the Totier Creek Agricultural and Forestal District – Referral to Agricultural and Forestal Advisory Committee</u>**: Periodic (10-year) review of the Totier Creek Agricultural and Forestal District, as required in Section 15.2-4311 of the Code of Virginia. The district includes the properties described as: Tax map 121, parcels 70A, 70B, 70D, 70E, 72C, 85, 85A; tax map 122, parcels 5, 5A; tax map 128, parcels 13, 14A, 14B, 14C, 14D, 27, 29, 30, 72; tax map 129, parcels 3, 5, 6, 6A, 7A, 7D, 9; tax map 130, parcels 1, 5A; tax map 134, parcels 3, 3A, 3B, 3C, 3D, 3E, 3F, 3G, 3H, 3I, 3J, 3K, 3L; tax map 135, parcels 7, 10, 11. This district, created on June 29, 1983 for not more than 10 years and last reviewed on June 20, 2001, shall next be reviewed prior to June 29, 2011. (Eryn Brennan)

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

**Motion**: Mr. Morris moved and Ms. Porterfield seconded for approval of the Consent Agenda as presented.

The motion passed unanimously by a vote of (7-0).

**<u>SDP-2010-00094 Farm/Cosner Property (AT&T CV427 Tier II) - Final</u>**
This is a request for approval of a treetop personal wireless service facility with a steel monopole that would be approximately 136 feet tall (10 feet AMSL above the tallest tree within 25 feet), with an 11.5' x 20' equipment shelter, within a 1,600 square foot lease area. This application is being made in accordance with Section 10.2.1 of the Zoning Ordinance, which allows for Tier II wireless facilities by right in the Rural Areas. The property, described as Tax Map 102, Parcel 11B, contains 7.64 acres, is located in the Samuel Miller Magisterial District, and is zoned RA, Rural Areas. This parcel is situated on the west side of SR 20 S, and the proposed facility is located on the northwest portion of the parcel. The Comprehensive Plan designates this property as Rural Area in Rural Area 4. (Gerald Gatobu)

Mr. Gatobu presented a PowerPoint presentation and summarized the staff report.

- This property is on Route 20 South and would have a 136-foot tower placed onsite as part of this application. A balloon test was conducted on January 19, 2011 in the general vicinity of the proposed placement. He presented some pictures within the vicinity. The balloon could generally be seen through the trees. Based on the visibility staff thought that it was highly mitigated and not very visible. Staff as well as the Architectural Review Board recommends approval.
- The most important principle for siting wire facilities in the County is mostly visibility. The ARB reviewed the request for compliance with the design guidelines for the Entrance Corridor on February 22nd. The ground equipment would not be visible from the EC. The antenna and monopole would be highly mitigated. Based on the balloon test there will be minimal or no material difference whether the monopole was at seven feet versus ten feet above the reference tree. Therefore, staff recommends approval at the height of ten feet above the referenced tree.

Mr. Zobrist invited questions for staff. There being none, the public hearing was opened, and the applicant invited to address the Planning Commission.

Kathryn Carmichael, representative for AT&T, presented a PowerPoint presentation to provide a general overview of the area and explain the improvement in coverage. The site is located just along the street from Camp Road along Route 20. She presented a map showing significant tree coverage on the subject parcel as well as a heavily forested area behind the recommended site. The old Route 20 roadbed would be used for access to prevent removal of trees as much as possible. The access road cut off would be about 160 feet from the old Route 20 roadbed toward the tower site. The reference tree in this location is a 126-foot Poplar, and the proposed tower would be 10 feet above that at 136 feet. The reason AT&T is trying to increase coverage in the area is to provide service in this heavily traveled location on Route 20, which currently has no AT&T coverage. Their network along Route 20 with this monopole would significantly increase coverage along Route 20 and the surrounding areas. The photo simulations show how well the tower blends in, noting that it is not highly visible from Route 20 due to the heavy tree coverage. The gravel road they are building is approximately 160 feet long and 12 feet wide.

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

**MOTION**: Ms. Porterfield moved and Mr. Loach seconded for approval of SDP 2010-00094 Farm/Cosner Property (AT&T CV427 Tier II) – Final as recommended by staff to be 10 feet above the reference tree.

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

Mr. Zobrist noted that SDP-2010-00094, Farm/Cosner Property (AT&T CV 427 Tier II) - Final was approved for the personal wireless service facility at the proposed height of ten (10) feet above the reference tree. This is not a matter that requires Board approval.

**SP-2010-00032 Avon Street Ross AT&T CV376 Tier III PWSF**
PROPOSED: A one hundred and eleven (111) foot AT&T treetop Personal Wireless Service Facility in an avoidance area (Southern Albemarle Rural Historic District)
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 (48) which allows for Tier III personal wireless facilities in the RA Zoning District
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: 527 Woodchuck Lane off Scottsville Road [State Route 20]
TAX MAP/PARCEL: 09000-00-00-014B2
MAGISTERIAL DISTRICT: Scottsville
(Gerald Gatobu)

Mr. Gatobu presented a PowerPoint presentation and summarized the staff report.

- This is a special use permit, SP-2010-32 for a Tier III personal wireless facility, which is proposed for Route 20. A balloon test was conducted in November 2010. The balloon was flown at 10 feet above the reference tree.
- In photographs of the area, he noted the balloon was hidden from the road. The most important principle for siting wireless facilities is visibility. The Architectural Review Board said the proposed tower is not expected to have a detrimental impact on the historic district in general. The only reason this is a Tier III is its location in the historical district. Apart from that, everything else would have been a Tier II. The ground equipment would not be visible from the Entrance Corridor and the monopole and antenna would be highly mitigated.
- This is located in the Southern Albemarle Rural Historical District, which is why it is a Tier III. There would be no material difference in visibility between seven feet and ten feet above the reference tree. Staff recommends approval at ten feet above the reference tree with the one condition listed in the staff report. He has received calls from several people saying they actually welcome having this improved coverage or service along Route 20. It appears that there is a big need for the cell phone service in that area.

Mr. Zobrist invited questions for staff.

Mr. Lafferty asked if the residents living on the site are in agreement with the proposal.

Mr. Gatobu responded yes. He spoke with a next door neighbor whose issue related to the runoff from the tower. He talked with engineering staff today to make sure that is done in due diligence. Their first consideration is the disturbance of critical slopes. In this case the tower would not be in critical slopes. The second consideration is the amount of grading needed for access. In this case, the amount of grading would not exceed 10,000 square feet. If the disturbance gets to 10,000 square feet, it would trigger an erosion and sediment control application to be done so staff can look at the E & S measures that need to be put in place. That is basically the two biggest things. However, in this case he talked with the neighbor and applicant to try to make sure during construction they try to reroute the sheet flow to go away from the access. They really don't have any way to mitigate any of those factors right now.

Mr. Lafferty asked if the only objection would be in the grading and not in the actual tower itself.

Mr. Gatobu replied that was correct in that staff would look at the grading. In this case, it is a matter of sheet flow once they put the tower and ground equipment in. What they do is bore holes and there will be a fence. It generates some amount of runoff, but not much. "Per the ordinance and per engineering, they really don't have any way to mitigate any of those factors." As per the neighbor the run off goes down towards the access. It will mostly be up to AT&T to see if they can work with the applicant at least to help run the water out somewhere and not just runoff into the access.

Mr. Zobrist asked why it couldn't be required of the applicant in the approval of the construction plan that they are directing the water away from the neighbors.

Mr. Gatobu responded that since this is a special use permit there could be a condition that there be some runoff control.

Mr. Zobrist asked staff to draft some language to add to the conditions.

Mr. Gatobu replied yes, staff could work something out to see if they can get that into one of the conditions.

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

Kathryn Carmichael, representative for AT&T, pointed out that the landowner, the Ross' are here tonight. She presented a PowerPoint presentation to provide a general overview of the area and explain the improvement in coverage.

- The goal with this tower is to establish better coverage in this area. Their first approach is to look for existing buildings, water towers and other structures for location. If those can't be found, they look for landowners. In this case, this is a great land location because the property is narrow, but it goes up the side of a mountain. When looking at it from Route 20 the visibility is heavily mitigated because it is a significantly wooded area. However, it also has a backdrop of the mountains that provides mitigation for the visibility. They would use the existing driveway with an access road built back to the actual tower location.
- She presented photo simulations of the area taken from the intersection of Woodchuck Lane and Route 20. The tower cannot be seen from that location or other surrounding areas. The reference tree is 97 feet tall. The proposed tower is at 111 feet with a change in elevation. Because of the heavily wooded lot and the change in elevation, they are able to locate the tower in this area with the significant tree cover. Although they are not able to see it, it will still work.
- Because of the slope and the tree coverage, the visibility is heavily mitigated. There are several other tall trees in the area. The reference tree is 97' tall. The nice fact about this site is it has a natural clearing, which resulted in not having to remove as many trees as they would have had to before. They would place the pole in the natural clearing area. For the access they are going to cut off the existing driveway so they will not have to remove many trees at all.

Mr. Zobrist invited questions for the applicant.

Mr. Loach asked what the coverage percentage difference would be between seven and ten feet.

Ms. Carmichael responded that the additional 3' height makes a fairly significant difference to achieve coverage objectives, but she can't provide a specific percentage.

Mr. Smith asked if the two areas mesh together in coverage.

Ms. Carmichael replied that the two areas work together to provide coverage in this area. That is why the two towers are so close to one another.

Mr. Zobrist asked how many more towers would be needed to provide coverage all the way to Scottsville.

Ms. Carmichael replied that it depends on how far they want to go along Route 20. Obviously, this is an important area that they are trying to build up a network. The County probably has a significant amount of applications that are pending right now to try to make this road covered.

Mr. Zobrist asked if each tower gives about 3 to 4 miles of coverage.

Ms. Carmichael replied that it depends on the topography as to how much coverage can be achieved. Route 20 is an important area that they are focusing on right now.

Mr. Zobrist asked if AT&T has any problem with the condition to direct water runoff away from the neighboring property.

Ms. Carmichael responded that the access for the neighbor Mr. Gatobu mentioned runs parallel to where AT&T's access would be. AT&T needs to be able to get to that site. If there is an issue with drainage, they will need to ensure the stability of that road as well for their own purposes. Obviously, they will do their best with the construction to make sure that the drainage issue is taken care of.

