Albemarle County Planning Commission
December 6, 2016

The Albemarle County Planning Commission held a regular meeting on Tuesday, December 6, 2016, at 6:00 p.m., at the County Office Building, Lane Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Bruce Dotson, Mac Lafferty, Pam Riley, Jennie More, Daphne Spain, Tim Keller, Chair; Karen Firehock, Vice Chair and Bill Palmer, University of Virginia (UVA) representative.

Other officials present were J.T. Newberry, Senior Planner, Elaine Echols, Planning Chief; David Benish, Planning Chief; Sharon Taylor, Clerk to Planning Commission; Amelia McCulley, Director of Zoning/Zoning Administrator; Amanda Burbage, Senior Planner; Andrew Gast-Bray, Assistant Director of CDD/Director of Planning and John Blair, Deputy County Attorney.

Call to Order and Establish Quorum:

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

Committee Reports

Mr. Keller invited committee reports.

Mr. Dotson gave a brief report from the Capital Improvement Program Oversight Committee, stating that they met last week and recommended to the County Executive and the Board of Supervisors that they proceed and approve the PVCC and the Senior Center projects as well as the Scottsville School project. He stated that they resolved to meet again in the spring, probably in the April/May timeframe, to consider a whole variety of process improvements including the suggestions that came from the Planning Commission.

There being no further committee reports, the Chair proceeded to the next agenda item.

Other Matters Not Listed on the Agenda from the Public:

Mr. Keller invited comment from the public on other matters not listed on the agenda. Hearing none, the meeting moved to the consent agenda.

Consent Agenda

a. Approval of Minutes: August 23, 2016.

Mr. Keller asked if any Commission members wanted to pull the item from the consent agenda. There being no requests to do so, he invited a motion.

Mr. Lafferty moved to accept the consent agenda. Mr. Dotson seconded the motion, which passed by a vote of 7:0.

Deferred Items.

ZMA-2016-00006 Glenmore K2C Proffer Amendment
MAGISTERIAL DISTRICT: Scottsville
TAX MAP/PARCEL: 093A5000000100, 093A5K20B00800, 09400000001600
LOCATION: Approximately 1,500 feet southwest of the intersection of Carrol Creek Road and Waterside Way.
PROPOSAL: Reduce the currently approved cash proffer amount of $16,590 per lot to the cash proffer amount recommended by the Fiscal Impact Advisory Committee of $4,918 per lot. PETITION: Request to amend proffers on property zoned PRD which allows a variety of development for residential purposes and ancillary uses. No new dwellings proposed.

OVERYLAYS: Entrance Corridor, Steep Slopes (Managed and Preserved), Flood Hazard
PROFFERS: Yes
COMPREHENSIVE PLAN: Neighborhood Density (Low) – residential (2 units or less/acre); supporting uses such as places of worship, schools, public and institutional uses in the Village of Rivanna Master Plan. (JT Newberry)
DEFERRED FROM THE SEPTEMBER 13, 2016 PC MEETING

Mr. Newberry summarized the staff report for ZMA-2016-00006 Glenmore K2C Proffer Amendment in a PowerPoint presentation, stating that this a proffer amendment request deferred from earlier in the year.

- Summary of Request: This is for the Glenmore/Leake area where the applicant has requested to reduce cash proffers from $16,590 per lot to $4,918 per lot.

Favorable Factors:
Mr. Newberry stated that staff found no favorable factors for this request.

Unfavorable Factors:
Mr. Newberry presented the unfavorable factors:
1. The cash proffered and accepted by the Board when the property was originally rezoned was voluntary. At the time that it was done, it seemed to be reasonable to mitigate the impacts from the rezoning.
2. The cash proffered and accepted by the Board when the property was originally rezoned was a reasonable amount to address the impacts from the rezoning.

RECOMMENDATIONS
Mr. Newberry reported that staff recommends denial of ZMA-2016-00006 Glenmore K2C Proffer Amendment because no new information for evaluating impacts from the development has been provided; and furthermore, no information has been provided to justify a reduction of the current cash proffer amounts. He presented a slide with some recommended motions for the Commission.

There being no questions for staff, Mr. Keller opened the public hearing and invited the applicant to come forward and address the Commission.

Justin Shimp, engineer for the project, stated that he had been working with the developer Jess Achenbach, who was present to address some of the proffer questions on an application submitted some time ago. Mr. Shimp stated that often in the past with projects, the Planning Commission has decided to move items on to the Board of Supervisors absent any policy to follow – but no policy has been discussed, and what has been put out before was just to abandon what was already in place.

Mr. Shimp stated that the notion of the proffers being voluntary is not the whole story, and it was always made clear if developers did not proffer the maximum amount, their applications would not be approved. He said that he has asked the county to show them the study, and presented the CIP adopted in October 2007, with their rezoning approved in December 2007. Mr. Shimp said that the proffers included items that were to be expected – schools, transportation, and libraries – but did not include things like the courts and judicial system or the acquisition of conservation easements. Mr. Shimp said that if that was part of the figured amount, there should be some investigation into the proffers and any impacts of this particular development.

Mr. Shimp stated that the language of policy, which he and the developer realize has been repealed, was the basis for both the original proffer and what the developer applied for in early spring, when the FIAC committee came out with revised figures pursuant to the 2013 change in State Code. Mr. Shimp said that as he is interpreting it, staff would recommend a maximum cash proffer policy in each case, through their review. He stated that his understanding was that there would be a discussion based on specific projects and their impacts – but instead, there has been an expectation for developers to proffer the maximum, without an actual analysis. Mr. Shimp said that the fundamental request is for that to be done, stating that they do not object to proffers but they should be reasonable based on the impacts of the development, not the highest proffer number established for projects countywide.

Mr. Shimp said that the maximum proffer amount was set at $17,500, and this development's cash proffer is just slightly below – with an affordable housing proffer for every unit that puts it above that, in addition to the dedication of 58 acres of land for greenway space, for which they received no credit. He stated that they are also building a crossing for Carroll Creek, valued at $1 million, which will be used by many homes in this neighborhood, which currently has no sidewalk or walking trail. Mr. Shimp said that there should have been a credit for that based on the policy and the projects approved. He noted that there was also no credit given for the development rights that would have been there previously, which has consistently been done in the past.

Mr. Shimp stated that the 2017 CIP, which is the basis of the current FIAC number, which is now about $7,500, still reflects things like courts and community development – and the question is whether the developer is paying for those things even though they were not identified as impacts. He said that the 2007 CIP and CNA were the basis of the $17,500, and in 2015 that number was reduced based on the State Code to approximately $5,000. Mr. Shimp noted that the CIP is only about $500 of that, and the items immediately to be paid for were smaller amounts – with the proffer amounts for broader items like courts possibly not ever getting funded. He quoted the FIAC report regarding the change in State Code, and emphasized that there is no cash payment that should be accepted that didn't address the actual expansion items. Mr. Shimp stated that this developer for this Glenmore project has gone beyond his fair share, and he feels that the county should work with him to come up with a number that addresses the actual impacts

Mr. Shimp presented a photo of the Carroll Creek stream crossing, which is a narrow 10 to 12-foot road with no trails with a big dip in it, stating that the developer would take the road straight across with a sidewalk connecting both sides – which would be a benefit to the neighborhood and all the residents there. Mr. Shimp said that the developer is asking the Commission to hear his case and is asking staff to look at these items consistent with the policy at the time this was rezoned originally, and when the developer submitted the past application, and as well as the 2013 law still in effect. He noted that they were not subject to the new law effective July 1.

Mr. Keller invited questions.

Mr. Lafferty asked if the bridge would be open to the public to drive across.

Mr. Shimp responded that it would be open to all of those in Glenmore, as there are many other houses besides this development of 112-120 homes, so there are other residents that have the benefit of that that are not paying for. Mr. Shimp said that consistent with other projects, he and the developer feel it would be fair to get some credit for it.

Mr. Lafferty asked if the crossing was open to the public.

Mr. Shimp responded that it is open to anybody that gets past the gate in Glenmore.

Mr. Lafferty asked if, when the developer signed the contract, he planned to make money on the development.

Mr. Shimp replied that he has heard in other cases where the developer says he can't make money – but he did not think that was the Commission's problem.

Mr. Lafferty commented that it is the intent.

Mr. Shimp said that when Mr. Achenbach bought the property, there was discussion at the time of a reduction in cash proffers – and an expectation among the development community that this would happen. He noted that the first staff report for this project recommended approval of this proffer amendment because it was consistent, and there was an expectation that this was a possibility based on what was being discussed.

Mr. Lafferty commented that it was a gamble.

Mr. Shimp responded that anything with the county is not certain until the Board of Supervisors votes on it, but there was an understanding that it was a possibility.

Mr. Lafferty asked if he thought the county was making money with the previous proffers given, for which the developer signed the contract.

Mr. Shimp responded that he did not think it is the county's intent to profit from cash proffers – they are trying to collect more reasonable offsets of the impacts. He stated that the developer is willing to pay, but does not believe the numbers assigned are a reasonable offset.

Mr. Lafferty asked if he thinks the county was doing much more than just maintenance work on the existing infrastructure when the developer signed the contract and the proffers were signed.

Mr. Shimp responded that based on what he knows from reading county staff reports, there was a significant portion of the CIP that was maintenance-related, and based on the new reading of the statute, that is not something the county can collect revenues for any longer.

Mr. Lafferty said that if a major portion was going toward maintenance in 2007 due to reduced proffer amounts, the county would have less money to do the maintenance – and therefore real estate taxes would go up.

Mr. Shimp replied that this may be the case.

Mr. Keller invited other members of the public to speak. There being no speakers, Mr. Keller invited the applicant to provide a rebuttal.

Mr. Shimp responded that he had nothing further to add, and thanked the Commission.

Mr. Keller closed the public hearing noting the matter was before the Commission for discussion and action.

Mr. Dotson asked staff to provide a progress report of work taking place to develop new approaches whereby the development community would pay a fair share of allowable costs under the new state statutes.

Ms. Echols replied that staff's guidance has been from the Board of Supervisors on the ZMAs and similar requests made – which the Board has not approved – and she is not aware of a new committee developed yet to work on proffer policy. However, she thinks it is something the Board is working on.

Mr. Mark Graham, Director of Community Development, clarified that the Board has been trying to form a work group on this and has been taking applications, hopefully appointing committee members at their December 7 meeting. He added that staff is ready to assist and is hoping to have direction in the first portion of 2017 as to how to address these infrastructure needs.

Ms. More asked if the committee would just work on how to move forward with applications made after the July 1 date, or would give advice to the Board and Commission on other requests.

Mr. Graham responded that they would take a broader perspective than just cash proffers and would assess what the best funding strategies would be for the county in the new environment since the proffer legislation went into effect in July of this year.

Ms. More asked if that discussion would include applications prior to the proffer legislation change who were coming forward and asking for a proffer change.

Mr. Graham responded that there were only two more in that category – Adelaide and the Daly property – and the Board was prepared to deal with those without waiting.

Mr. Dotson stated that he would encourage the Board to move forward with all due diligence and all speed; but, in the meantime, he would recommend that the Planning Commission deny ZMA-2016-16 Glenmore K2C Proffer Amendment for the following reasons:

- No new information evaluating the impacts from the development has been provided;
- No information has been provided to justify a reduction, and in addition that the cash proffered and accepted by the Board when the property was originally rezoned was voluntary; and
- The cash proffered and accepted by the Board when the property was originally rezoned was a reasonable amount to address the impacts from the rezoning.