Mr. Zobrist invited public comment. There being none, he closed the public hearing to bring the matter before the Commission.

**MOTION**: Ms. Porterfield moved for approval of SP-2010-00032 Avon Street Ross AT&T CV376 Tier III at ten feet above the reference tree with the condition presented by staff and an additional condition requiring the applicant to keep any additional runoff caused by the tower off the neighboring property.

Mr. Kamptner noted that he would finalize the language for the new condition prior to this item going to the Board of Supervisors.

Ms. Porterfield added that she would like it noted to the Board that even though this is in an historic district, both the ARB and Commission agreed that the only effect would be on the property it would be sited on.

Mr. Loach seconded the motion.

Mr. Franco pointed out the goal is not to try to keep all runoff from the adjacent site, but to reduce the impact of the increased runoff resulting from the tower.

The motion passed unanimously by a vote of 7:0 subject to the following conditions:

1. The proposed personal wireless service facility must be developed in general accord with the plan prepared by SAI Communications with a revision date of 12-2-2010, and a certified engineer's seal and signature dated 12-02-2010.

2. Additional condition to be added requiring the applicant to keep any additional runoff caused by the tower off the neighboring property. (Language to be finalized prior to this item going before the Board of Supervisors. The goal is not to try to keep all runoff from the adjacent site, but to reduce the impact of the increased runoff resulting from the tower.)

Mr. Zobrist noted that SP-2010-00032 Avon Street Ross AT&T CV376 Tier III personal wireless service facility was approved at the proposed height of ten (10) feet above the reference tree with staff's recommended conditions, as amended to reduce the impact of the increased runoff resulting from the tower on the adjacent property This item will be heard by the Board of Supervisors at a date to be set.

**SP-2010-00058 Charlottesville Power Equipment**

PROPOSAL: To establish outdoor storage, display, and/or sales of power equipment in the Entrance Corridor (EC) Overlay District
ZONING CATEGORY/GENERAL USAGE: Highway Commercial (HC) - commercial and service uses; and residential use by special use permit (15 units/acre) in Urban Area Neighborhood 2; Entrance Corridor (EC) - overlay to protect properties of historic, architectural, or cultural significance from visual impacts of development along routes of tourist access
SECTION: 30.6.3 (a)(2) which allows outdoor storage, display and/or sales in the Entrance Corridor (EC) Overlay District by special use permit. No residential units are proposed.
COMPREHENSIVE PLAN LAND USE/DENSITY: Community Service - community-scale retail, wholesale, business and medical offices, mixed use core communities and/or employment services, and residential (6.01-34 units/acre).
ENTRANCE CORRIDOR: Yes
LOCATION: At the northwest corner of the intersection of Rio Road East (Rt. 631) with Putt Putt Place
TAX MAP/PARCEL: 06100-00-00-124F0
MAGISTERIAL DISTRICT: Rio
(Margaret Maliszewski)

Ms. Maliszewski addressed the Board, stating that this is an application from the Charlottesville Power Equipment Company to establish outdoor storage, sale, and display of power equipment in the Rio Road East Entrance Corridor.

- The site is located at the corner of Rio Road East and Putt Putt Place. This building previously housed the Rivals and Boudreau's restaurants. There are various types of power equipment proposed to be displayed in the areas highlighted in the plan. It includes the patio area in front of the building, three areas along the perimeter of the parking lot, and one small area along the addition at the back of the building. The applicant has outlined the types of equipment to be displayed, such as lawnmowers, golf carts, trailers, etc. in the five different display areas. It is a total of 6,591 square feet of display area.
- A special use permit is required for this use specifically because it is proposed in the Entrance Corridor. The intent of the requirement for the special use permit is to review the visual impacts of the outdoor storage, sale, and display activity on the Entrance Corridor street. The ARB reviewed this proposal and had no objection to the use with

recommended conditions. With those recommended conditions of approval, no detrimental impacts to the corridor are anticipated.

- The ARB's recommended conditions pertained to the location and method of display, landscaping, and the height of items for display. Those are typical conditions for this type of use in the Entrance Corridor. Because the ARB had no objection to the use with those conditions, staff is recommending approval with the conditions as presented in the staff report.

Mr. Morris asked if they had begun to move into that location.

Ms. Maliszewski responded that the business is in the building.

Mr. Lafferty commented that this is a "well thought out plan" that includes a lot of detail.

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

L.F. Wood, the property owner and landlord for Charlottesville Power Equipment, represented the applicant. He made the following comments.

- Charlottesville Power Equipment are moving their location due to the loss of lease on Route 29 next to the new Hibachi Inn. Their lease was up on January 30 and they have rented some storage space across the street to move in part of their items. They are operating within the building and have stored a few small lawnmowers and equipment on the property. This is a small equipment operation. There are no big tractor-trailers or items that have significant height. They have worked closely with staff and the ARB. On February 17, 2011, the ARB recommended approval based on several recommendations as presented to the Commission. They have no problem with that.
- Most of the shrubbery and growth is mature. Most of it was planted in 1975 with Snow's Nursery. The shrubbery has matured since that time. He likes the idea of adding some other small greenery and two more trees. One of the trees has been knocked down twice by automobiles running off Rio Road. That is very reasonable.
- The conditions were discussed at the ARB meeting. They made a request in condition 2c in the last sentence where it says, ". . . and shall be spaced in a form to form a hedge at maturity." That hedge is in front of Area D, which is on Putt Putt Lane between Putt Putt Lane and the parking lot. Putt Putt Lane is a private road that they built to state standard years ago in 1975. It is not on the Corridor itself. It is partially visible from the Corridor.
- However, they worked very closely with the Albemarle County Police Department. As most know behind this location at the very end of the road there is Rio Hill subsidized housing units. Although it is very nicely operated, they have some problem with security, vandalism, and trespassing. They would ask that the condition be changed to take out, "to plant a hedge." They would like to plant some separate smaller 30" height shrubbery type of things between the existing mature trees. They would hate to see a hedge that would be a hiding area so when police are making calls to Rio Hill or some vandalism on this property that police officers would be able to have a sight distance into the property for their safety in performing their duties.

- They would accept all of the other conditions and agreed to do that. They plan to go before the Board of Supervisors on April 1. He asked for a favorable recommendation with these conditions.

Mr. Zobrist asked how the last sentence in paragraph C would be modified to meet the security need.

Mr. Wood suggested eliminating it from the word "and" on. They did not want to be cited in violation. Therefore, it would be made clear and simple. Charlottesville Power Equipment would keep the area well maintained.

Mr. Zobrist invited public comment.

Bruce Draper, Chairman of Trustees for Aldersgate United Methodist Church, noted that the church was right across the street from the proposed location. They are proud and happy to have this fine company to come in their area because it would be a whole lot better than what they have had given the history of the bars that were in the area. The applicant maintains their property in excellent shape. He thought this business would be a big asset to the neighborhood.

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

Mr. Lafferty asked if the hedge was 30".

Ms. Porterfield clarified that Mr. Wood doesn't want the plantings to grow into a hedge, and asked if he could just put in bushes and space them.

Mr. Wood responded that he has no problem with that.

Ms. Maliszewski said that the recommendation came from the ARB, based on staff's recommendation. Individually spaced shrubs was not what she recommended.

Mr. Morris asked if she sees any problem with leaving space for the safety and so on.

Ms. Maliszewski responded that she doesn't review for safety, but only for Entrance Corridor guidelines.

Mr. Lafferty commented that he doesn't want the applicant to get in trouble with the ARB and have to go back through the ARB process.

**Motion**: Mr. Lafferty moved to approve SP-2010-00058 Charlottesville Power Equipment subject to the conditions as recommended by staff with the part of the sentence in 2c pertaining to the hedge growing to maturity removed. Mr. Morris seconded the motion, which passed unanimously (7-0).

Mr. Zobrist noted that SP-2010-00058, Charlottesville Power Equipment would go to the Board on a date to be determined with a recommendation for approval with the following conditions, as amended:

1. Equipment shall be displayed only in Areas A, B, C, D and E shown on sheets 1, 2 and 3 of the plan entitled "Tax Map 61 Parcel 124F Amended Site Plan" prepared by Roudabush, Gale & Associates, Inc., revised January 18, 2011.
2. The site shall be landscaped as follows:
   a. Add one tree in the planting strip between Putt Putt Place and the parking row labeled "Area C" and one tree in the planting area between the rows labeled "Area B" and "Area C." These trees shall be a species whose mature height is coordinated with the overhead electric lines and shall be planted at a minimum of 3½" caliper (if reasonable for the species). Provide the height of the overhead lines.
   b. Add three small trees or large shrubs between the existing trees in the planting strip along Display Area D.
   ~~c.~~ Add shrubs in the planting strips between the parking lot and Putt Putt Place, including the corner at the intersection with Rio Road. The shrubs shall be a mix of species and shall include evergreen shrubs, but may also include deciduous species. The shrubs shall be a minimum of 30" high at planting.
   d. Add this note to the plan: All site plantings of trees and shrubs shall be allowed to reach, and be maintained at, mature height; the topping of trees is prohibited. Shrubs and trees shall be pruned minimally and only to support the overall health of the plant.
3. Display items in areas A, B and C shall not be taller than 7', which corresponds to the bottom of the soffit on the existing building.
4. Display items shall not be elevated anywhere on site.
5. Balloons, banners, signs, and/or other similar items shall not be attached to equipment on display or installed anywhere within the approved display areas.
6. Items stored in the fenced storage area shall not rise above the height of the fence.

**ZMA-2010-00012 King Property**

PROPOSAL: Rezone .85 acre of a 1.775 acre parcel from Rural Areas (RA) zoning district which allows agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots) to Light Industrial (LI) zoning district which allows industrial, office, and limited commercial uses (no residential use). Remainder of the parcel is zoned Light Industrial.
PROFFERS: Yes
EXISTING 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: 352 Rio Road W (Rt. 631) at intersection with Four Seasons Drive
TAX MAP/PARCEL: 045000000025A0
MAGISTERIAL DISTRICT: Rio
(Judith Wiegand)

Ms. Wiegand presented a PowerPoint presentation and summarized the staff report.