Mr. Lafferty seconded the motion.

Mr. Keller invited discussion. There being no discussion, Mr. Keller called for a vote.

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

Mr. Keller noted that this request would be moving forward to the Board of Supervisors.

Public Hearing Items

ZMA-2016-00015 Oakleigh
MAGISTERIAL DISTRICT: Rio
TAX MAP/PARCEL: 045000000026A0
LOCATION: Located on the south side of Rio Road West across from its intersection with Woodburn Road
PROPOSAL: Amend previously approved Proffers, Code of Development and Application Plan to allow a 140-bed assisted living facility on the rear half of the site. The amended plan also seeks to allow the site to develop according to the existing approved Application Plan with a revised Code of Development and Proffers.
PETITION: Rezone 8.82 acres from Neighborhood Model district that allows residential uses mixed with commercial, service and industrial uses at a density of 3-34 units per acre to Neighborhood Model district, which allows residential uses mixed with commercial, service and industrial uses at a density of 3-34 units per acre. This request seeks to amend the Code of Development to add a 140-bed assisted living facility in Blocks III, IV or V of a revised Application Plan, which would reduce the total maximum dwelling units from 109 units at a density of 12.3 units per acre to 36 units at a density of 4.0 units per acre. This request also seeks to preserve the ability to develop the existing approved Application Plan that proposes a maximum of 109 dwelling units at 12.3 units per acre. Under either Application Plan, the request seeks to amend Proffers #1, 2, 4 and 6 as follows: amend Proffer #1 to provide $19,100 cash per required affordable housing unit to meet the 15% Affordable Requirement after the certificate of occupancy is issued for the 52nd dwelling unit (the existing proffer requires constructing 7.5% of total required affordable housing units and providing $19,100 cash in lieu of 7.5% remaining required affordable housing units); amend Proffer #2 to reduce cash proffers from $17,500 to $7,333.18 for each single-family detached dwelling, from $11,900 to $5,447.57 for each single-family attached dwelling that is not an affordable dwelling unit, and from $12,400 to $7,419.91 for each multi-family dwelling unit that is not an affordable unit; amend Proffer #4 to reduce the number of trees preserved under the plan with an assisted living facility from 39 trees to 13 trees and reduce the required bonding from $29,000 to $10,000; eliminate Proffer #6 which required additional erosion and sediment controls to achieve a sediment removal rate of 80% for the property.
OVERLAYS: Entrance Corridor (EC), Steep Slopes (Managed) and Airport Impact Area (AIA)
PROFFERS: Yes
COMPREHENSIVE PLAN: Urban Density Residential – residential (6.01 – 34 units/ acre); supporting uses such as religious institutions, schools, commercial, office and service uses and Urban Mixed Use (in Centers); supporting uses such as retail, residential, commercial, employment, office, institutional, and open space in Neighborhood 1 of the Places29 Master Plan. (JT Newberry)

Mr. Newberry summarized the staff report for ZMA-2016-00015 Oakleigh in a PowerPoint presentation, referencing an aerial map and stating that the property is located on Rio Road West near the intersection with Route 29. He stated that the property is adjacent to the Charlottesville Health and Rehabilitation Center and the Garden Spot, and is located near Berkmar Crossing, which is further to the east on Rio Road. Mr. Newberry presented a Comprehensive Plan map, noting that the property is designated urban density

residential with a small portion of urban mixed use in centers.

As an overview of the project, Mr. Newberry reported that in 2008, the property was rezoned from R-6 to Neighborhood Model Development to approve up to 109 dwelling units and close to 30,000 square feet of commercial space. He said that the applicant pursued site plan approval for that rezoning, obtaining approval for 108 dwelling units – 70 of which were condos – and 14,400 square feet of commercial space. Mr. Newberry stated that the applicant is currently seeking to amend the original rezoning approval to permit an assisted living facility with up to 140 beds, approximately 56,000 square feet, and construct a minimum of 14 dwelling units and 28,800 square feet of commercial space. He noted that this would include a revised code of development and proffers, and the applicant is also seeking to maintain the original layout approved under the original rezoning in 2007, which would also be subject to the revised code of development and proffers.

Mr. Newberry referenced a map of the site, stating that under Scenario A, Building A is in block one; Building B is in block two; a commercial building as Building C is in block three; there are six townhomes in block four; and the assisted living facility is in block five. He stated that under Scenario B, the original layout approved in 2007, had many more buildings. Mr. Newberry said that the form and uses for buildings A and B are identical, the perimeter landscaping and buffers around the site are essentially the same; and the revised code of development would permit non-residential uses throughout the development. Mr. Newberry stated that Scenario A would have less greenspace and trees than Scenario B, but the arborist working for the applicant has stated that the most significant trees that were part of the original approval would be maintained under Scenario A. He noted that a much-desired emergency access connection would be pursued with Scenario A, which would connect the Charlottesville Health and Rehabilitation Center to the back of this site. Mr. Newberry stated that Scenario A would likely generate less traffic and school-age children than Scenario B's mainly residential development, which may also result in more constructed affordable housing than the cash in lieu of construction under Scenario A.

Mr. Newberry stated that the applicant provided sufficient justification for revised cash proffers under Scenario A, and the applicant's presentation would include specific numbers for that justification. He said that staff and the applicant worked with the Finance Department, Economic Development, and the County Assessor, to evaluate the justification and the numbers in the applicant's presentation. Mr. Newberry said that for Scenario B, staff did not find sufficient justification to grant the by-right credit from the original R-6 zoning, or to revise the cash proffer amounts originally accepted.

Mr. Newberry said that Scenario A is consistent with the Comp Plan, and the assisted living facility would provide a needed housing type for seniors, and staff spoke with the Director of Social Services about the type of housing available for low-income seniors – and the applicant confirmed that the proposed developer would be able to accept auxiliary grants for low-income seniors. He stated that the assisted living facility would support a targeted industry, would provide a targeted access, and under Scenario A the site would likely generate higher tax revenues than Scenario B. Mr. Newberry said that for unfavorable factors, the proposed cash proffers are not in keeping with the cash proffer policy in place when the site was originally approved; Scenario A would have less greenspace and trees, although the arborist's report notes that the most significant ones would be retained; and the minimum required number of dwelling units may not result in development that would be consistent with the urban density residential designation.

Mr. Newberry presented a list of outstanding issues and recommended changes, stating that staff recommends that the original cash proffers be retained for Scenario B, as well as those for tree preservation and affordable housing. He said that in order to ensure that Scenario B would hit the minimum dwelling recommended by this designation, staff recommends that the code of development be revised to require 53 dwelling units, and asked that Scenario A be clarified so that layout is available only if the assisted living use is established. Mr. Newberry stated that there are also some technical changes that will likely be required to clarify the administration for Scenario A and Scenario B to take place, and staff recommends some written indication that the adjoining site is agreeable to the emergency access connection.

STAFF SUMMARY

Staff believes that the proposed rezoning under Scenario A would be advantageous to the county and not create adverse impacts. After looking at potential tax revenues, staff may also be able to affirm that the

value of the tax revenue mitigates the impacts of the residential uses such that no cash proffers for residential units would be necessary. Staff does not agree with the applicant that a) cash proffers should only apply to units 53–109, based on zoning that preceded the 2007 amendment and b) that the amounts be reduced to those recommended by FIAC. Development under Scenario B will create impacts from all residential units. In keeping with the Board of Supervisors' most recent actions on requests to reduce the cash proffer amount, staff cannot support the applicant's proposed reduction to cash proffers.

Staff has identified the following factors, which are favorable to this request:

1. The proposed uses in Scenario A are consistent with the Comprehensive Plan recommendations for use and density.
2. The proposed assisted living facility will provide a needed housing-type for seniors.
3. The proposed assisted living facility supports a targeted industry under the County's Economic Development Policy.
4. A required emergency access will provide an inter-parcel connection that addresses a known deficiency in emergency access to an existing facility.
5. An assisted living facility and commercial uses in Scenario A will provide higher tax revenues than Scenario B and may create sufficient tax revenue to mitigate impacts from residential uses on the property.

Staff has identified the following factors which are unfavorable to this request:

1. The proposed cash proffers are not in keeping with the cash proffer policy in place when the zoning was originally approved.
2. Scenario A would result in less greenspace and fewer trees being preserved than what is currently required under the existing zoning.
3. The minimum required number of residential dwelling units (14) creates the opportunity for development that may be inconsistent with the Urban Density Residential designation.

RECOMMENDATION

Staff believes that Scenario A provides for uses that are needed in the community and where the benefits provided by the alternative layout outweigh the concerns. Providing the option for Scenario A or B creates flexibility to address different types of housing and commercial needs in the community. Staff can support ZMA201600015 if it can be shown that future tax revenues mitigate the potential impacts of residential units in Scenario B and if the following changes are made before the Board of Supervisor's meeting:

- No changes to cash proffers are made for Scenario B
- Technical changes are made related to tree preservation and affordable housing proffers and the COD for Scenario B
- The COD is revised to require a minimum of 53 dwelling units under Scenario B and under Scenario A if an assisted living use is not established
- Other technical changes to the application as necessary to provide clarity for the administration of development under Scenario A and Scenario B

PLANNING COMMISSION MOTION:

A. If the ZMA is recommended for approval: Move to recommend approval of ZMA201600015 with proffers as recommended by staff.

B. If the ZMA is recommended for denial: Move to recommend denial of ZMA201600015 with the reasons for denial.

Mr. Newberry concluded his presentation, stating that staff recommends approval of ZMA 2016-00015, and presented three slides reflecting Scenario A, Scenario B, and a combination of both so that the Commission is open to making as specific input as they wish.

Mr. Lafferty said that he assumes from comments that the applicant does not have easement for third entrance.

Mr. Newberry responded that he is not aware of one.

Ms. Spain asked if a connector is necessary or desirable only if assisted living facility is there to connect the two.

Mr. Newberry replied that this was the case for Scenario A, stating that this would also have been applicable under the original 2007 rezoning, as the size of the footprint of an individual building requires that additional connection under the fire code. He stated that under Scenario B, there would be no requirement to make that connection under the fire code.

Mr. Dotson stated that application plan as mentioned in the staff report references a desire for flexibility for the developer to be able to adapt to the market, noting that there are two application or site plans. He said that his assumption is that if they approve both, it is an either/or but not something halfway in between.

Mr. Newberry responded that this is the intent of staff's recommendations, and one of the recommended changes is those kind of technical clarifications moving forward.

Mr. Dotson said that he could see the potential for confusion if the assisted living facility shrunk and that would become housing – but that was not shown on application plan – so that needs to be clear from the outset.

Mr. Lafferty stated that when the new Northside library was built, there was some concern that there was no connectivity with the apartment complexes directly behind facility, and asked if there had been thought of providing sidewalk, walking path, or bike path with this development.

Mr. Newberry responded that he knows there is sufficient connectivity within the site and an interconnection with the Berkmar Crossing property, but those were the only connections investigated at or towards the Northside Library.

Mr. Lafferty said that putting in the facility would probably decrease use of public library.

Mr. Newberry responded that this was potentially possible.

Ms. More said that one of the recommended changes is to clarify that Scenario A is only available for assisted living use to be established – which addresses the use – and she wondered if this was an attempt to guarantee that if Scenario A were to move forward, the assisted living would happen in phase one. Ms. More said that there seem to be benefits to Scenario A, and she would want to know that the assisted living would take place in order for other benefits to be part of that scenario.

Mr. Newberry responded that he would want that clarification to take place in the proffers to confirm that the layout of Scenario A would only be the eligible application plan if the assisted living use was established.

Ms. More asked if that would be required before the applicant would be in front of the Board.

Mr. Newberry confirmed that it would be.

Mr. Lafferty asked if the county would expect a proffer for dwelling units if they would not be designated as dwelling units.

Mr. Newberry responded that the county would not expect this.

Ms. Spain asked if the townhomes were independent of the assisted living facility and separately sold.

Mr. Newberry responded that there were six townhomes in Block 4, and his understanding is that they would be marketed to anyone interested.

Mr. Keller opened the public hearing and invited the applicant to speak.

Valerie Long, attorney with the Williams Mullen law firm, addressed the Commission and stated that she represents the applicant. She introduced Andy Yarborough and Glenn Barkley from the Blake, the assisted living facility interested in building the project; George Ray, the project owner and developer; Alan Franklin, civil engineer; Steve Edwards with Edwards Design Studios, the planner and landscape architect; and Nicole Scro, a colleague from Williams Mullen. Ms. Long stated that Scenario A is the applicant's strong preference, and they have left Scenario B in as a very distant fallback plan so they wouldn't have to amend the plan a third time. Ms. Long noted that they do not yet have an easement for the connector road but are hoping to maintain that, and mentioned that the townhouse units would be separately owned but may appeal to future residents of the assisted living facility or their family members.

Ms. Long's team presented a video of the site created by Bob Penio of Design/Develop.

Ms. Long stated that what was shown was the type of assisted living facility that Blake would develop at this location, noting that the company owns and operates a number of assisted living facilities throughout the U.S., mostly in the southeast. Ms. Long stated that when the property was first rezoned in 2008, it had an existing zoning of R-6, and the applicant revised it to what it is now – giving up the right to do 52 dwelling units by-right. She noted that at the time, the Board was not giving by-right lot yield credit, but they are now, most recently for the Brookhill project, where they granted by-right lot yield credit for 269 units. Ms. Long said that the applicant is comfortable with staff's suggestions and revisions and would be happy to talk about the tax revenue generated.

Mr. George Ray addressed the Commission and referenced a handout being distributed that had additional information on the project, including letters of support from Sue Friedman of the Alzheimer's Association, Peter Thompson of the Senior Center, Tim Hulbert of the Chamber of Commerce, and Suzanne Jessup Brooks.

Ms. Firehock invited public comment.

Morgan Butler of the Southern Environmental Law Center addressed the Commission, stating that the SELC's concerns focus on the proposed elimination of Proffer 6, related to erosion and sediment control – which offers an extra layer of protection for streams by requiring that a greater amount of sediment be trapped on the site during construction than would typically occur by following the minimum regulatory requirements. Mr. Butler stated that the proffer is one that has been agreed to in a number of past rezonings as part of the county's commitment to better protecting local water quality, and should not be discarded now without some compelling reason. He said that the justification the applicant is proposing for dropping the proffer is not entirely clear, and the staff report is clear that staff believes the proffer should remain – but for some reason, keeping the proffer intact is not included at the list of recommendations at the end of staff report or reported on at this meeting. Mr. Butler stated that the SELC is not opposed to developing an assisted living facility onsite or providing some additional flexibility for the developer, but given the reduction in greenspace in this proposal, they feel it is not unreasonable to require ENS measures for the site during construction.

Mr. Keller invited the applicant to provide additional comments.

Ms. Long stated that the applicant does have an erosion and sediment control plan approved as part of the site plan approved as part of the original rezoning, and the engineer has indicated that they would likely submit a similar if not identical ENS plan for the new project with necessary adjustments made. She noted that the applicant is comfortable with retaining that proffer. Ms. Long said that with the ongoing level of uncertainty with state law and lack of a county proffer policy, the applicant understands that this is a challenge for the Commission to address but would like to note that this project would generate approximately $450,000 annually in tax revenue. She stated that the county proffer policy, even when it was in place, never addressed the offsets that would be provided by projects like this mixed use one in the form of commercial tax revenue – so if the rezoning is approved for Scenario A with the assisted living facility, they would have at most 22 units with those impact fully offset by tax revenue.

Ms. Long pointed out that this rezoning is not subject to the new state law because the application was submitted prior to July 1, which provides the county greater flexibility to accept cash proffers, and the

numbers used in this application are the same used in the Brookhill project – which were suggested by the FIAC committee with increases to reflect the increase in the new CIP figures. She stated that those numbers came from the committee, which met for 18 months, and staff was recommending approval of those figures before the cash policy was repealed, as was the county attorney, and lacking any other official policy, the applicant feels the number is prudent to move forward with it. Ms. Long added that if they don't grant credit for the 52 by-right lot units, it would only apply to the 22 units being built less the 3 affordable housing units.

Ms. Riley asked if the applicant, in citing Brookhill as an example of using the new FIAC figures, was recognizing that his application was the prior to July 1.

Ms. Long responded that Brookhill's application was also prior to July 1.

Ms. Riley asked if the applicant was also asking for a reduction in trees from 34 to 13 in Scenario B as well as Scenario A.

Ms. Long responded that they hoped Scenario B was a distant plan, but they would retain the trees larger as shown on the current plan. She noted that some of the trees have not aged as well as hoped, although the owner has taken steps to preserve them, but they would retain all that they were able to keep. Ms. Long also confirmed that they would keep the 80% ENS level.

Ms. Spain asked if the assisted living facility was not placed at the front of the lot because of the massing, and the fact that the frontage on Rio Road needed to be smaller buildings.

Ms. Long responded that it was mostly due to the serenity of the rear nature of the property, which was tucked back from the road, with the lot being wider in that location as well. She noted that the trees to be retained right on ridge, the trees would help provide a lovely setting for the building.

Ms. Spain asked if the applicant had to take out trees, if they were planting more or just saving the 13 trees there.

Ms. Long pointed out the location of trees under Scenario A that would be retained, and said they were planning to plant more in a location for a pocket park that would be the same species – although they would not be as magnificent as those being retained at the time of planting. She stated that they are also proposing to have additional landscaping along the frontage, under ARB and Entrance Corridor requirements.

Ms. Spain commented that since 80% of the residents in assisted living would be older women, she was surprised to see a fallen veteran's park – and wondered what might be more appealing to the older women living there.

Ms. Long responded that Mr. Ray has a nephew who was killed while fighting in Afghanistan, which was the genesis of the idea, but the final plan for the park had not yet been set. She stated that Ms. Spain's observation was thoughtful, and she would like to talk about how to make it even better, and she wouldn't be surprised if some of the women who lived there had served their county or had relatives who did.

Ms. More commented that staff has been in contact with DSS about auxiliary grants but noted there was no guarantee that auxiliary grants would be accepted, and there are other facilities in the area that accept very few or set aside a significant amount of beds for those who need the auxiliary grant. She asked the applicant to speak about this commitment.

Ms. Long responded that the partners in the venture from the Blake had been speaking directly to DSS and were very open to accepting the grants, but were working to learn more details about how the program actually works. She said that one question is if they accept grants, if it does not cover the full cost for rent for housing for that person, are there options for family members to supplement that.

Ms. More stated that the grant differs depend on a person's income and ability to pay, and typically a facility retains the majority of the income, with the individual getting a small monthly stipend and the grant picking up the rest of the tab. She noted that the commitment from the facility comes in with the balance of how

many beds the facility can provide with the rate that is paid, and asked if the company had this in place with other facilities.

Ms. Long responded that they do not operate other facilities in Virginia, but does elsewhere in the southeast, and the applicant is not prepared to make a commitment at this time until they know exactly how the program works.

Ms. More said that she agreed with staff's assessment in their report that there is a significant shortage for these opportunities for individuals get placements in facilities like this when they can't live at home.

Ms. Long stated that the applicant is also hoping that this will help a little by increasing the supply and demand across the community and thus relieving the pressure on costs.

Ms. Firehock asked why there was a significant decline in the number of trees from 39 in the original proposal to 13 in this one, stating that 7 trees were described as being "in poor health," which she interprets to mean that 32 trees are in acceptable condition to remain. She said that obviously they can't remain where they are going to put a building, but there are environmental benefits to having trees beyond just the beauty of looking at them. Ms. Firehock noted that hospital visits are reduced in neighborhoods where there are well-treed landscapes, and removing them is taking away something that is cleaning the air. She said she would encourage the applicant to plant more trees there to thicken up buffer. Ms. Firehock stated that she as interested to see the presence of a memorial garden, as people would want to walk outside – but there is not a pleasant pathway or garden here, and the pocket park is located in a median area. She said that people need to take walks to stay healthy, but this site is so developed and there is very little usable outdoor space. Ms. Firehock said that if she were an elderly person here, she would feel trapped because you cannot walk anywhere and the site does not connect to anything, adding that the lack of walkable green space makes the plan less desirable.

Ms. Long responded that if they could retain the 39 trees they would, and they had their team and arborist look hard at the ones they could save in an effort to disrupt only the ones they had to. She emphasized that this is an urban community, and there are sidewalks throughout the project as well as a sidewalk along Rio Road. Ms. Long stated that the applicant is hopeful for a reciprocal path arrangement with the medical health center. She said that there is also the Berkmar Crossing Shopping Center and office park nearby, which is not necessarily the most pleasant destination, nor would the assisted living and memory care residents likely have a desire to go down there, but there would be residents in Block A and B as well as those in the six townhouse units. Ms. Long noted that there is Agnor-Hurt Elementary School and the library nearby, and not all of the details for the memorial garden have been established, but the applicant would take comment to the given extent possible to make it an area where residents would want to gather. Ms. Long stated that the assisted living facility has two courtyards interior to the building – as there are challenges with safety and the facility operators would not want residents to leave the premises. Ms. Long said that the applicant has worked hard to make this a pedestrian-friendly environment and feels this is a great location.

Mr. Lafferty stated that it looked like very little attention was paid to multi modal transportation – although it was mentioned that they would consider bike racks, and they might consider indoor storage or bike housing. He said that he thought the presentation and advertising for Blake were very good, but he wished the Commission had been given it beforehand. Mr. Lafferty stated that the type of facility planned is much needed in the community, especially with the aging population.

Ms. Spain asked about the location of the nearest bus stop.

Ms. Long responded that it is right in front.

Mr. Dotson commented that the original proffer had half of the affordable housing constructed and half in lieu of payments – and in the proposed revision they were all in lieu. He stated that this was an opportunity lost because the workforce in assisted living very much needed affordable housing, and in the winter, this would be a wonderful opportunity to have people live onsite so they don't have to drive in. Mr. Dotson said that the seven residential units could provide a way to make this more of a community by having its residents

live there, and he would like to hear that the applicant was going to build half of affordable housing units, as this would make it a better project that is more profitable.