- The purpose of this rezoning is to rezone a portion of a site that is now zoned Rural Areas with the other portion zoned Light Industrial, so that both portions will have the same LI zoning. She pointed out the location of the property and its proximity to Rio Road and the entrance to Four Seasons Drive. The property backs up to Squirrel Path, which is in the rural areas. Some of the property in the back was designated by VDOT for a future Western Bypass. The Comprehensive Plan recommends this area for Rural Area designation. This is the current zoning. Prior to the adoption of the ordinance in 1980 the property was zoned Light Industrial. The property was two separate properties at one time. The parcels were joined in 1982, but the zoning was left split.
- She presented an aerial photo of the property, which shows the residential property behind the property. There was significant tree coverage in the area. There is one small residence in the middle of the parcel, which is just under two acres in size. The property is located in the South Fork Rivanna water supply or watershed. Because of the water shed and other concerns related to this, the applicant has proffered to remove one of the by-right uses listed under Light Industrial. They would remove assembly and fabrication of light aircraft from component parts manufactured off site. Staff basically has no problem and were happy to recommend that both halves of the parcel be zoned Light Industrial. One reservation staff has is that this property is in the water supply and watershed.
- Staff is concerned about what could possibly happen on this property with various types of Light Industrial uses. Staff has considered this and has talked with the applicant about it. It is a small site. So many industrial type uses would simply not be possible here because of the size of the site. In addition, the fact that it is located in an Entrance Corridor would mean it would have to meet certain regulations. So things like storage yards might not be approvable depending on how they chose to try to lay something out. Staff also recognizes that any business that might go in that would have actual hazardous material would also have a course of monitoring and tracking system. So staff is not particularly worried about that because it would be very carefully supervised. They also note that the surrounding property that is also zoned Light Industrial does not have any kind of restrictions on it in the form of proffers or other restrictions.
- Basically, what staff would like to do at this point is go through the list of by-right uses as attached to the staff report. There are a couple that staff wants to ask questions about. Staff is open to questions from the Commission. The uses found in the Light Industrial District by right are compounding of drugs, fire and rescue stations, and then a whole series of manufacturing, processing, and fabrication and so on of various uses. Staff sees some potential issues, but it is hard to tell from this exactly what people would be using. Again, if it were a hazardous waste, it would be tracked and monitored. Staff had some reservations about photographic equipment because the process uses chemicals. Staff was okay with most of the by right uses. Number 8 is the one the applicant has agreed to proffer out, which is the assembly and fabrication of light aircraft. The storage yard use would have to be approved by the Architectural Review Board. Staff also looked at engineering, engineering design and assembly work because it could involve materials and might generate vibrations and noise.
- Staff found favorable factors as the rezoning would address the unique location circumstances of the parcel, which is currently split into two zoning districts. It would also make it consistent with the surrounding property.

- Staff found that unfavorable factors include the proffers removing only one potential use, as stated in the staff report. Staff is concerned that there is insufficient commitment to watershed and water supply protection because only one use was proffered out.
- Staff doesn't recommend approval of this rezoning unless some commitment is made to limit the uses to those appropriate in the location, particularly relating to the water supply watershed.

Mr. Zobrist invited questions for staff.

Mr. Lafferty asked who owned the triangular piece of property behind the site.

Ms. Wiegand responded that VDOT owns it, and confirmed that if VDOT sells it the property owner would have the first option to buy it since that piece was originally part of this property. The owner of the property is trying to rezone the property with the intention of selling it. He wanted to have one zoning on the property so someone would more likely be able to use it if sold. So there is no plan proffered as part of this nor is there a specific use being requested. She did not know if the property was sold if it would go back to this owner or another one.

Mr. Lafferty commented that the previous owner would have first right of refusal to buy the property back at the price VDOT paid for it. If that is the case, he understands that VDOT has to do something very soon. He asked if they are doing "a creep down toward the reservoir" and will the applicant come back in. That would be his concern.

Ms. Wiegand noted that was a question for the applicant.

Mr. Morris commented that he went by the location today, and the parking lot on the adjacent property was full of Century Link vehicles. He asked who actually occupies the site.

Ms. Wiegand responded that Century Link is in one of the buildings and the property that VDOT has acquired is in the back.

Mr. Morris asked if staff would be in favor of the application if the potential uses were proffered out not to be used.

Ms. Wiegand replied that staff would feel more comfortable with those removed.

Mr. Loach asked why the piece of land wasn't included in the LI zoning that's all around it, and whether there were any limitations placed on the surrounding properties.

Ms. Wiegand responded that she is not aware of any restrictions placed on adjacent properties. Apparently, only one of the parcels was included in the rezoning when it changed to LI.

Mr. Cilimberg noted that this is somewhat like other properties the Commission has seen in projects, such as Restore 'N Station – which had old zoning predating the 1980 zoning of the county, and what was done in 1980 was essentially reflecting the zoning that was in place. For

whatever reason one of these parcels originally had Light Industrial zoning and then the parcels were combined.

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

David Cook, representing the applicant Steve King, stated that they don't have anything more to add to what Ms. Wiegand has already presented. They are here to answer specific questions. There are no specific plans for the property at this time. The applicant wants to create a more saleable property by having consistent LI zoning on the property. It just seems to make more sense. They don't have anyone interested in the property at this time.

Mr. Zobrist invited questions for the applicant.

Mr. Morris asked if the applicant would be willing to include the additional proffers to restrict possible uses on #8, #9, and #10.

Mr. Cilimberg noted that #8 was already included.

Mr. Cook said when they were trying to come up with uses to proffer it was difficult because Mr. King is not the ultimate end user. Mr. King did not want to paint himself into a corner by limiting the property. They felt that at some point whatever the next use might be, they are going to come back before the Board anyway to get a permit to operate.

Mr. Zobrist noted that maybe not, which was the problem.

Mr. King noted that in order to get a business permit to operate they are going to have to come back and go through the necessary process to get the approvals. The size will limit some uses. However, because it is so uncertain what the next use might be they are reluctant to load it up and get the LI zoning, but not be able to do anything with it. That's why they were hesitant to put too many proffers in there right now.

Mr. Zobrist commented that it's difficult to rezone it when the intended use is not known, and staff is recommending against it.

Mr. Cook stated that the applicant is in agreement with the four proffer restrictions that staff has presented.

Mr. Zobrist invited public comment.

Barbara Kalemba-Sliwinski, an adjacent neighbor, supported the proposal.

Neil Williamson, of the Free Enterprise Forum, stated the question here is whether the need is there for additional concerns to the water supply watershed. He asked if Albemarle County is not checking industrial endeavors now. Right now if they place this on the property, they will have one-half of the property that has the zoning conditioned. Effectively they get it on the other side. He was not certain that a great gain is made here because he believed that through zoning

clearances and other issues that the County has through a site plan, etc. to deal with these issues, that he was not sure it belongs in a rezoning discussion.

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

Mr. Lafferty commented that maybe the conditions should be made on the whole property.

Mr. Kamptner pointed out that the rezoning applies only to the .5 acre portion of the entire parcel. The proffers would apply only to the portion being rezoned. This is an unusual type of proffer dealing with off-site impacts. That may be possible. The other option may be that it needs to go through to rezone the entire parcel, which is typical where they have land that is already rezoned and the applicant wants to amend the proffers to rezone the entire portion. It may be from LI to LI, but it is with the addition of new proffers.

Mr. Zobrist asked if the applicant would have to file a new zoning application and start over again. On the other hand, could they add the balance.

Mr. Zobrist replied that he would let Community Development staff answer that. They can look at the issue as to whether or not the proffer could be amended. The Commission could recommend that the proffer be amended to put the limitation on the entire parcel, "but that's really stretching beyond the boundaries of the land that's being rezoned." Staff can take a look at that question. He pointed out this is a different situation from an applicant who is offering to build an offsite road or something like that.

Mr. Lafferty said that he shares Mr. Williamson's concern about the proximity to the drinking water "and it's all downhill" to the reservoir. Everything is going to drain right into the reservoir.

Mr. Zobrist commented that Mr. Williamson was contending that there shouldn't be limitations put on LI.

Mr. Loach stated that Mr. Williamson was saying that the conditions for the water protection would fall under the site plan review, not the proffers themselves.

Mr. Zobrist asked if that was what he meant.

Mr. Lafferty replied that he thought the reason the proffers came up is the protection.

Ms. Porterfield pointed out during the time she has been on the Commission there have been at least two schools that have tried to go in on that side of the road. One proposal was turned down. The other proposal was a work session and did not get good feedback so it did not come back. If they are turning down schools due to watershed concerns, then she thought they have to be careful with industrial property.

Mr. Loach agreed.

Mr. Cilimberg noted this rezoning is for less than ½ of the total property. If they were going to develop this property industrially, it would likely be built on both sides of the line. The proffer being applied to this parted line is practically going to impose this limitation on the whole parcel. He did not know if it is a critical matter that they have to have the whole parcel under the proffer limitation. It practically, due to its size, is going to be limited if they feel like there should be a limitation.

Mr. Zobrist suggested that they simplify it. He asked Mr. King if he would be willing to proffer the four conditions to apply to the whole property.

Mr. King agreed that he would.

Ms. Porterfield asked if that was possible.

Mr. Kamptner replied that the Commission could recommend that. Staff would analyze it between now and the Board meeting to see if that was practical. He thought what Mr. Cilimberg said was true giving the very small size of the parcel.

**MOTION**: Mr. Lafferty moved for approval of ZMA-2010-00012 King Property with the entire parcel being subject to the four conditions as discussed.

Mr. Franco seconded the motion, which passed unanimously (7-0).

Mr. Zobrist noted that ZMA-2010-00012, would go before Board of Supervisors on a date to be determined with a recommendation for approval subject to the proffer as recommended by staff and as amended to delete four uses and to apply such deletion to the entire parcel. Staff to determine legality of applying proffers to the entire parcel between now and the Board meeting. (Set Out Recommended Proffer Changes, as follows:)

The uses of the Property permitted by right shall be all those uses allowed by right under Section 27.2.1 of Chapter 18, Zoning, of the Albemarle County Code, as that section is in effect on [date of rezoning action], 2011, a copy of which is attached hereto and incorporated herein as Attachment A, except for:

- Manufacture, processing, fabrication, assembly, distribution of products such as but not limited to:
    - Photographic equipment and supplies including processing and developing plant. (section 27.2.1(3))
- Assembly and fabrication of light aircraft from component parts manufactured off-site (section 27.2.1(8));
- Storage yard (section 27.2.1(9));
- Engineering, engineering design, assembly and fabrication of machinery and components, including such on-site accessory uses as machining, babbitting, welding and sheet metal work and excluding such uses as drop hammering and foundry [section 27.2.1(10)].