Ms. Long stated that the applicant's team had a similar realization with Scenario A having a total of 22 resident units – so 15% would be 3 units. She said that Housing Director Ron White suggested that with such a small number, they would prefer cash as they can often do more with matching grants to make it more effective, especially with affordable housing units not working as well as hoped. Ms. Long said that the applicant is not opposed to building onsite and is trying to keep their options open. She stated that at the time the project was approved in 2009, there was a great desire to have units, but that started changing during the approval process, and the applicant changed to half-and-half – but at that point there were 109 units and a very different project. Ms. Long said that it made sense to the applicant to have the three units, and the Board has been happy to accept proffers for either the cash or the units as long as the requirement was satisfied.

Mr. Dotson commented that the pendulum had swung from construction to in cash in lieu of units, but it was probably due to swing the other way.

Mr. Dotson said that he questioned having in the code of development for neighborhood service center having a department store, fast food restaurant, or indoor/outdoor amphitheater, as they seem to have nothing to do with neighborhood service.

Ms. Long responded that the applicant was just trying to keep options open. She stated that they have run into scenarios where the uses don't fit into particular category, and they were just trying to keep their options open for a wider variety of uses. Ms. Long said that staff had suggested that they commit to an assisted living facility under Scenario A for Block E, and while there is no other place where a department store works, those uses change over time. Ms. Long said that the model for things like medical clinics or fast food restaurants have changed over the years, and a movie theater could be something like a Vinegar Hill-type theater, with an amphitheater being a small space to accommodate an acoustic guitar. She emphasized that there is no plan for that and she tends to use the same code of development, but she wanted to mention those possibilities.

Mr. Keller suggested that they move the discussion along.

Mr. Dotson asked Ms. Long to run through the bullet points.

Ms. Echols mentioned that they added the last one to retain proffer 6, and that was intended to be added in the staff report, but it just did not get on the list.

Mr. Keller suggested that they look at this by taking Scenario A and B separately, as mixing them together made it challenging to assess.

Mr. Keller stated that if there are no other questions for the applicant, he would close the public hearing and bring it back to staff. He asked if there were other examples of approving two scenarios

Ms. Echols responded that it is a little unusual and she did not know of any projects that have been done this way, although there have been alternative arrangements proposed for minor areas. She stated that when the applicant asked if they could do an either/or scenario, staff did not know if the zoning division would be amendable to it due to the administration of it.

Mr. Newberry stated that this feels like a very binary option, and he can think of other approvals where there has been more of a singular bubble plan having flexibility within it, but this is proposing more of an either/or scenario.

Mr. Keller asked for comments from counsel.

Mr. Blair responded that this is perfectly legal for the applicant to request this, and the decision would be at the Commission's discretion.

Mr. Keller suggested talking about A and then B, with a discussion as to whether they are even comfortable with B.

Mr. Dotson stated that as the staff report indicates, there is a need for assisted living in the community – with the 2010 census showing 14% of the county population over 65, and 2015 updated data showing that had grown to 17%. He stated that this is tangible evidence of a need. Mr. Dotson commented that this project is consistent with the county's ambitions to be mixed use. He stated that the placement of a large assisted living building, which is really up over the rise and probably appeared more in slide show than it would be in reality, and the fact it could be up to 56,000 square feet rather than 20,000 square feet, particularly if it has courtyard areas, doesn't trouble him. Mr. Dotson said that the reduction in trees is unfortunate, but the replacement landscaping might help to offset that.

Ms. More said that she would echo several of Mr. Dotson's comments, reiterating that accepting cash in lieu of affordable units and the possibility for that to be an advantage on the site would mean losing the potential for affordable units under this scenario. She stated that she is not convinced that while there is a need for assisted living in the area, there is no guarantee that this facility will accept auxiliary grants – nor will it necessarily provide affordable housing units. Ms. More added that with all the good things this does offer, there is the potential not to help people who need affordable units.

Ms. Riley stated that she agreed with all comments made, and since they are retaining proffer 6, she has nothing else to add at this point.

Ms. Firehock agreed with what has been said, stating that the applicant made a compelling argument to get credit for the 52 units in terms of calculating what was due on cash proffers under Scenario A.

Ms. Spain echoed other opinions and said she would like to see affordable housing for both rental and home ownership units, particularly for staff working at such a facility, as renting units might be more relevant than owning.

Mr. Lafferty said that he agreed with others and did not think it was wise to take cash in lieu affordable units – as the county is very much in need of affordable units. He stated that as Mr. Dotson said, this is an excellent opportunity to put an affordable unit for people who work in the facility, as they have tried to do in Crozet so that fire and rescue personnel did not have to commute from Waynesboro.

Mr. Keller said that he concurred with his colleagues, and asked if they could make a motion for Scenario A that offers support for it, but with the affordable housing component that has been suggested.

Ms. Echols asked if they would also be talking about the commitment for the senior living use being shown on the plan under Scenario A, and working on the verification of emergency access as part of that.

Mr. Lafferty responded that he thinks it should be included.

Mr. Dotson said that it has been argued that the mixed-use aspect would generate tax dollars perhaps in excess of the residential units – but that is not an argument he would like to see them entertaining. He mentioned a hypothetical situation in which a developer who was just building a shopping center would sell the offsets to someone wanting to build housing. He stated that they are not prepared to do an analysis of all the secondary and multiplier implications of this, and this is not justification for any particular forgiveness or proffer amounts. Mr. Dotson said that they have heard supportive comments made, but they should be consistent with their recommendation regarding proffer amounts as they did on the first agenda item of this meeting – saying yes on the uses and application plan, but not on the proffer modification.

Mr. Keller stated that this is a chance to define this in a way that is helpful, as they send this on to the Board of Supervisors.

Mr. Lafferty asked Mr. Dotson to make a motion since it was in his magisterial district.

MOTION: Mr. Dotson moved that the Planning Commission recommend approval of ZMA-2016-15 Oakleigh Scenario A, with the exception that it not grant the reduced proffers as stated in the code of development proffer 1 or 2, both of which deal with affordable housing; that the department store, fast food restaurant, indoor theater, and outdoor amphitheater uses not be approved for inclusion in the development code. He stated that he was open to comments that would improve that motion.

Mr. Keller asked for a second so that they can have discussion.

Ms. More seconded the motion.

Ms. More stated that she was looking at staff's recommended changes and pulling the ones that pertained directly to Scenario A, and staff had to clarify that Scenario A is only available for an assisted living use to be established. Ms. More said she thinks the applicant may want to consider if they are talking about a nursing home or assisted living, because she did not know if there was a distinction.

Ms. Echols replied that it was for "senior living," which would cover convalescent, nursing home or assisted living as the things that would qualify under that.

Ms. More said she thinks the other technical changes to the application that were necessary to clarify for Scenario A was having the conceptual location for the emergency access through the Berkley subdivision, but not for Scenario B, and they need to verify with the adjoining property owner – Charlottesville Health and Rehab Center – that they are agreeable to providing an emergency access connection; and then retaining proffer 6 related to enhanced erosion and sediment control.

Mr. Dotson agreed to accept those as amendments to his motion.

Mr. Keller asked Mr. Blair if the Commission needs to vote on those amendments per se.

Mr. Blair replied that they should for clarity's sake and would ask for a second for Ms. More's amendments.

Mr. Lafferty seconded the motion with amendments revising the original motion.

Mr. Blair agreed.

Mr. Keller asked for a roll call on the amendment to Mr. Dotson's original motion.

The motion passed by a vote of 7:0.

Mr. Keller asked to go to the motion itself and asked if there was any further discussion on that. He asked staff if they thought they had captured all of the pieces.

Ms. Echols replied that she thought so, and asked if there was a second to Mr. Dotson's motion.

Mr. Keller replied yes, and asked for a roll call vote.

The motion passed by a vote of 7:0.

Mr. Keller said the recommendation for Scenario A will go forward to the Board. He asked staff if an alternative for Scenario B to leave it the way it was previously approved.

Mr. Newberry replied that the intent is to retain just that existing approval.

Mr. Keller noted that it had a proffer reduction component to it too, as he understood it.

Ms. Echols clarified that the applicant was asking for that proffer reduction with Scenario B, and staff's recommendation was that it not take place with Scenario B.

Mr. Keller asked if there was a motion on Scenario B.

Mr. Dotson moved that the Planning Commission recommend as part of ZMA-2016-15 Oakleigh that Scenario B be approved in its original form.

Mr. Blair added clarification that it was in 2007.

Mr. Dotson agreed to add in 2007 to the motion.

Mr. Keller pointed out that this is maintaining the proffers the way they originally were presented.

Mr. Dotson agreed.

Ms. Firehock seconded the motion.

Mr. Keller invited discussion.

Ms. More said that just going through staff's recommended changes, they are saying they would not look at the minimum of the 53 by-right units to be removed because that was not done in the original application.

Ms. Firehock pointed out she expressed support for that, but did not hear anyone else echo that so she would leave it.

Ms. More commented she would like to be consistent in the way that we approach the applications, if that is something that has been given before with other applications. She said that it sounds like she got sort of a mixed message from staff's report, but it does sounds like the Board has granted this before in some cases such as Brookhill.

Ms. Echols replied the new rezonings that came in before July could use the newer cash proffer amounts, and the credit is an interesting piece of this. She explained that the cash proffer policy that no longer exists said that in rezoning applications where there is a minimal increase in density, a credit may be given for the number of residential units allowed under the existing zoning and a cash proffer amount will be based only on the estimated density increase resulting from the rezoning. Ms. Echols said that in the cases where the credit has been given in the past for other rezonings, it has been with a very small amount. She said that in looking at the Brookhill rezoning, they had 277 acres zoned R-1 and were asking for credit for those 277 acres – but with a maximum density of 1,550 units, which was 16% of the total. Ms. Echols stated that Oakleigh would like to have credit for a half, but to her knowledge that has not been granted before, and the credit for much lower density has been given.

Ms. More asked for confirmation that it has been given for lower density, but in a higher density development they still have not requested half – it was 16%.

Ms. Echols confirmed this, stating that she thinks the same might have been said for the earlier cash proffer reduction – the Leake – where they were asking for a cash proffer reduction based on the fact that things were different in 2006. She emphasized that the Commission did not grant them any credits for those either.

Ms. More said that she was a little bit compelled, but felt that is not what they were seeing here. She stated that she just wants a clarification that that if we were seeing something that was consistent with other applicants, that would be something she would like to consider, but the explanation she is getting is that is not consistent.

Mr. Keller thanked Ms. More for bringing that up, as they had not heard that clarification.

Mr. Dotson said he had a question of the other Commissioner's views, noting that the applicant is proposing in terms of uses a much expanded code of development with the exception of the four uses for the department store, etc. He asked if they would entertain this more expanded code of development, but with

this application plan and with the original proffers, which would mean if the desired use did not work out, it would make the mixed use more flexible and would be of some advantage to the applicant.

Mr. Lafferty asked if he would anticipate the applicant coming back to the Commission if they had something that was inordinate, to see if it was acceptable, or come back to Zoning.

Mr. Dotson replied that he thought they would do it through the zoning staff for an interpretation, and he would be comfortable with the same uses in B that he is comfortable in A – and the side- by-side comparison with the original code of development was more limiting than it currently needs to be in terms of uses.

Mr. Keller agreed.

Ms. Riley also agreed and felt that Ms. Long really made a compelling case about the scenario A as the far preferred scenario, but if they had to come back, the more flexibility provided in terms of mixed use in the code of development would be helpful to other potential purchasers, and she would agree with that.

Mr. Dotson modified his motion to recommend approval for Scenario B as originally approved, except to allow the code of development with regard to uses as proposed minus the four uses that were excluded before.

Mr. Keller asked for a second for the amendment to Mr. Dotson's action.

Ms. More seconded the motion for the amendment, but wanted to ask whether they want to clarify what blocks or buildings for the expanded uses and if that was necessary to make it clearer.

Mr. Newberry said the Commission can discuss this, and thanked Mr. Dotson for noticing the revision to the code of development for Scenario B. He said that regarding the request that a minimum be established for Scenario B if the code of development is revised, currently the code of development would only require 14 total dwelling units – so in Scenario B, which is mostly residential, in making a motion to also revise the Code of Development as was recommended under Scenario A, staff thinks it would be prudent to have the code of development for Scenario B require a minimum of 53 dwelling units. Mr. Newberry clarified that this establishes the minimum R-6 or the minimum for the urban density residential recommended density.

Mr. Dotson modified his motion to incorporate that provision.

Mr. Keller asked if the second still holds.

Ms. More seconded the motion.

Mr. Keller asked if there was any further discussion on this.

Mr. Blair asked the Chair for a moment to confer with Ms. Echols to address the advertising issue.

Mr. Blair explained that staff's concern was the advertisement for this particular project and whether it was specific enough about adding uses to Scenario B. He stated that there is language about adding uses in the advertisement, and currently he did not see a problem if the Commission wants to add on Mr. Dotson's motion, stating that they could come back if they determine later that there needs to be a more specific advertisement.

Mr. Keller thanked Mr. Blair for his counsel and asked if there was any further discussion on Scenario B. He asked for a roll call vote on the motion.

Mr. Lafferty said that he assumed they were voting on the original motion and the two amendments.

Mr. Keller asked Mr. Dotson to review what they were voting on.

Mr. Dotson clarified the motion was to reaffirm and reapprove the original approval for the site in 2007, with the modification that the proposed new code of development with respect to uses would apply except for the four excluded previously, and to have the minimum number of residential units be 53 in order to be consistent with the Comprehensive Plan.

Mr. Keller thanked Mr. Dotson for the clarification.

Mr. Lafferty asked if they needed to include proffer 6.

Mr. Dotson replied that he believed that was part of the original approval, the 80%.

Mr. Blair pointed out that it was part of the 2007 approval.

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

Mr. Keller thanked the Commissioners for working this through, stating that they would take a five-minute break.

The Planning Commission recessed at 7:50 p.m. and the meeting reconvened at 7:58 p.m.

ZTA 2016-00003 Farm winery, brewery, and distillery events – The Planning Commission will hold a public hearing to receive comments on its intent to recommend adoption of an ordinance amending Secs. 18-3.1, Definitions, 18-5.1.25, Farm wineries, 18-5.1.57, Farm breweries, 18-5.1.59, Farm distilleries, 18-10.2.1, By right (Rural Areas district (RA)), 18-10.2.2, By special use permit (RA), 18-11.3.1, By right uses (Monticello Historic district (MHD)), 18-11.3.2, By special use permit (MHD), of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Sec. 18-3.1 by amending cross-references in the definitions of farm winery event, farm brewery event, and farm distillery event, and in the use classifications in Secs. 18-10.2.1, 18-10.2.2, 18-11.3.1, and 18-11.3.2; amend Secs. 18-5.1.25, 18-5.1.57, and 18-5.1.59 as follows in each respective section: (1) amend sub. (b) by moving farm winery, farm brewery, and farm distillery ("FWBD") events, weddings, wedding receptions, and "other uses" to sub. (c); (2) amend sub. (c) to require that FWBD uses established on and after the effective date of the ordinance have at least the minimum agriculture production and use, along with beverage-related uses on-site in order to hold FWBD events, weddings, wedding receptions, and "other uses" on-site; allow by right FWBD events, weddings, wedding receptions, "other uses," and up to 4 education events related to agriculture or beverage making, if attendance at one time is 200 persons or less, and by special use permit if attendance at one time is more than 200 persons; establish method for calculating attendance; define "other uses"; and require notification to abutting owners and an on-site point of contact if a zoning clearance is required; (3) amend sub. (d) to require a traffic management plan to be submitted with an application for a special use permit; (4) amend sub. (e) to prohibit outdoor amplified music between 10 p.m. Sunday thru Thursday nights and 7 a.m. the following mornings, and between 11 p.m. on Friday and Saturday nights thru 7 a.m. the following mornings; (5) amend sub. (f) to establish 125 foot setbacks for tents, off-street parking areas, and toilets, with a grandfathering provision and provision for special exceptions; and (6) delete sub. (h), which is addressed in amended sub. (c). A copy of the full text of the ordinance is on file in the office of the Clerk of the Board of Supervisors and in the Department of Community Development, County Office Building, 401 McIntire Road, Charlottesville, Virginia.

Ms. Burbage summarized the staff report in a PowerPoint presentation.

Mandy Burbage stated that the Comprehensive Plan includes goals of supporting agricultural uses in the rural area – which includes farm wineries, breweries and distilleries – and allows special events to occur as a means to support those uses, providing those events are subordinate to a primary onsite agricultural use. She stated that the zoning ordinance allows by-right events associated with wineries, breweries and distilleries to occur, and associates those privileges with holding an ABC license – but because there is no minimum amount of onsite agriculture required for acquiring an ABC license, or under the current zoning ordinance, the potential exists for abuse of the license to hold by-right events in the rural area. Ms. Burbage said that it is clear there is demand for rural area event space, and it is the county's intent to address this gap in the ordinance to ensure that events that do occur are supporting a true agricultural use.

Ms. Burbage stated that early on, they established these goals in the zoning ordinance amendment process, as reflected in the resolution of intent adopted by the Commission. She said that they boiled down to strengthening the tie between events at wineries, breweries and distilleries and agriculture present onsite, and also addressing impacts associated with events on neighboring properties and the rural area at large. Ms. Burbage said they began this process in March with the adoption of a resolution of intent, and stakeholder engagement has been a key element of this ZTA process. They began with four roundtable discussions in the spring to better understand issues associated with these events, and there were over 65 attendees, representing wineries, cideries, breweries, and distilleries – as well as residents of the rural area. She stated that input from the roundtables was shared at a joint work session with the Commission and Board in June, to inform the development of provisions to establish primary agricultural use for events eligibility, and to address the impacts of events.

Ms. Burbage reported that at that work session, the Commission requested further input from rural area residents, so staff circulated a survey over the summer to rural area residents and received 280 responses. Based on that feedback, she said, staff drafted an ordinance and brought it to the Commission in September for discussion, as well as four other topics identified in the stakeholder survey. She pointed out right now she would touch on those four topics.

Ms. Burbage said that the only issue not addressed in the ordinance before you this evening is the minimum road standard for event eligibility. She said while the Commission supported the idea of exploring a minimum road standard to evaluate winery, brewery, or distillery eligibility to hold events, under State Code requirements in order to use that standard, there must be a finding of substantial impact to public health, safety, or welfare, and the impact must be directly associated with events and roadway safety. Ms. Burbage noted that staff requested five years of accident data from police for roads serving existing farm winery and brewery uses (we did not have distilleries at the time), but that data was inconclusive in associating events with an uptick in accidents. She said that the Commission further requested that staff break down the data into paved versus unpaved roads, which they have included in their packets in Attachment E, but the data remains inconclusive as far as correlating an increase in accidents with these uses. Ms. Burbage stated that staff at this time is unable to provide a minimum road standard to county regulation of these events. She noted that this is something staff would continue to monitor and revisit in the future as more information is gathered.

Ms. Burbage reported that the second provision the Commission discussed at their last work session was a traffic management plan for events over 200, stating that these events already require a special use permit, so the traffic management plan would be required to be supplied by the applicant in conjunction with the special use permit (SP). Ms. Burbage explained that the plan would outline how traffic would access the site, whether or not traffic personnel would be present, and whether or not transportation vendors would be used to manage traffic impacts. She noted this condition has been applied to other special use permits at wineries, and would simply codify the requirement and give applicants advanced notice of what is expected of them.

Ms. Burbage stated third to address concerns about noise associated with outdoor amplified music, staff had recommended a curfew of 10 p.m. to 7 a.m. – during which music would have either to cease, go indoors, or become acoustic. She said that the timeframe is based on the county's nighttime hours as defined in the noise ordinance, and the Commission supported the idea of a curfew, but requested that a later 11 p.m. curfew be considered to address concerns voiced by some establishments that wedding receptions typically go to 11 p.m. She pointed out she would address how we have modified our provisions accordingly.

Ms. Burbage stated that the final provision was one to require farm wineries, breweries and distilleries that want to hold events to notify their abutting neighbors prior to holding events, and provide an onsite point of contact who can be reached during an event. She said that this would be a one-time process associated with the zoning clearance application, and not prior to each event.

Ms. Burbage said that to address how this prior work has translated into the proposed ordinance, she would now focus on the provisions for establishing a primary onsite agricultural use as a prerequisite for event

eligibility – which they had discussed at prior work sessions but not at the last. She pointed out that these eligibility requirements do not apply to by-right activities such as production, harvesting, and tasting that are protected under the State Code. Ms. Burbage reported that the first eligibility requirement would be a minimum of five planted acres to be used in beverage production, which may include production on adjoining properties that are under same ownership. She noted while it is acknowledged that many, if not most, wineries, breweries, and distilleries rely to some extent on outside product, this requirement ensures there is some minimum amount of agricultural activity onsite that provides an agricultural basis for events that are occurring on the property. She said that the ordinance language makes accommodations for seasonal crops – such as corn or barley – and for orchards and vineyards that can take several years to become established.

Ms. Burbage reported that the second provision relates to onsite fermenting and bottling, which comes from ABC's requirements for wineries, and while staff feels that it replicates state requirements, it reflects a significant investment in establishing the use above and beyond planted acreage. She said that staff understands that purchasing equipment for fermenting and bottling can costs tens of thousands of dollars more than the cost of planting an orchard or a vineyard. Ms. Burbage added that while it is already an ABC requirement, it gives the County greater ability to interpret and enforce the regulation as it pertains to allowing events – and portable bottling equipment would count toward that onsite provision as long as the bottling was happening onsite.

Ms. Burbage stated that the final provision for establishing the primary onsite use is a tasting room with regular hours, and while the hours can be flexible, they must be open to the public on a regular basis and not by appointment only. She said that the rationale for this is that it is an indicator that a winery, brewery, or distillery is producing enough product that they can sell it to the public on a regular basis – and therefore there is enough product to market and sell at events, which is the reason for allowing events to occur.

Ms. Burbage noted that for all three eligibility requirements, existing farm wineries, breweries, and distilleries would be grandfathered – those that exist on the date the ordinance is adopted. She said that they have built in an allowance for up to four educational events with under 200 attendees per year, to provide some flexibility for those who cannot meet these requirements but want to engage in a limited amount of event activity – and this is consistent with provisions in place for agricultural operations.