**The Commission took a brief recess at 7:00 p.m.**

**The meeting reconvened at 7:08 p.m.**

**ZTA-2010-00008 Farm Winery Outdoor Amplified Music**

Amend Sec. 5.1.25, Farm wineries, of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Sec. 5.1.25 to amend the noise standard for outdoor amplified music at farm wineries. The full text of the ordinance is available for examination by the public in the offices of the Clerk of the Board of Supervisors and in the Department of Community Development, County Office Building, 401 McIntire Road, Charlottesville, Virginia. (Amelia McCulley)

Mr. Zobrist reminded meeting attendees that this proposal addresses two very narrow issues, and staff has made a recommendation to the Commission of two proposed zoning text amendments. That is all the Commission will discuss and vote on tonight. He asked that speakers direct themselves to the zoning text amendments since the Commission has spent a lot of time with this issue and are ready to move it on.

Ms. McCulley stated that given the legal issues pertaining to the ZTA, Mr. Kamptner would begin the presentation by providing some context for the discussion. The staff presentation will be given after that.

Mr. Kamptner presented a PowerPoint presentation and a memo addressed to Albemarle County Board of Supervisors and Planning Commission dated March 1, 2011 regarding farm wineries; regulation of outdoor amplified music. He said that what's being addressed here is why weddings and wedding receptions are allowed at farm wineries, with the second issue being the regulation of outdoor amplified music. There are three topics discussed in the memorandum.

Regarding the first issue, he stated that weddings and wedding receptions are usual and customary activities at farm wineries; events with 200 or fewer persons do not have substantial impacts on the public health, safety or welfare; and weddings and wedding receptions at farm wineries are considered to be agricultural activities. He reported that state law section 15.2-2288.3 says that usual and customary activities and events at farm wineries "shall be permitted without local regulation unless there is a substantial impact on the health, safety, or welfare of the public." He explained that under the county's farm winery regulations since 1998, special events including wedding receptions have been allowed – so wedding receptions under the prior and current farm winery regulations would be considered to be "usual and customary." The standard under state law is that usual and customary activities that have to be allowed without restriction are examined statewide, so county staff was part of a team in 2007 and 2008 that surveyed the statewide practices of localities that have farm wineries – and the conclusion was that these two activities are "usual and customary" statewide.

He said that staff also looked at a house bill in the General Assembly that failed in 2008, which included a lengthy list of activities and events that would fall under the definition of usual and customary activities. That bill failed. In a meeting with the Farm Winery Council in 2008, they indicated that the farm winery council would rely on the list in that bill as creating the uses considered to be "usual and customary." Since the county had allowed wedding receptions since

1998 and had studied the statewide activities, there was no reason for county staff to determine otherwise as it was consistent with other localities.

Mr. Kamptner said that the second issue staff considered was identifying substantial impacts that might arise from the various activities and events held at farm wineries, and unless a substantial impact is found state law prohibits the county from regulating these activities.

County staff identified three potential impacts – entrances onto public roads, which would be regulated by VDOT; health and sanitation issues, which would be regulated by the Department of health; and noise, which is left to the county. So no substantial impacts were found for those events that will have 200 or fewer persons, but staff recommended and the Board adopted regulations to require a special use permit for certain types of activities and events including weddings and wedding receptions if more than 200 persons would be attending at any one time.

Mr. Kamptner stated that the last – and most controversial issue – is the county's conclusion that weddings and wedding receptions at farm wineries are considered to be agricultural activities. He acknowledged that in the abstract, it is "not the easiest conclusion to reach," and in the unique context of farm wineries the county has determined that these activities are agricultural in nature. The definition of agriculture in the Zoning ordinance includes agricultural industries or businesses, which is fairly broad in scope and may be an "underappreciated clause" in the definition of agriculture. He stated that the business part of a farm winery includes promoting and marketing wine, which is accomplished through a wide range of activities. The business part of a farm winery includes promoting and marketing wine, which is accomplished through a wide range of activities under state law – and within the terms of that law, they market and sell their products. He stated that weddings and wedding receptions are usual and customary activities at farm wineries and the county's farm winery regulations require that they be related to agri-tourism or wine sales, which brings the activity back to the agricultural link.

Mr. Kamptner said that the final element is a 2009 amendment to the state law that compels localities to take into account the "agricultural nature" of the activities of farm wineries that market and sell their product, and the county has determined that these activities are agricultural. He stated that the most relevant point of that conclusion is how this fits into the regulation of outdoor amplified music. The obligation under state law is to balance the interest of farm wineries with the affect on adjacent owners and nearby residents. The second issue is that the noise standard for outdoor amplified music at farm wineries precludes the enforcement of the general noise regulations by the police department, and that is the companion controversial issue.

He reported that the third issue raised was whether the county can ban outdoor music at farm wineries all together.

Mr. Kamptner reported that state law stipulates that no local ordinance regulating noise other than outdoor amplified music arising from activities and events at farm wineries shall be more restrictive than that in the general noise ordinance. The companion provision states that in authorizing outdoor amplified music at a farm winery, the locality shall consider the affect on adjacent owners and nearby residents. The current audibility standard borrows from the standards in the general noise regulations and considers the impact of outdoor amplified music

on adjacent owners and nearby residents. He noted that the standard itself "is a pretty high standard," and the real complaint is its civil enforcement and the speed with which the county is allowed under state law to proceed.

Mr. Kamptner said that the audibility standard is not the only possible standard though, and the other standard being debated is the decibel-base standard – which in the proper context is a reasonable standard as well. He emphasized that the rest of the land uses in the Zoning ordinance are subject to a decibel-based standard.

Mr. Kamptner stated that the county has taken the position that the noise standard for outdoor amplified music at farm wineries precludes the enforcement of the general noise regulations. He explained that outdoor amplified music generated during a wedding reception is a sound generated from a land use, so like every other land use it is enforced by the Zoning Administrator and her staff as a zoning violation under the Zoning ordinance. He explained that there are two classes of penalties – civil and criminal – with civil being the typical approach and state limits of $250 for the first violation and $500 for each subsequent violation. He said that the other civil remedy is injunctive relief, and one of the farm wineries' neighbors has obtained a temporary injunction against Keswick Vineyards. He emphasized that a police officer has no authority in civil matters with limited exceptions that are inapplicable here, and state law prohibits police from enforcing civil matters except for serving subpoenas, etc.

Under the general regulations such as the zoning noise regulations, he said, sound produced during lawfully permitted, bona fide agricultural activities is exempt. He explained that because of the way the county has viewed these events in the past, they would fall under the exemption under the general noise regulations.

"What the farm winery outdoor amplified music standard is," Mr. Kamptner said, "is really an exception to the general exemption that exists – not only in the general noise regulations but also in the zoning noise regulations."

He stated that the final issue of whether the county can ban outdoor music at farm wineries altogether was considered, as the state law refers to localities regulating noise and authorizing outdoor amplified music. Under a Dillon Rule analysis, Mr. Kamptner explained, staff concluded that if the General Assembly had intended to enable localities to prohibit outdoor amplified music it would have used the word "prohibit." He said that the word "regulate" is the lesser power than the power to "prohibit," so it can't be concluded that that power would even be implied from the power that's granted. That is the introduction and Ms. McCulley will continue on with the rest of the presentation.

Mr. Zobrist thanked Mr. Kamptner for getting the memo out to the Commission to review.

Ms. McCulley stated that the county received a letter late this afternoon from Jake Bushing of Pollock Winery, which was forwarded to the Commission by email and appears in paper copy at their places, and noting that Mr. Bushing supports the use of a decibel-based standard.

Ms. McCulley reported that on May 5 there was a comprehensive rewrite of farm winery regulations that included changes to sound regulations, and December 2 there was a roundtable involving the public with a December 5 resolution of intent from the Board. She said that on January 18 the Commission held a work session and February 8 they discussed the item again and directed staff to proceed to public hearing, which is this meeting, with an audibility standard to be enforced by the police department. She stated that the next day the Board discussed having a decibel-based standard and set their public hearing date for March 9. She indicated that the county attorney has drafted both ordinances, as attached in their reports.

Ms. McCulley stated that there is a need to balance "two competing needs" in terms of the public purpose, and it's important to evaluate what you are trying to achieve by amending regulations. She said that the standard and enforcement must be "reasonable, effective, and efficient," and she has spent considerable time contemplating what those words mean in terms of regulation. She said that to be reasonable it must consider the needs of the wineries and neighbors, must be possible to achieve, must be objective, and must be easily measurable. She stated that there are differing opinions as to whether an audibility standard or decibel-based standard best achieves the purpose, noting that the decibel standards under Section 4.18 were adopted in 2000 after "many many years of work" that included community sound readings and work with a community noise task force. She stated that the county has found that those standards do work for land uses and in researching them has found that they are "very comparable with other localities' standards," not extreme in either direction.

She said that another aspect of being reasonable is that it needs to be easily measurable, and a decibel standard needs an instrument to measure it – which is one issue that continues to resurface. She stated that zoning currently enforces a land-use based decibel ordinance and uses a sound meter, which is regularly calibrated, and moving to a decibel standard would not be new at all.

Ms. McCulley said that to be effective the same situations must be treated equally, and one concern that has been raised is that imposing a decibel standard to a farm winery creates an inconsistency in regulation when compared to an event such as a wedding on an adjoining property. She clarified that there is already a "deliberate, intentional inconsistency" in sound regulations on private property versus what is controlled through zoning regulations as a land-use activity. "It's purposeful. It's a division of private use of one's property and use of one's property that's subject to zoning regulations." She commented that this inconsistency has existed for many, many years, and prior to the audibility standard it was a nuisance noise level; and prior to the current decibel levels it was a different decibel standard.