Ms. Burbage said the second set of provisions relates more to the mitigation of event impacts, with the first provision in that category being an increase in setbacks for parking areas, tents, and portable toilets, and currently those setbacks are dictated by rural area setback standards – which can be as close as 25 feet to the property line. She stated that this would increase the setbacks to 125 feet from the property line, and that would be a property line under different ownership, and could be modified by special exception, taking into consideration permission from the abutting owner who is affected by the reduced setback. Ms. Burbage said that existing parking areas would be exempt from the requirement, but tent areas and portable toilets would be expected to come into compliance.

Ms. Burbage stated the provisions for the outdoor amplified music curfew would apply to all wineries, breweries, and distilleries, and staff has recommended a compromise between residents' desire for nighttime quiet hours and the establishments that want to accommodate weekend activity to allow a later curfew on Friday and Saturday evenings of 11 p.m., with Thursday through Sunday of 10 p.m. She pointed out this was a correction from the staff report in there was an error that said Saturday and Sunday instead of Friday and Saturday. She noted that this would also be modifiable by special exception. Ms. Burbage reported that staff believes that neighbor notification would promote direct communication between the wineries, breweries, and distilleries and their neighbors – with existing establishments exempt from the requirement. She explained that this was, in part, because many of them are already grandfathered from the zoning clearance requirement from a prior ordinance amendment, with only one established in the meantime. Ms. Burbage stated that the traffic management plan would also be required of all wineries, breweries, and distilleries because it is associated with the special use permit process. She noted that there has been some confusion about the 200-person trigger, and that pertains only to event attendance – not staff associated with the establishment or anyone engaging in by-right activities such as tastings. Therefore, it is just the events attendance that is over 200 that triggers that special use permit requirement.

Ms. Burbage said that she has summarized everything in a table for reference in the staff report with the correction of Friday and Saturday, and staff's recommendation is to recommend adoption of the proposed ordinance found in Attachment A, following the public hearing.

Mr. Keller invited questions.

Ms. Firehock said as a primarily rural area Commissioner she has a number of concerns. She asked about the grandfather provision and if there were many wineries in Albemarle County that would not be effected by this.

Ms. Burbage responded that they would not be affected by the event eligibility requirements.

Ms. Firehock stated that there were comments at their last meeting about this related to the time, as one particular winery owner said they would not be able to get bookings because everyone needed to party to 11 p.m. She asked if that winery owner would not be affected by this.

Ms. Burbage replied that staff is recommending that the curfew provision be applied to all wineries, breweries and distilleries.

Ms. Firehock commented that there would not be an unfair competition established then.

Ms. Burbage agreed, adding that an additional complication would be enforcement, as police who are responding would not know if the curfew applied to a grandfathered entity or not. She emphasized that this is cleaner and addresses the issue, and the county has had noise complaints with existing wineries primarily – and those are related to outdoor amplified music typically.

Ms. Firehock said that the idea is that the music goes inside, where the event can continue.

Ms. Burbage confirmed this, clarifying that this is not an event curfew, it is an outdoor amplified music curfew.

Mr. Lafferty said that he would bold the word "curfew", and said that he assumed the noise ordinance limit of 60 decibels at the property line was still in effect.

Ms. Burbage responded that this was a daytime decibel limit, and said that it would go down to 55 decibels at 10 p.m., noting that often music can be heard and still be in compliance with county regulations.

Regarding neighbor notification, Ms. Spain asked if there would be a way to add that neighbors be given the updated information if there is a change in staff at a venue, so they have a current phone number – not just one they get at the beginning of each year that might not be valid all year long.

Ms. Burbage responded that once the ordinance provisions take effect, staff would deal with that through their communications with entities who are coming in for the zoning clearance application in making sure that they are providing current information.

Ms. Spain asked if there was a sense of indoor facilities for the places that would be having events for more than 200 people, and if they could move the event inside with indoor music if they had 200 people – and she assumes that the larger wineries would and the smaller ones might not accept the bigger events.

Ms. Burbage responded that she is not sure about all the event spaces and thinks it varies, stating that some have the space to accommodate it and rely on tents for their event space, so they would be more hamstrung by the curfew, although there is a special exception avenue if they can demonstrate that they have sound attenuation measures in place and believe they will not be disruptive to their neighbors – as they can go to the Board and request a special exception for those hours.

Ms. More asked for clarification that the 200 attendees did not include staff needed for the event, and whether it included just the facility staff or also the vendors who might be there for a wedding.

Ms. Burbage confirmed that any staff would be excluded from that count, as it is only wedding attendees counted if it is a wedding.

Ms. Firehock asked if it needed to be added to the language, as it did not specifically say that; but, she recalled staff telling the Commission that.

Ms. Burbage responded that staff can look at where that might need to be clarified, adding that the 200 threshold has existed in the regulations since 2010 and even prior. She added that she did not know if that has been an issue with administering the special use permits, but if it can be further clarified, then staff can do that.

Mr. Blair said that he would try to come up with some language before the Commission takes its vote.

Ms. Spain asked why existing wineries are exempt from the neighbor notification provision.

Ms. Burbage responded that in December 2015, when the provisions for wineries, breweries, and distilleries were last adjusted, the zoning clearance requirement was established for vehicle trips over 50 and parcels less than 21 acres. She said that those establishments existing prior to that date of ordinance adoption were grandfathered from that zoning clearance requirement, and because they are not required to submit a zoning clearance for events, they would not have to do the neighbor notification.

Ms. Firehock stated that the Commission had received a letter from one constituent asking why they are against appointment-only wineries, and staff has said they wanted evidence that the establishment was making enough product to be open – but she can think of one or two wineries in the county that run out of product because they are small production wineries. She said that they still fall under this ordinance, but perhaps someone else making the same amount of wine would be allowed to have events and one would not. Ms. Firehock stated that she was not swayed by staff's argument that a winery needed to be open beyond having appointment hours to be a functional winery and worthy of having an event, so she did not know if the intent was to tamp down on the number out of fear that everyone would open up and have weddings along with other things.

Ms. Burbage responded that the intent was to avoid a situation in which there was a winery that made just a token amount of product but could have events as frequently as they wanted. She emphasized that the purpose of the events is supposed to be to market and sell the product, so if they have a limited amount of product but are having events every weekend, it seemed unlikely that the event would be to market and sell their product. Ms. Burbage commented that it is not a perfect solution.

Ms. Firehock said that she understands; but then using that logic would we then want to do that based on the amount of product produced rather than whether they have a tasting room that was open. She pointed out that she was not saying they had the time to deal with this right now.

Ms. Burbage responded that it would be another avenue to address it, but it becomes tricky to pick that quantity and have a viable legal basis for it, and they can't pick that number out of thin air as they must be able to justify "substantial impact."

Ms. McCulley said that she did not think if there was an establishment that ran out of their product – and would have regular hours open to the public were it not for the fact they ran out of product – that they would be penalized. She stated that they may still want to be open for other reasons, and she could not imagine that would be a violation they would create because they were completely out of product and end up being closed

Ms. Spain stated that she got the idea about the notification being dependent on zoning clearance, and asked if this meant that existing wineries did not have to notify neighbors, and Ms. Burbage replied yes.

Ms. Spain asked if there was a way to have existing wineries notify neighbors of events that they were going to have throughout the year, independently of the zoning clearance.

Ms. Burbage responded that existing wineries were not required to notify, and while this was something they could encourage, she did not think they could legally require it.

Ms. McCulley noted that they were preexisting the regulation.

Mr. Blair, Deputy County Attorney, stated that ex post facto – which is the same idea as retroactivity – would create a constitutional question about imposing the regulation after this was passed.

Ms. Spain stated that the whole idea was to encourage good neighbor relations, and it wouldn't seem fair to have only some wineries responsible for that and others not. She asked how many would not be bound by this.

Ms. Burbage responded that there were 35 active licensees now, and they would be exempt.

Ms. McCulley stated that this is a complex topic generally, and in the framework that the State Code has given related to wineries, breweries and distilleries there are even further restrictions about what localities can require – but the legal department could examine that after this meeting. She said that a lot of wineries do this as a matter of being good neighbors.

Ms. Firehock said that she has heard that some are good neighbors and others are not, and while they may not have the ability to regulate it legally, they can at least encourage good neighbor practices. She added that everyone wants to get along out there.

Ms. Burbage noted that one of the first things staff says when a prospective winery or brewery comes to the county is, "Have you talked to your neighbors about it," because they know it is going to be an issue that will arise.

Mr. Keller opened the public hearing and turned the meeting over to Ms. Firehock, Vice-Chair.

Ms. Firehock invited members of the public to come forward and speak. She invited the first person signed up to come forward, Mr. Schornberg.

Mr. Al Schornberg addressed the Commission, stating that he is speaking on behalf of Keswick Vineyards and that he believes the ZTA process started out as an effort to curb "faux wineries," which are event businesses disguised as wineries to take advantage of the events. Mr. Schornberg stated that one part of this proposal actually hurts legitimate farm wineries rather than protecting them, explaining that the Commission had previously agreed not to incorporate a 10 p.m. curfew on outdoor amplified music. He said that now staff is proposing a 10 p.m. curfew Sunday through Thursday – but Sunday happens to be the second busiest day of the week for farm wineries hosting weddings, equating to approximately 25% of the wedding revenues. Mr. Schornberg said that imposing a 10 p.m. curfew on outdoor amplified music would drive potential customers to other venues that are not limited, and that creates an uneven playing field. He noted that in June and July, the last light is not until 9:30 p.m., so it was somewhat impractical to shut down a half hour after dark. He stated that the proposed curfew discriminates against farm wineries, as there are roughly 17 outdoor venues in the county that host weddings – but only four are farm wineries, or 23% of the venues. Mr. Schornberg said that the vast majority of outdoor venues would have no curfew, and that puts farm wineries at a huge disadvantage but would have very little impact on whatever problem staff is trying to solve. He stated that if there is going to be a curfew on outdoor amplified music, it should apply to all outdoor venues, not just farm wineries. He noted that the intent of the proposed ordinance was to protect legitimate farm wineries – not hurt them and put them at a very obvious disadvantage. Mr. Schornberg stated that it did not seem right, did not seem fair, and he wondered if it was even legal. He said that wedding couples usually contract their weddings one or two years in advance, and those contracts spell out times and dates, so the county would be creating all kinds of expensive legal and contractual issues because people book these events based on existing regulations. He added that he did not believe a 10 p.m. curfew on Sunday is warranted or necessary, and if the county wants to limit noise, they should consider not allowing live music – which is the source of many complaints they are hearing – and venues using DJs and well-placed speakers should be allowed to operate.

Mr. Robert Hodge addressed the Commission and stated that he and his wife bought their Whitehall farm in 1976, and recently about three wineries have sprung up within a mile of his property. Mr. Hodge stated that the winery across the road from them has posted a curfew of 10 p.m., which he believed has not affected their bookings whatsoever. He stated that the problem with the survey is that it did not distinguish those respondents who live close to a winery versus those who live a great distance away, so this provided skewed results in terms of the actual problem. Mr. Hodge stated that the winery he has been working with has been very cooperative, but it is very hard to enforce a conversation and noise level, so he would push to go with the staff recommendation to keep the curfew at 10 p.m., as people have varying work hours. Mr. Hodge said that many people moved out to the rural areas of Albemarle County because of the beauty and serenity, adding that he also has a licensed vacation rental on his property, which people stay in because they want serenity. He emphasized that 10 p.m. is a reasonable compromise and would not really affect the bookings. Mr. Hodge said that people can buy property in Albemarle, but they never know what will pop up next door. He said that it is like a smoking gun because of the commercial activities that are sanctioned in a winery, which is different from what goes on in a zoned area, such as a commercial area where this is permitted. He stated that if facilities want to extend their hours beyond 10 p.m., they should build an indoor facility and have something where they can have music inside. He added that 10 p.m. is very reasonable and should apply to every day of the week.