She said that to be effective, there must be some determination by the landowner as to whether they are in compliance. She stated that weddings that are resulting from a special use permit for special events under the zoning regulations are subject to a decibel-based standard – and staff is suggesting that weddings that take place on farm wineries should also be subject to this standard. She said that those who are having to bear with a nuisance next to them have some basic needs and want some relief from that noise as quickly as possible, also seeking some assurance that it's not going to be a recurring problem. While police may have a greater and more noticeable presence, they cannot shut down an event. She said that police work toward voluntary

compliance, and an extremely small number of noise complaints – less than 8% - make it to summons. She said that staff's suggestion is to have police team with zoning to be the initial response in those limited cases.

Ms. McCulley reported that the third criteria, efficiency, relates mostly to enforcement, but also relates to the standard. She noted that this includes choosing the right resources to use for the job, and staff suggests that use of the police department for this type of enforcement is an inappropriate use of that "very strained and very understaffed resource." She emphasized that a noise complaint is a very low-priority police call, and the county police department is currently understaffed by 20 officers below the Comp Plan staffing recommendation of 1.5 officers per 1,000 population to achieve desired response times.

Ms. McCulley stated that it's important to achieve the desired result, and staff suggests that a decibel standard will better allow wineries to avoid violations, and wineries themselves have said it allows them to better determine whether they are in compliance or not. She explained that if a complaint comes in after normal business hours and the police are available, they would respond; if the violation continues, zoning staff would observe it and send a notice of violation if it recurs. The next step, she said, is civil penalties – but there is also an injunction available to zoning whereby a judge agrees that a person has not followed requirements and imposes sanctions accordingly. If there is a recurring problem, the county could go must quicker to an injunction route to try to get more serious and longer-lasting results. Under a criminal proceeding, the police would go to a site typically more than once looking for voluntary compliance and if the problem recurs they would issue a summons that would likely result in a misdemeanor fine for a specific date and time. The civil injunction allows this court order to stand as long as necessary with the sanctions imposed if it is violated. She suggested that the civil route actually provides a greater enforcement action. What they are learning in this process is they should go much more quickly to that route rather than the civil penalty route because it is not going to be as good a process as this kind of thing.

Ms. McCulley concluded by stating in summary that staff continues to recommend approval of the draft ordinance, which is a decibel-based ordinance enforced by zoning. Alternatively, the Commission may choose to recommend approval of Draft Ordinance E – which is the audibility standard enforced by police. If there are specific questions, Mark Graham is here to try to answer any engineering questions and Lieutenant Allen from the Police Department to answer any police questions.

Mr. Zobrist thanked Ms. McCulley and asked if there were questions for staff.

Mr. Morris noted that as far as the administrative program that he heard laid out that one of the things he was impressed with was that she felt that if there is a complaint issued about a wedding that action needs to be taken very quickly. He asked if zoning would take the action in a situation where a complaint is issued about a wedding.

Ms. McCulley explained that in all likelihood most weddings would occur outside zoning's regular business hours, and in the event of a complaint a neighbor would inform the county that it was a nuisance. From then on, once they are informed about it, the county would schedule

time to be able to witness if it is a continuing violation. Most of the time there is voluntarily compliance and it is not a continuing problem. However, if it is they will plan to be there and witness the events and are take the necessary action.

Mr. Morris said if it continues how will they know that it continues and what action can the neighbor take. What he envisions if they go with staff's plan was zoning is going to have to establish a "duty roster" that would be in place every time there is going to be a wedding or whatever at any of the wineries. That would likely mean that management, which is exempt from overtime, would need to be on call, go out, and respond immediately. They would need a backup in case there were two violations at the same time. He commented that the Zoning Department is "just as strapped" as the police department. He questioned how they would provide action immediately to the person issuing the complaint. If this happens on a Friday night, they don't want to wait until Monday morning for a return phone call.

Ms. McCulley stated that in off-hours, the call would go to the police department and an officer would go out and talk to the winery if they can fit it in just as they do currently with their noise complaints. There is about a 92% success rate in getting the sound turned down. She explained that if zoning were informed of it on a Friday night the following business day staff would be in contact with that winery and find out what their subsequent events are and what their plan is for that location. Staff would make plans to be there to witness it. What happens in reality is that this is a very limited circumstance. It has really amounted to such a limited circumstance that one individual, a code enforcement officer, has been able to schedule his time to be off during the week in order to be available via phone to take the call on Saturday night when it occurs.

Ms. Porterfield clarified that Mr. Morris is saying that Zoning should be on call. These types of events are going to occur on Friday, Saturday, Sunday and holidays. So Ms. McCulley was not offering to schedule her staff to have them be on call so they take a complaint.

Ms. McCulley responded that this would be "a significant budgetary impact." So what staff would do in those situations is plan for somebody to be available during the time of the next event with time taken off the regular work week to compensate for the overtime or pay them for that limited time they are there say on that Saturday night.

Ms. Porterfield noted otherwise what she was saying is that she would direct the police to take those calls on Friday night, Saturday, Sunday, holidays or anytime her office is not open.

Ms. McCulley replied that she did not have any authority to direct the police to do anything. Her understanding, and Lieutenant Allen can speak, is that if the police receives a call through 911, and are available and the person insists on an officer responding to a call, they will attempt to respond to that call if at all possible – even if it's a zoning violation.

Ms. Porterfield asked if that was different than what has been happening, that people have not been calling the police.

Ms. McCulley replied that people have called the police even after calling Zoning.

Ms. Porterfield noted that would have been when Zoning staff was not available. To follow that, she was reading Zoning staff's recording, which says there is going to be an on-site visit within ten business days and that these calls will be taken care of in the order received except for the ones that are environmentally hazardous or regard public safety. Does that mean a complaint about a winery event could drop down even farther than actually being gotten to the Monday after the weekend when something happens?

Ms. McCulley replied that just like the police Zoning has to work it into their work load. They have lost probably at least half of their enforcement staff. Their numbers are significantly down and they are handling a high case load on top of building permits, which are time-oriented. Knowing that these types of things are time sensitive and that another event is probably going to occur potentially as soon as the next weekend they would try to get to it, be available for that next event, talk with the winery, and try to work it out.

Ms. Porterfield noted in other words winery event complaints were not going to be "immediate gratification" so to speak because of Zoning's time frame as to when they could get to these things.

Ms. McCulley said the intermediacy after the event has ended is to resolve it so it does not recur.

Ms. Porterfield agreed, but asked if it could be a few days before staff could get back to the complainant after the event occurs.

Ms. McCulley agreed that it could be.

Ms. Porterfield asked if this situation would happen regardless of whether it's an audibility standard or a decibel standard. Is it the same situation as far as reporting the violations and the response to the reports. In the County's response that has been delineated, does it matter whether it's the audibility standard or the decibel standard and is there any difference in the response.

Ms. McCulley responded that if it's assigned to Zoning staff, there would be no difference in the response and it would be treated equally. In fact, since they currently have land uses controlled by decibel level now she would not be surprised if some of the loud noise calls the police currently get could be land-use based noises that Zoning should be regulating anyway. That is what staff is suggesting happens.

Ms. Porterfield clarified that it makes no difference as to which of the two ways, and Ms. McCulley replied that was correct.

Mr. Loach said just for clarification on level of noise allowed they gave the example of the tractor at 6 a.m. He asked if a tractor is allowed to be there because of the right to farm law, and if so does the 65-decibel rule apply.

Ms. McCulley responded that it is allowed because of the right to farm, and the fact it is an agricultural use makes it completely exempt.

Mr. Loach noted that they were almost talking about multiple levels. One is a tractor and the other is the stump grinder application, which was too loud.

Ms. McCulley noted that it was at 50 and 65 decibels.

Mr. Loach said now they were into a third level, which was the farm winery level that is a decibel level they were trying to determine.

Ms. McCulley said the decibel level staff is recommending is the existing decibel level that would apply to the stump grinder if he had been allowed to open. It applies to any land use in the rural areas or residential district that is regulated.

Mr. Loach noted that staff made the analogy of the tractor at 5 a.m. So it seemed like a wedding at 5 a.m., if they wanted to start go on the honeymoon early, would be okay, too because it is in the rural area.

Ms. McCulley replied that she did not intend to imply that.

Mr. Loach noted when the police responds they are using the audibility standard when the officer stands back and listens to determine if it is an acceptable level. Therefore, it seems like they have a problem because they are asking the police to go out and apply an audibility level, which they are actually saying is void because it is a land use situation. There seems to be some inconsistency with this proposal as to how and when the police respond. There needs to be a clear methodology if they are to respond. It seems to be a case of fixing something that isn't broken. If they have a 92 percent success level that seems to be pretty good.

Ms. McCulley explained that the police enforce the audibility standard in a way that she would love Lieutenant Allen to explain. It is not as rigid as neighbors to farm wineries would expect us to enforce it. It is not if it can be heard at all in any way, shape or form it is a violation. They are using their best judgment as to whether it is loud enough to be a nuisance and it is audible, of course. She was afraid that the standard that people are expecting us to uphold is more significant and impractical for farm wineries to achieve.

Mr. Lafferty asked for some clarification as to the magnitude of this problem.

Ms. McCulley responded that of all the wineries in Albemarle County, there are only complaints from one – but some wineries are in the process of expanding their event area, with two under construction for large event spaces of 10,000 square feet. Therefore, it is possible that there may be more in the future. Right now, it relates to one winery only.

Mr. Lafferty asked if staff thus far has been able to handle the situation, with immediate action desirable but not practical in this case.

Ms. McCulley replied that the neighbors would disagree, and in retrospect, she feels the county would move quicker in the case of a violation. She was not saying in that particular case. She thought that based upon what they have learned they would not track the normal civil penalty

route until they max out at $5,000 and then go to injunction if it continues. They would go much quicker to an injunction to get the desired result of compliance.

Mr. Lafferty said he thought this has been a learning lesson for all of us.

Mr. Cilimberg emphasized that this regulation is not really about weddings, it is about "amplified music," and that's it. The rest, as Mr. Kamptner said, is considered to be agricultural activity. They are really talking about the regulation of amplified music outdoors and that is not regulated. They are talking about a very specific aspect.

Mr. Zobrist asked if staff had considered a safe harbor regulation whereby wineries could self regulate, adding that he doesn't see any reason why they can't use their own decibel meters. He said that if someone makes a complaint, they could prove the noise level with the decibel meter. That way they would not get a violation. That way the winery would know at all times whether they are in compliance or not. The Commission had a lengthy discussion and gave very specific instructions to staff. He was not sure either one of the regulations comes up to what the Planning Commission said. That may not be relevant because the Board is going to have their hearing in a few days to make their decision. He would like to help them if they can. If they could create some kind of safe harbor for the wineries so they could install their continuous monitoring machinery that they cannot tamper with might be something that at least it was up to them whether to do it or not. If someone complained then they could provide that night's readings. He could not figure out how the decibel meter works even after reading all of the technology on it. He was perplexed on how they could solve this problem. There were more and more people coming to Albemarle County and many brides wanted to get married here. He was for all of that stuff. But they have to figure out what those who live next to the winery are willing to tolerate and how do they do it without spending a lot of money. It seems that in many areas in law they give people a safe harbor. Someone does not have to register if they do a, b, c, and it is up to them to proof it if he comes knocking on your door. He asked if staff has considered that at all.

Ms. McCulley replied yes, but maybe not at the degree he mentioned although staff has done some interesting research. She responded that with a decibel-based ordinance, self-enforcement could be used to determine compliance – and a sound meter reading must occur for five minutes and then establish an average reading. The machine itself, if it is on the right way to measure, will give the final average measurement of what that decibel level is. There is machinery that could be fixed that a winery could use or hire somebody to do. There is equipment that could be used by a hired third-party expert who could be a professional expert, which is what quarries and other industrial sites often use. The remote sensing equipment, wireless equipment, and fixed equipment is out there. She stated that this would be helpful, but it may not stand up the test of a good attorney in court who might question whether or not it was tampered with unless there was a video of the entire recording time. She thought that a decibel based ordinance allows wineries to self regulate.

Mr. Zobrist stated that if they give a safe harbor to wineries and they give staff their records and it looks fine they are not going to enforce. He questioned how they would get a smart attorney on the other side unless it is the neighbor who is suing for an injunction. He suggested that the let the neighbors worry about that one. It would make it simpler to enforce because they would

not have to have decibel readers in the hands of anybody. If they receive a complaint let the police go out there. If the police decide it is too much noise they will talk to them. If they don't lower the noise, then zoning can go out on Monday morning and ask them for their reading. Some people will tamper and cheat and some won't. Those who violate or cheat would obviously receive a lot more calls. He was for simplicity and certainty on both sides. He thought they might be going about it in the wrong way.

Mr. Morris suggested that law enforcement person address the Commission to discuss the decibel-based system in how they handle it now and what are their recommendations.

Mr. Zobrist invited Lieutenant Allen to come forward and address the Commission.

Lieutenant Ernie Allen of the Albemarle County Police Department addressed the Commission.

Mr. Loach asked Lieutenant Allen what the criteria would be for the 92% success in establishing that both parties are happy so the officer can leave the site.

Lieutenant Allen responded that last year there were over 700 calls, with only 13 summons issued. They need to keep in mind that the police standards are more flexible – with them going 100 feet from where the complaint is coming from and if it can be heard, "it is too loud." If it is not 100 feet, then he basically goes inside the residence with all the windows and doors closed. Then if he can hear it, then it is too loud. He stated that it is really up to the responding officer and subjective as to whether a noise is too loud and whether to approach the individual to ask them to turn it down. It is on a case by case basis.

Mr. Loach asked what percentage of calls reaches the point where the police determine that the noise level is acceptable, but the complainant doesn't feel that way.

Lieutenant Allen responded in his experience that there is usually at least 80% compliance. They do not have a noise meter and is all from what he can hear. If there are repeat visits to the same locations a summons would likely be issued. He would doubt that the first time they received the call that a summons would be issued. It would only be after repeated offenses for the same location. Again, they can't shut it down.

Mr. Morris asked if the audible standard has worked for him and for his officers.

Lieutenant Allen responded, "Yes."

Mr. Zobrist opened the public hearing and invited public comment. There are two propositions before them. Attachment E is staff's attempt to response to the Commission's prior suggestion. Copies are available for the public.

Al Schornberg, owner of Keswick Vineyards, addressed the Commission, stating that he supports staff's recommendation that a sound ordinance be created using the decibel metric and opposes the recommendation that it be based on audibility. He also said that when the farm winery ordinance was changed to support farm winery activity in Albemarle and agri-tourism,

the intent of the sound ordinance was not for a neighbor to stand 100 feet from the property line with an ordinance enforcement officer and "struggle" to hear a sound. "That's why it has to change, and that's why we need a decibel reading."

Patrick Cushing, Director of the Virginia Wine Council, addressed the Commission and stated that he sat in on the roundtable last December. He stated that the council represents 190 wineries and 300 vineyards in Virginia, and his primary focus is lobbying the General Assembly for things like tax credits and funding for the wine board. He said that he is here in support of the 19 Albemarle wineries, adding that it is important to have activities – especially weddings – and outdoor amplified music is a key component that plays a large role and drives a large portion of sales on the premises of Virginia wineries. "Our wineries rely on the foot traffic at wineries. So the more people that they can bring on their site the more wine they can sell and the more that industry can be driven – especially here in this county." He stated that the wineries are a major driver of economic activity. Over the next couple of months there is a new study pending that looks at the economic impact of wineries on the Commonwealth. They have some new funding to take a look at that. They expect that to be a very large number. That number has not been updated probably in about ten years. When looking at this ordinance, the council supports a decibel-based ordinance. It is important that the wineries have the ability to self-regulate. He added that the idea of self-policing is an important aspect of this ordinance and that is what the decibel measurement provides. He said that the audibility standard is "way too subjective," and any pin point of music or "blip on the radar screen" from amplified can result in events being shut down. They would like to see the decibel standard for enforcement.

Elizabeth Lewis Page addressed the Commission and stated that she has lived at Linden Lane Farm for the past 33 years. Until last year, they have enjoyed a very quiet and peaceful existence, but that has been "abruptly interrupted" by a number of very loud events coming from the winery next door. She stated that at times the noise from these events was overwhelming and unsettling. She would appreciate anything that can be done to prevent this type of abusive behavior in the future.

Lee Beltrone addressed the Commission, stating that she has laryngitis. Jason Beltrone, her husband, addressed the Commission and read a statement on her behalf. Mr. Beltrone said that there are several provisions in this proposal by zoning that "seem unlikely to work." He explained that neighbors have no way of knowing whether there would be events that might have outdoor amplified music, as the events aren't advertised. Mr. Beltrone noted that there are a dozen wineries and cider-works already operating throughout the county, and it would be unlikely that staff could monitor them simultaneously with one sound meter and limited staff. He said that the staff report also says that the civil process is efficient and effective for compliance when voluntary compliance does not work, and residents could initiate the process by calling the zoning complaint hotline. The Commission has a copy of the recording on the complaint hotline. He stated that complaints are monitored during normal business hours and investigations are conducted within a 10-day period – days after the outdoor event takes place. "There is no possibility for an alleged violation to be checked as it is occurring under that criteria, and perhaps no way for actual violation to be ultimately cited."

Judith Summer addressed the Commission, stating that she supports the audibility standard and police enforcement of the noise ordinance. She said that noise pollution in any form is "unwelcome sound" that negatively affects human health, adding that it can make people physically ill. She suggested that anyone wanting to have amplified should get a special use permit from the county, which would alert enforcement that someone would be having amplified sound. Ms. Summer stated that sound waves travel according to the laws of physics, but variation and outdoor environment introduce unpredictability into estimating the path and intensity of sound. She added that refraction from temperature differentiation can cause sound waves to bounce up, and underneath you won't hear anything; diffraction is the spread of sound waves around an object, such as a concrete wall. Ms. Summer commented that the only winery that has had a problem with the audibility standard is Keswick Winery, which has been for sale for several years. She said that the easement agreement with the Virginia Outdoors Foundation allows them to build a 10,000 square foot permanent structure associated with the winery as long as it's not visible from Route 231. Ms. Summer indicated that the listing states: "Keswick Vineyards provides an opportunity to own an established and profitable vineyard winery estate." She said that the owners might not want to build a permanent indoor event venue given the uncertainty of their ownership, but the decision not to build means accepting noise limits on outdoor activities. Ms. Summer read a definition of emergency and said it doesn't sound like something zoning can handle, adding that 911 is the number people know to call for emergencies. She emphasized that if only one winery has run afoul of the law in the last year, it's unreasonable to expect a flood of 911 calls in the future. "Give the responsibility to law enforcement."

John Henry Jordan addressed the Commission, stating that his house is 2,000 feet from the property line between the Page's residence and Keswick Vineyards. He said that he has heard music from their events from his front porch. He stated that Ms. McCulley made a comment about zoning not having the authority to direct police, and he has been pondering how in the past the police were instructed not to respond to winery events. "Somewhere, somebody said 'don't go.'" He said that zoning is more significantly understaffed than county police percentage-wise, missing one zoning administrative position, one enforcement manager, and two out of six code enforcement officers. He stated that he supports the audibility standard and asked why the entire law is being changed for one violator – with 18 other wineries abiding by the law. He also pointed out that there have been considerable man hours spent on this issue, and if vineyards are given more leeway to make noise there's no way zoning will be able to handle it. He said that the county attorney has already indicated in the past that the use of a metering device would trigger additional professional requirements in terms of court, and while zoning staff is trained, they are not certified in the use of the meter.

Kathleen Jump addressed the Commission, stating that she has lived next door to a winery for the last 10 years and noting that she is in favor of the audibility standard as it is the "most stringent." She said the difference in her case is that a structure was built to contain the amplified music, and as an interim measure, the winery only played amplified acoustic music. She stated that the regulation of amplified music is the only aspect of a winery's operation that the county can control, and the number of events and hours the music is played are out of their control. She noted that there are also noises from catering businesses coming in and out, as well as noise generated from recycling. She commented that she hopes the Commission won't be

short-sighted in its consideration of measures pertaining to winery activities and amplified music. She encouraged them to protect the interest and attraction of persons who want to live in agricultural areas.