Ms. Katie Hellebush of the Virginia Wine Council addressed the Commission and referenced comments submitted to them ahead of time. Ms. Hellebush stated that the Virginia Wine Council had been able to take part in discussions about all of the different subjects raised pursuant to this ZTA, and was very interested and engaged in making sure they are representing all of our farm wineries, cideries, vineyards and orchards all across Virginia – especially the 35 in Albemarle and 30 in the Monticello Wine Trail. She said the Council has worked closely with colleagues locally to keep track of the county's efforts, and over the past few months has held its own roundtables and several industry events to talk about current laws and ordinances and discuss other efforts going on around Virginia, and to discuss what the industry needs to do to advance it in a positive way and be aware of issues as they arise. Ms. Hellebush stated that the Council hopes they will come up with an industry-driven solution that will address concerns from the Commission and those presented by constituents, as well as the comments made by Mr. Schornberg and others that are specific to the Virginia wine industry.

Ms. Hellebush stated that the Virginia Wine Council takes issue with four points in staff's recommendation:

- Regulating farm wineries in the same manner as limited breweries and distilleries, as there are separate percentages required regarding agricultural activities;
- The requirements for tasting rooms that are ongoing versus by appointment;
- Curfews, as they should be addressed by farm wineries so as not to impede their businesses; and
- Traffic management plan, as all wineries would hopefully be acting in the best interest of their neighbors as well as people visiting their establishments.

Mr. David King of King Family Vineyards in Crozet and the current Virginia Wine Board chair addressed the Commission, stating that at the wine board's quarterly meeting earlier that day, they found that the issue would again be raised in the General Assembly. He commented that this is an ongoing 10-year saga, and there would be competing bills in the legislature pursuant to Section 4.1 of State Code regarding licensure. Mr. King stated that for the very first time, to the surprise of those in the industry and those in northern Virginia that are directly involved in the current legislation issues, there is a viable alternative that has been provided by the county and the Monticello Wine Trail – who have collaborated to get this to a starting point. He understands there are risks and it is not finished. He said that these efforts, in collaboration with the local wineries association, will be the only viable alternative raised in the 10 years he has been following the issue. Mr. King stated that he has no comments on the particulars, and the proposal is not perfect, but he wanted to thank staff and congratulate the Commission for providing a viable alternative.

Mr. Jeff Werner of the Piedmont Environmental Council addressed the Commission and stated that he agreed with Mr. King's statements, noting that they have known one another a long time and often agreed. Mr. Werner said that there may be a grammatical change needed for one of the provisions. He stated that this was supposed to be about the making of Virginia wine and growing of grapes, but all they ever talk about is weddings and noise. Mr. Werner emphasized that this is the only business that people seem to get

into with the complete foreknowledge that they can't make any moneymaking wine or cider – they can only make money if they host weddings or have a commercial event venue in the rural area. He stated that they continue to pretend that this is something else, adding that he lives in the old winemaker's house on Wine Street, and he has found no records that they had to have weddings and events in order to be a viable winemaker, as the wines sold well all over the world. Mr. Werner added that he would like to hear one day with what they can do to help with the agricultural aspect of wineries rather than events, but he does understand the value of incremental compromise. He thanked the Commission and staff for their hard work.

Ms. Cynthia Neff addressed the Commission and said that it is untrue that they are moving from the urban to the rural – as there are several proposed wineries just down the street from Oakleigh. Ms. Neff said that 95% of Albemarle County is designated rural, and she was a big fan of the master plan; but it was also a bit of an enemy at this point. She stated that she works on the Places 29 Hydraulic Committee and lives in that area, but she entertains by visiting area wineries. Ms. Neff echoed the frustration with it is all about the weddings. Ms. Neff stated that within the one proposed winery, there are 2,500 homes within one mile, and that is a vastly different scenario of talking about an agricultural initiative than a winery in the rural area. Ms. Neff said they need to be clear about what they are looking at since she did not know that the urban ring is really where we plan to put in wineries, distilleries and breweries – so she thinks that is something that needs to be considered. She said that she appreciated all the work and effort put into this and thanked staff for their efforts.

Mr. Neil Williamson, with the Free Enterprise Forum addressed the Commission, stating that he had also sent a letter to them with specifics about this item, as well as speaking with Mr. Blair. Mr. Williamson stated that he does not feel that the language as currently proposed accomplishes what the county intends, but he felt certain they would work it out. He said that the reason they don't talk about the agricultural components of the farm wineries is because they are by-right uses: the county can't regulate them so it does not talk about them. Mr. Williamson emphasized that the events are the only things that can be regulated, which is why they are discussed. He mentioned that he ran a winery in the Napa Valley for a year and a half, and visited a winery that was over 100 acres and was an appointment-only winery – Duck Horn Winery. He said that you had to make appointments weeks in advance, and he didn't think anyone would think that winery was a "faux winery" because of the manner in which they address their guests, by appointment only. Mr. Williamson stated that the issue they are trying to solve is to tie significant agriculture to the wineries – and they have done that with the five-acre minimum. He concurred with Ms. Hellebush that this should not go together with distilleries and breweries, because they are very different, but cideries are close enough. Mr. Williamson thanked the staff, stating that he participated in all four focus groups and has been in communication with them and with Planning Commission members. He commented that this ordinance was on its way to being very good, and he has raised a total of five points needing attention, and he was hopeful they could work out the curfew so it was what they asked for in the joint meeting with the Board of Supervisors, which was 11 p.m. Mr. Williamson said that it shouldn't be a concern on weekends. He stated that he clearly believed this was part of the county's economic development strategy, and it almost had to be with almost 95% of the county being in rural area.

Sarah Henley of Henley's Orchard in Crozet addressed the Commission, thanking staff and stating that the constituents involved in this do feel like they are being heard – which is very positive. Ms. Henley stated that with rural farms, you do not get a lot of visitors unless you have events going on, so they are important in bringing customers to them, as opposed to an urban location where there are customers stopping by. She said that bringing people out to the county has been the answer as to whether a farm can continue to exist or not. Ms. Henley stated that her orchard lost all of its peaches this year and had a difficult apple crop, and having "Henley Fest" festivals meant a lot to them because it meant people were coming out – and they wouldn't have come without the events. She added that there are a lot of vendors, florists, and caterers in Albemarle County who are depending on this as their income, so it impacts a lot of people. Ms. Henley said that she didn't realize that Albemarle County was setting an example for the rest of the state, and congratulated the Commission for that.

Ms. Sue Albrecht addressed the Commission, stating that she has been a resident of Albemarle County since 1980 and is the owner of Rosslyn Farm and Vineyard. Ms. Albrecht stated that she appreciates staff's effort and the Commission's effort in recognizing the growth of the winery, brewery, and distillery industry in the county, and considering how to best manage events allowed at these farms. Ms. Albrecht said that

having participated in the last several months of roundtable work sessions and this public hearing, she was sympathetic to the county's desire to regulate farms to prevent lackluster operations from access to holding events – however, these regulations should not task legitimate operations with providing administrative paperwork to substantiate compliance with the ordinance changes. She asked that each commissioner pause and reflect on how much these regulations are going to be a challenge for farmers to provide that information, and how the county is going to monitor these activities. Ms. Albrecht asked who at the county is measuring planted acreage onsite and on adjoining parcels and calculating setback minimums, and what qualifies as a "bottling operation" or "tasting room," and what are "regular hours", as well as who the neighbors were – whether they were contiguous or a large radius around the farm. She asked what method would be used for notification, who would be verifying the requirements, who the neighbors are, what the frequency is, and by whom. Ms. Albrecht urged the Commission to reflect on the need to study how these policing tasks will be handled prior to voting on the ordinance changes. She asked how they planned to add additional staff and monitor the changes by the county, and how it will be done. Ms. Albrecht stated that there is already a tall benchmark set for farmers to financially survive with the cost of Albemarle County real estate, and each farmer values the right to individually handle the choices involved in managing land use and crops, and marketing/sales and the scheduling of various types of events. She stated that she feels they all deserve the freedom to manage their farms to best suit their needs without being required to succumb to additional bureaucratic paperwork – taking time and energy from the running of their farms. Ms. Albrecht thanked them for consideration of all these issues.

Mr. Bryan Slaughter of Michie-Hamlett addressed the Commission and stated that he represents a group of landowners on a small rural road in Albemarle County. Mr. Slaughter said that he wanted to talk about the road issue, stating that he would like the Commission to consider reserving to the county the ability to look at certain roads. He stated that they could all agree that somewhere in Albemarle County there is a road that is not suited to having a hundred cars a night, twice a weekend. Mr. Slaughter emphasized that it is their job, by state statute, to be able to regulate the safety of those roads – but they need that in the regulation. Mr. Slaughter said that he would like them to consider a provision mentioned two meetings ago that a road study is required below a certain threshold – and he thinks it should be the 18-foot width, which is the minimum amount for a VDOT Road. He stated that whatever it is, the county should be able to look at certain roads to say this is not safe to have people at night, after they have been drinking, on these roads. Mr. Slaughter said that he understands they may not be comfortable with an actual requirement, but asked that they maintain the ability to review roads for suitability.

There being no further speakers, Mr. Keller closed the public hearing to bring the item back to the Commission for discussion and recommendation.

Ms. Spain asked how they would address Ms. Albrecht's concern about the paperwork required, monitoring, and so forth, and asked if there was significant amount of paperwork required, one report a year, etc.

Ms. Burbage responded that there is no new paperwork proposed with this ordinance, and currently the zoning clearance and special use permit applications would be the two permits required. She stated that the zoning clearance is a $54 application that administratively reviewed by staff and it is a one-time application that would apply to all events going forward – not even an annual renewal – and it is a two- or three-page application. Ms. Burbage said that a special use permit application is a more involved process, but that is only required for events over 200.

Ms. Spain asked about monitoring compliance and how staff saw that playing out.

Ms. Burbage responded that there are some new elements being introduced, such as minimum acreage, and this is being done on a complaint-driven basis, so code compliance officers would have to go out to the site. She stated that Google Earth is a very useful tool for approximating acreage, but in close-call scenarios, it might be a little trickier. She said that setbacks are standard practice in other parts of the ordinance, so she did not imagine that increasing setbacks is implying any additional burden on staff. Ms. Burbage stated that the neighbor notification would happen in conjunction with the zoning clearance application process, and there are other neighbor notification requirements associated with home occupations. She said that once the ordinance was adopted, they would need to come up with guidance to

give applicants so they know what they need to be doing as far as notifying abutting property owners, but the county would spell that out.

Ms. Spain said that this does not apply to the existing 35 anyway, and Ms. Burbage confirmed this.

Ms. McCulley said just to be clear in terms of monitoring that across the board, with the exception of public health and safety concerns, staff is not proactive – and would treat this like any other matter. She said that when it is brought to their attention, staff would be responsive; and when someone applies for a zoning clearance, the new regulations grandfather existing establishments.