Art Beltrone addressed the Commission, stating that he lives at 6057 Gordonsville Road adjacent to Keswick Vineyards. He said that one part of the issue is the detrimental effects of outdoor amplified music from then vineyard property during events and weddings, but that is only one part of the issue. He stated that this meeting isn't about one vineyard in one location, noting that Sissy Spacek had told the Commission that the reason she selected Albemarle County for her family's home was "for the peace and tranquility in the rural area." She said that he and his wife also chose this area to get away from Long Island, and were drawn here because of the area's scenic beauty and strong sense of history. He stated that today the 19 wineries and cider-works stretch from one end of the county to the other and host a wide range of activities to promote their businesses, such as weddings with outdoor amplified music. He said that even "rock concerts" could be promoted in the countryside, but the Commission has the opportunity tonight to champion the way to protect and preserve the special qualities of county living for now and future generations. He added that the state actually encourages them to do so, with Section A of the Farm Winery Ordinance provisions stating, "in authorizing outdoor amplified music at a farm winery, the locality shall consider the effect on adjacent property owners and nearby residents."

Burt Page addressed the Commission, stating that he lives next door to Keswick Winery and saying that he wants to speak to an issue that has not yet been discussed. He said that the most important and compelling issue in this case is public welfare, health and safety. As the county ordinance states, "the public has a right to and should be free from an environment of excessive or unwanted sound…and the Board of Supervisors has a significant governmental interest in providing an environment free of excessive and unwanted sound." He stated that county research shows that inadequately controlled sound "presents a growing danger to the public health, safety, and welfare." He said that his concern with police enforcement of noise complaints is having corroboration from a credible witness to the offense with the capability of issuing a citation if the facts on the ground dictate. He stated that the Zoning Department has demonstrated repeatedly "their inability or unwillingness to perform this important function." He said that neighbors seek no special consideration, only peaceful enjoyment of their property.

Nannette Derkac addressed the Commission, stating that she is also an adjacent property owner and is here in support of the audibility standard. She said that she and her husband purchased the farm in Albemarle because of the beauty, the history and tradition, the serenity, and the peace it provides them and their three sons. She commented that there are many people who have made a commitment to preservation by putting their land in easement, and while she is supportive of the wine industry, she doesn't understand why the assets of the county and state should be sacrificed for economic reasons.

Stephen Barnard addressed the Commission, stating that he is the winemaker at Keswick Vineyards and saying that it is important to have a measurable sound level. He stated that he supports a decibel-based system.

Cindy Schornberg addressed the Commission, stating that last year the county changed the ordinance to encourage agricultural activities and allow wineries to increase the number of special events. She said that Keswick Vineyards engaged in doing special events and has invited neighbors to come out and see what is being done. She asked why these neighbors didn't call them first, as they went directly to the police and zoning instead. She said that the Zoning Department went to the second wedding and came back on the following Monday to tell them they were in violation. She stated that at the third wedding, zoning went out to the neighbors' again and didn't feel there was a violation. She said that it must be a situation where noise is actually a nuisance, not that they can just hear it because it is unreasonable to think that it would be totally inaudible. She pointed out that their home and winery are not for sale, as they now live here full-time.

Neil Williamson of the Free Enterprise Forum addressed the Commission, stating that in another locality north of here their website has a link on the wedding page for brides before they sign contracts "understanding our commitment to noise control." He said that the information from the winery states that they were allowed to build a garden pavilion and "based on a contract of trust and respect" they are "totally committed to preserving the integrity of our operations and the rights of our neighbors to peacefully enjoy their property and the rural nature of our community." He also said that the winery says that "while music is a very important aspect of your wedding or reception, the determination of acceptable levels of music are at the sole and exclusive direction of the winery." He stated that the winery says they have hosted hundreds of events, and has occasionally asked music to be turned down – working with an objective metric that the bride understands as she signs the contract. The point is that there is an objective metric level. This winery in the north is working with an objective metric that the bride who signs the contract and pays the money. Levels of expectations are made of the neighbors, the winery and of the participants in the wedding.

Donald Morin addressed the Commission, stating that he is the attorney representing Mr. and Mrs. Page, the neighbors of Keswick Winery. He would refer to next to the last slide in Mr. Kamptner's presentation. He asked that slide to be put up on the board. They are here in support of the audibility standard primarily because as drafted they understand that the audibility standard will be in Chapter 7 and would be enforced by the police. Lieutenant Allen spoke about the police enforcement and how easy and objective it was to do. He emphasized that police enforcement is critical, and is also easy and objective. "He stands a hundred feet from the property line, and if he can hear it, it's too loud." He said that he then goes over and talks to the people making the noise to get them to turn it down, which works over 80% of the time. "Nothing could be easier. Nothing could be less expensive." He said that he was part of the roundtable in December and asked Ms. McCulley how many sound meter devices the county has, when they were last calibrated, and who is certified and trained to operate them. He responded that she said she didn't know, and the police department does not even have one. It will be a substantial economic impact if they go to a decibel standard. He noted that this would be expensive to implement and possibly subject to attack in court, adding that the audibility standard provides "a level playing field." He stated that in writing to the Commissioners and the Board, he said that amplified outdoor music has always been regulated under Chapter 18, the zoning ordinance and under Chapter 7, the general noise ordinance.

Mr. Morin noted that Mr. Cilimberg was correct that they are here about outdoor amplified music. When the Board was adopting the audibility standard as it exists today under the general ordinance, this is the commentary provided to the Commission and Board of Supervisors. County Code Section 7.105-B5 "establishes noise standards emitted from various devices including electronic sound amplification equipment" and the standard prohibits sound that is audible from a distance of 100 feet or more from the property line of the parcel in which the device is located or for inside a dwelling unit or hotel room on a parcel other than a farm winery." He said that the Farm Winery Ordinance has a provision that states in authorizing outdoor amplified music, the locality must consider the effect on adjacent property owners and nearby residents. "This draft further clarifies that outdoor amplified music is not an exempt agricultural or any other activity. It is subject to regulation under Chapter 7. That's why the audibility standard as it's been proposed should be adopted. Let the police enforce it, it's easy to do."

There being no further public comment, the matter was placed before the Commission.

Mr. Zobrist said that at the last meeting there were four Commissioners who voted in favor of an audibility standard and three who voted against because they wanted a decibel-measurement standard. He asked if any Commissioners had changed their position since then.

Mr. Loach responded yes that he voted last time for a decibel based standard, but that he may have a compromise standard that he would express later.

Mr. Zobrist questioned whether the Commission wanted to spend their time on Attachment E or D.

Ms. Porterfield supported the concept that "if it is not broke, don't fix it." The big problem seems to be the enforcement. When Lieutenant Allen said the audibility standard was adequate "that sold it for me." She supports the audibility standard with the police enforcement.

Mr. Morris agreed.

Mr. Lafferty asked Mr. Kamptner to explain Section 2B of his memo.

Mr. Kamptner said the passage that Mr. Morin cited was in the annotated version of the draft ordinance. He did not believe the Commission has those. It goes into the argument as to whether or not the standard is enforced by the police under the general noise regulations or under the zoning regulations. The annotations unfortunately were not updated to coincide with the final language of the draft ordinance, which imposed a standard that was similar to the standard in the general noise ordinance, but it no longer contained the direct cross-reference to the general noise regulations. Once this matter got to the Board of Supervisors, there was a change and the desire was to have it enforced under the Zoning Ordinance. That is how they always interpret and they don't duplicate violations.

Mr. Kamptner stated there is a precise provision in the Virginia State Code that deals with civil enforcement, which hasn't been cited because it hasn't been relied upon up to this point. They

don't know if it is speaking just within the context of a zoning ordinance or applies across the board. The language says, "Designation of a particular zoning ordinance violation for a civil penalty pursuant to this section shall be in lieu of criminal sanctions, and except for any violation resulting in injury to persons such designation shall preclude the prosecution of a violation as a criminal misdemeanor." They did not cite that, but that is an additional reason why they don't duplicate violations. Like he said, that particular provision is less than ten years old. They are not aware of any cases where that has been applied from a zoning noise regulation versus a general noise regulation. However, at least it indicates the intent of the General Assembly not to have civil penalties being on top of possible criminal sanctions.

Mr. Zobrist asked if one or the other is okay.

Mr. Kamptner replied yes.

Mr. Lafferty commented that he sees the problem breaking down into amplified music and the audible versus decibel standard, and the zoning enforcement versus the police.

Mr. Franco said that he sees it breaking down into expectations as to how reasonable and immediate the relief has to be with the second being how reasonable is that standard. He looks at it as a land use and looks at the other land uses that are out there. They listened earlier to comments about calling the hotline and maybe being pushed off because there are a number of different calls and it might be prioritized below other health and safety issues. Other things that he had heard that have happened in the past for zoning violations would be dumping, junkyards, and things like that which cause environmental problems. He did not think there is a need for zoning staff to be on call on the weekends just to answer "junk calls." Those would be, in his opinion, to have a greater impact to the environment. So he looks as the expectations as being unrealistic to have immediate relief from the situation and the problem. From his perspective, immediate relief is a problem.

Mr. Lafferty said that he did not think they disagree. He did not think that having loud or audible music or some decibel level constitutes an emergency.

Mr. Franco said it seems that they have boiled this down to three events that occurred last year. The third event at which zoning walked around and did not hear an issue. As far as the amount of calls, he did not think this was tremendous. He had heard the winery come before them and say they have made changes and zoning is working with them to try to correct the situation. He thought they ought to allow staff to continue working with the community to fix the problem He did not know if bringing the police into it is a necessary requirements because there are a plenty other land use issues that would take a higher priority for him with the police.

Mr. Lafferty agreed.

Mr. Zobrist asked to try to frame the issue. He asked if they have a majority that wants to discuss Exhibit D since he thought they ought to move this along. He asked if Exhibit D was the audibility.

Mr. Cilimberg noted that Exhibit E was the audibility.

Mr. Zobrist asked if anyone wanted to discuss Exhibit D, which was the decibel standard recommended by staff. He noted that D to E is the one they were talking about. That is subject to the standard in the County Code 7.105.b5 shall be enforced as under 7.107 rather than under this chapter and shall not be considered exempt. That is Exhibit E. He asked if that was the one the Commission asked staff to draft.

Mr. Kamptner replied yes. Staff is going to recommend some different language for that.

Mr. Zobrist noted that only two Commissioners, Mr. Lafferty, and Mr. Franco, want to talk about that. He asked if the rest of the Commissioners want to go on to a discussion of Exhibit E.

Mr. Smith commented that a statement was made that "not audible is not reasonable," but it is reasonable if that's what you are used to.

Mr. Lafferty said that was not quite right if they go out into the woods.

Mr. Smith pointed out he was only talking about amplified music.

Mr. Lafferty asked for what length of time and if it was instantaneously or for half a minute.

Mr. Smith replied it would be for a duration. If they were going to have a wedding or any event it was not going to be just one instance but for the duration of the event if it was offensive.

Mr. Lafferty said that they are talking about objective versus subjective. When he says duration that is subjective unless you say the duration of the event or a specific time. If he says audible, what he can hear now is a lot less than what he could hear 20 years ago. An average decibel reading over a specific period of time they are getting a specific reading.

Mr. Smith noted they have nice young police officers that can go out to the site that will listen.

Mr. Loach noted that there is a specification that says duration if they want to talk about it. The duration criteria for daytime noise is proposed to be five minutes of continuous sound within a one hour period. Mr. Smith is talking about a lot more than that.

Mr. Zobrist said it was with normal hearing levels. He asked that they go back. He has had several conversations with members of the Board of Supervisors because they want to know what the Commission is doing. He is fairly certain that the Board of Supervisors wants a decibel standard, but the more he hears the more he likes the audibility standard and what the Commission did at their last meeting.

Mr. Morris agreed.

Mr. Zobrist said after hearing the lieutenant, he thought the audibility standard is the simplest solution in the world. They might get five calls in a year. He agreed with Mr. Beltrone who said

that they have 19 wineries and it will probably be stretched out. He thought that might be true. He wants to help the farm wineries, but he wants to help the neighbors, too. He is a neighbor, too. Not everybody can buy a house that is a long way from their neighbors. Therefore, they have to live in this society and put up with it. The wineries are in the rural areas and have neighbors. They have a large properties and should be able to contain their sound. He is in favor of passing whatever language Mr. Kamptner wants to put in Attachment E, the audibility standard to the Board of Supervisors for adoption.

Mr. Loach said that it seems the effort here is to come up with an acceptable decibel level for the neighbors. They use 50 decibels currently for the rural area. He was not sure that was good, bad or in different. When the police respond, they use a subjective standard "which a reasonable person is going to use and say that music is either too loud, shut it down – or I'm going to shut you off." He said that he doesn't know what that decibel level is, and it's really whether or not a person can hear it. He was not sure if that dramatic of a criteria is necessary. If was not sure what level of sound was acceptable at 8 p.m. to 10 p.m. when someone was trying to rest. If he knew that decibel level, he would be more than happy to put it into place and essentially let the wineries self regulate. He stated that if that decibel level could be established, wineries could have a decibel meter onsite to be certified by the county as accurate, and an officer can evaluate that – unless there is no meter, whereby he would use his own judgment. He was not sure if 50 decibels was too high or too low. He just could not decide. When he heard the demonstration in the conference room, he felt that 65 decibels was too high. Obviously, he did not have the votes here. If he had to he would go to a decibel level that is acceptable and enforceable by the winery so they can self regulate and would be able to show it to the police and use that as the criteria.

Mr. Kamptner asked to answer Mr. Loach's question at least partially. The general noise regulations are not all audibility-based standards. There is one general prohibition that they plugged into that one. The standard being is being that it shall be unlawful for any person to produce sound that causes at least a 15-decibel increase in the sound level above the ambient sound level and using the procedures that are used under the zoning ordinance. He explained one of the reasons why the 15-decibel level was chosen was in the statement of purpose and intent in the general noise ordinance. One of the provisions they used to support the regulations they stated was that "studies have characterized the human reaction to increases in sound pressure levels over ambient levels as measured in decibels as intrusive for increases of 5-10 decibels, very noticeable for increases of 10-15 decibels, objectionable for increases of 15-20 decibels, and very objectionable to intolerable for increases of 20 or more decibels." If he recalled correctly he believed that decibel increases of less than 5 were generally not perceptible or at least not to the point where they affect people. He stated that using an increase over the ambient sound level is another approach.

Mr. Zobrist said that they couldn't do less for them than they are doing for the general public according to what he told them.

Mr. Kamptner replied no, for outdoor amplified music they can regulate. It does not have to match the general noise standards.

Mr. Zobrist said the general standards could not be more restrictive on the wineries and anything except for outdoor amplified music.

Mr. Kamptner agreed.

Mr. Morris stated that they hear time after time again that they don't have money for this or that and yet if they go to a decibel level they are going to need to have new equipment and special training for the staff. Going back to a statement made by a fellow Commissioner, he did not see that they have something that is broken and did not feel that they need to change it. He would go with Attachment E. That would be his recommendation to the Board.

Mr. Zobrist noted that the recommendation to the Board was to adopt Exhibit E as redrafted to meet their intent. He asked Mr. Kamptner what he was going to do to change it.

Mr. Kamptner said that in a discussion with Larry Davis today they think that rather than having a zoning regulation reach over into the general noise regulations, that what this standard should say is something such as they would not regulate it under the zoning ordinance and it would not be exempt under the zoning ordinance. They would need to amend the general noise regulations to identify the standard. The one that was in the drafts from over a year ago, which is the standard for radios and other electronic devices that amplify music.

Mr. Zobrist asked if that was the 15 decibels over ambient.

Mr. Kamptner replied no, that is the audibility standard. Then they would amend the exemption section to exclude outdoor amplified music from the agricultural exemption just to eliminate any argument or debate as to whether or not it's produced from an agricultural activity.

Mr. Kamptner suggested that the motion be made to employ the concepts in Exhibit E and recommend them to the Board. They would like the Board to know that they listened to all of the arguments and science, and at the end of the day, four or five Commissioners were persuaded that E was the way to go and not D.

**MOTION:** Mr. Morris moved and Mr. Smith seconded to accept Exhibit E and recommend to the Board that an audible standard be adopted.

Mr. Zobrist invited discussion.

Mr. Franco asked as part of the motion and part of the framing of the motion made that he talked about the expensive equipment and stuff. He thought he heard staff say earlier that it is equipment and skill sets that they have and currently use to enforce other noise provisions in the land use section of the code. He thought if that was one of the facts or one of the fundamental basis for the motion, that is incorrect statement because it is not requiring additional equipment.

Mr. Morris said that what he has heard was contradictory statements across the board.

Mr. Franco asked that they get an absolute.

Mr. Morris asked that they remember it is the police department that is going to go out and take intermediate action unless they want to set up a duty section for the zoning department and they are on duty.

Mr. Zobrist said he wanted to go back to what persuaded him. The lieutenant persuaded him and Ms. Porterfield, too. He thought that was the direction and maybe the Board of Supervisors could hear from him also. It is really their decision and the Commission is just trying to do their best and make a recommendation. They want to make the best recommendation they can. He has tried to accommodate what he has heard from them and he just cannot get there.

Mr. Franco asked if he saw this as something that "creates a creep" in the rest of the land use provisions to the police department. If there are violations of other land use like dumping or construction taking place on a weekend that is not suppose to be are they going to make provision in other chapters of the ordinance so the police can shut those things down.

Mr. Loach said that he was sure that the police are handling those things as they would handle them now if they were called under Chapter 7.

Mr. Franco noted that was just noise. He asked what about other activities that are taking place. If construction is taking place and it is not suppose to be, should they have the police handle it. Right now if construction starts on a site at 5 a.m. for building construction he thought that is considered outside the normal time zone and the police don't have the power to come and shut that down.

Mr. Zobrist stated that they don't shut it down. That is not before the Commission right now. He suggested that they stay with the point. He asked if there was any discussion in respect to the motion.

Mr. Loach asked if there was any support to have the wineries use a meter, with the officer using the meter to get the decibel level, as Mr. Kamptner was talking about. If there is no meter the officer still has the ability to use the auditory standard if that is not available. They can make the meter one that has to be certified by the county so that they know it will not be rigged to give a false reading.

Mr. Morris said that looking at it from an industrial point of view, the county doesn't have the technical capability to certify anything as far as calibration. They would have to get an outside calibration organization, which is fine if they have a certified calibration person on staff who can in fact calibrate a decibel meter.

Ms. McCulley stated that the equipment is sent back to the manufacturer on an annual basis to be officially and certifiably calibrated.

Mr. Morris said that the manufacturer would then be the calibration agency and they would have to get that person in here to do the calibration.

Mr. Zobrist noted or to testify.

Ms. Porterfield asked to respond to Mr. Loach's comment. She understood what he was trying to say. She would hope that if the wineries have the decibel meters that they can figure out what the decibel reader should say to make sure that they are in compliance with the audibility standard. She would think that they could work with their neighbors to get on the neighbor's property and just check it out. That way they could look at their decibel reader, but the police would be using their ears.

The motion passed 4-3. (Mr. Lafferty, Mr. Franco, and Mr. Loach voted nay.)

Mr. Lafferty voted no because he thought the standard should be more objective.

Mr. Zobrist said the motion passes and the Commission would make that recommendation to the Board of Supervisors. He was sure that each Commissioner would be called by whoever appointed them and they could explain the many hours the Commission spent. He thanked everyone for coming. It is a tough decision. He apologized that the Commission could not come up with a better solution, but it would ultimately be up to the Board.

Mr. Kamptner stated that this would go to the Board on March 9. Staff will summarize the Commission's action since he was not sure if the minutes would be provided.

Mr. Zobrist noted that the Commission struggled with this item. The Commission would support whatever the Board does.

**Old Business**:

Mr. Zobrist asked if there was any old business.

- Mr. Kamptner reported that regarding the critical slopes waiver case in Key West for Sinclair, the Virginia Supreme Court accepted the Sinclair petition for appeal and it is currently in the briefing phase.

- The Pages, property owners adjacent to Keswick Vineyards, obtained a Temporary Injunction from Judge Higgins.

- Two Planning Commissioners need to submit their responses to the Planning Commission Organizational Diagnostic questionnaire.

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

**New Business**:

Mr. Zobrist asked if there was any new business.

- No Meeting March 8, 2011

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

**Adjournment**:

With no further items, the meeting adjourned at 9:02 p.m. to the March 15, 2011 meeting at 6:00 p.m. at the County Office Building, Room 241, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

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V. Wayne Cilimberg, Secretary

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