Ms. Firehock said that Ms. Burbage clarified that the curfew time applied to Friday and Saturday nights – not Saturday and Sunday – and asked if there was an advertising concern.

Ms. Burbage replied that the draft ordinance itself was correct and the legal ad was generated from the draft ordinance, so the mistake was in the staff report so it shouldn't affect the advertising.

Mr. Blair confirmed that it would not.

Ms. Riley stated that she has a follow-up question to the comments on the minimum road standards, noting that the Commission did get the memo from County Attorney Greg Kamptner. She stated that she appreciated the data provided that does not show a correlation between unpaved roads and accidents – but this did not address Mr. Slaughter's concern about some roads being too narrow. She asked if the staff has explored the suggestion about the county maintaining some approach to suitability of certain roads as new wineries might apply.

Ms. Burbage said that this is an issue that staff has looked at extensively and agrees that it is a good idea – but very tricky to implement, both from the enabling authority perspective, but also the applicability of any road standard, whether it is width, paved or unpaved, because you have to take into consideration which roads are serving the use. She stated that many of these roads are in remote locations that are served by several roads that may meet a minimum road width standard in some places and drop below that width standard in other places. Ms. Burbage commented that sometimes there are several ways to get to a site, so there are other parameters that come into play. She said that another issue arising from the discussion of minimum road standard is that there are quite a number of rural area uses that exist that don't have minimum road standards that generate similar traffic impacts – so applying a standard to one use but not another is not a level playing field, although public safety risks are associated with different types of uses. She said that Mr. Blair could address this, but she did not believe they could require looking at minimum road widths for allowing events.

Mr. Blair said that State enabling authority under Section 15.2-2288.3 says that "no localities shall regulate any of the following activities of a farm winery licensed in accordance with the ABC," and it lists six activities. He stated that even taking events out of it, there is an enabling question because there is specific preemption about the activities of a farm winery – and while they can argue that they are not trying to regulate the activities, but saying a road may be too small to have a farm winery would be regulating or disallowing it. Mr. Blair emphasized that the county would be very cautious from a legal perspective in trying to regulate something, but there is a specific preemption for localities regulating those activities of a farm winery, and he did not know how they would get around saying a farm winery could not be allowed on a certain road – which in effect negates all of the activities that farm winery could engage in, which are not supposed to be regulated by a locality. He said that is one concern obviously the substantial impact. He said that he appreciated Mr. Slaughter's comments about just leaving the idea open for "studying," but if there are events that have over 200 attendees, there would be a process they have to go through that would consider traffic management. Mr. Blair added that they could continue to look at the issue, but the State statute specifically preempts local regulation of certain farm winery activities, and he did not know if they could come out and say, "You can't locate a farm winery on this road," and just completely negate any opportunity to have those activities.

Ms. Firehock stated that she lives on a road that has greatly varying widths and challenging curves and it is paved, so they might say that is a safe road – but there are paved roads in Albemarle that have very

awkward angles and tilts that make them quite unsafe. She said that one could make the case that if a road had to be of certain standards, they would have to make a wide road so their activities could be accommodated, which Mr. Blair has indicated cannot be done. Ms. Firehock stated that she fears going down that path, coupled with the fact that they did not get accident data to substantiate that there were additional problems with places that have active wineries or breweries.

Ms. More asked if, when they talk about tasting room hours and private tasting schedules, there is a definition for the amount of hours a place is required to be open to the public – and whether there is way to incorporate into it acknowledgement of those tastings taken by appointment only.

Ms. Burbage responded that the provision is in Section C1, Number 2: "An onsite tasting room with regular hours in which it is open to public." She noted that she did not think they have a definition of "regular hours," so it would be an interpretation by the zoning administrator – and the intent is to allow maximum flexibility of what "regular" means. Ms. Burbage said that it could just be few regular hours per week, but that is in contrast to appointment-only hours where you have to call to have a tasting.

Ms. More stated that she just wants to make sure it is flexible.

Ms. Burbage said that by not defining it, it is more flexible, which was staff's intent.

Ms. Firehock commented that they have defined acreage that creates a bona fide farm-based operation, and asked if that was not enough. She said that there is already something in the ordinance that guarantees a farm is creating a product from which they are making wine, with the assumption they are selling it – and she remains unconvinced that they need to have the regular hours. Ms. Firehock added that they could be open one hour a week, so it seems like a silly argument at this point, and she would like to get rid of it. Ms. Firehock said she was less concerned about the small scale by appointment only events, which are people.

Ms. McCulley pointed out that the Commission has several options: to go with it as written; to recommend removing it entirely or to take it from a requirement that cannot be waived to allowing it to be waived by special exception.

Ms. Firehock said that perhaps it could be done by special exception – that way they could determine if it is actually an issue. She stated that it would be harmless to do it that way.

Ms. McCulley noted that there are limits under the Sinclair Supreme Court case as to what can be done administratively by waivers.

Mr. Blair advised to have the special exception for that particular option.

Ms. McCulley said or eliminate it.

Mr. Blair agreed.

Ms. Firehock stated that the other issue is the curfew on Sunday, as they have heard from some professional operators that it would be harmful, and from others that it would be detrimental to their quiet enjoyment of the countryside. She asked if that was something else that could be handled on a case-by-case basis. Ms. Firehock said that part of the difficulty with this is that the landscape is very different, and the placement of a facility can have a wildly different effect as to how sound carries, depending on numerous variables – the topography, proximity to neighbors, and the behavior of guests. She suggested that instead of making a blanket statement about the Sunday, a person could come in and ask for an exception to stay open later if they have the support of neighbors and work through those issues.

Ms. Burbage clarified that this already exists as a Board special exception – but it is not an administrative waiver.

Ms. McCulley pointed out that it exists in the draft ordinance before the Commission tonight.

Mr. Lafferty asked if they could include Sundays, and then if there were neighbor complaints, thereafter they would have to get a special exception.

Mr. Blair said that he did not think that would work, as this is a legislative decision that needs to be made, with the Commission recommending and the Board adopting – and he did not think regulations can be contingent on whether there is a complaint or not.

Ms. More stated that it could set up a strange dynamic.

Mr. Lafferty said that checking the noise level is complaint-driven.

Ms. Firehock said she understood that, but there is one police officer from the top of Afton Mountain to the southern tip of Albemarle, and she did not know how they would check noise complaints.

Mr. Lafferty commented that this should not be the Commission's concern right now.

Ms. Firehock said that was the reality of it.

Mr. Blair clarified that the county enforces on a complaint basis – but what that means is if there were a complaint about somebody violating the regulation, the county would go out and investigate and enforce. He emphasized that he did not think they could craft an ordinance that says a venue can have music until 11 p.m. unless and until there are so many complaints by a neighbor.

Ms. More commented that the first part of what staff provided gets to the intention of what they set out to do, which was to make sure wineries have the focus on agriculture and not just be a place that wants to have events and have that be the focus. She said that staff has done an amazing job and everyone has provided good input to get them to this point – but it seems they have wandered into trying to create more regulation with issues that have come up, such as trying to strike a balance between neighbors and those facilities operating and hosting events. Ms. More stated that she is not entirely comfortable with all of those things, but she does feel that a lot of work has been put into trying to come to common ground, and the first part addresses their intent of making sure these are bona fide operations. She emphasized that they are talking a lot about weddings, but there are a lot of other events that are key in supporting the product, which are important product-driven events that bring a lot of crowds.

Mr. Keller asked Ms. More to expand on her concerns for the areas addressed beyond the first part.

Ms. More said that they are getting into prescribing dates for curfew – Friday, Saturday and Sunday – and some wineries have self-imposed curfews, so they can move inside, but others are limited. She stated that she feels they may have wandered into some of these things in trying to strike a balance with making neighbors happy while having a facility operate without creating a situation in which they would be less attractive to certain types of events and not just weddings. Ms. More said that people have worked hard to strike a balance, but her main concern is that what was in place before was a noise ordinance method – and she did not know whether it wasn't working well, or whether this would work better for neighbors.

Mr. Lafferty commented that there were some initial complaints, but he thinks it is working well now.

Ms. Firehock noted that the zoning clearance established helped to resolve some of those potential complaints.

Ms. More asked if that was not working, and if they had to go deeper to outline days of the weeks and times.

Ms. Burbage said she could speak to the nature of complaints related to noise at wineries, and frequently the complaints were investigated and the noise was found in compliance with noise regulations – but was still a nuisance to the neighbor. She stated that a curfew would give a certain cutoff, after which neighbors wouldn't have to hear it anymore. Ms. Burbage said that in her work talking to rural area residents, she knows this is a real issue for people, and this ordinance would provide some relief. She emphasized that this is not a perception – it is a reality for some who live nearby on these properties.

Ms. More stated that she is assuming that most facilities would respond to their neighbors' complaints and adjust accordingly – and there are all kinds of factors in play, such as acoustics on properties because of topography that might be hard to control. She pointed out they heard from people at the last public hearing where they were hearing just regular conversation between employees during the day; and, that is something that she understands is not what they want to hear but might be something hard to control. She said that the question is whether they feel this would help establish a better relationship between neighbors and facilities. Ms. More said she hoped all facilities would work with their neighbors, but she would guess that would be a reality that we might have this.

Ms. Firehock commented that this is why they have regulation in the first place.

Ms. More stated that her question is whether the regulation that was in place was not addressing those concerns, and it sounds like staff is saying for some neighbors it was not.

Mr. Keller asked if there were any other questions or discussions before a motion.

Ms. Riley said she was ready to make a motion if there was no other discussion.

Ms. Firehock said she would like to add to the motion to adopt as attachment A to keep Sunday open to the later hour of 11 p.m. by special exception for the outside curfew; and to keep the clause that requires them to maintain regular hours, but for those who are open by appointment only, to be able to request to have events by special exception. She said those are the two things she would like to see in the motion that one would make and that Ms. Riley may continue to make a motion, noting that they are both rural area commissioners.

Mr. Lafferty asked if that was a motion.

Mr. Blair asked if it was a motion to approve.

MOTION: Ms. Firehock moved to approve Attachment A for ZTA-2016-00003 Farm Winery, Brewery and Distillery Events with two changes: they be allowed to keep open one hour later with a curfew outside to extend to 11 p.m. on Sundays by special exception; and for the clause concerning the requirement that they maintain regular hours, that those were open by appointment only may also petition to have events by special exception.

Ms. McCulley said that a quick point of clarification is the first thing is already embedded in the ordinance, as the special exception is available for curfew extension – but the other is not. She said that she also understood Commissioners stating in the beginning the need to clarify that the number 200 does apply to staff of any type, including vendor or winery staff.

Ms. Firehock agreed.

Mr. Blair pointed out that he had some language: "Attendance shall not include any owner or employee of the farm winery; attendance also shall not include any employee or owner of a vendor providing service to the farm winery event, wedding, wedding reception, or other use."

Ms. Firehock said that sounded good to her and asked to include that, too, in the motion.

Ms. Spain seconded the motion.

Mr. Keller invited further discussion.

Mr. Lafferty said that he agreed with the Sunday, but did not agree with eliminating the tasting. He stated that he thinks the tastings serve as a mechanism of getting the public there, showing the product and having an economic impact.

Mr. Keller pointed out that the tasting is there by right.

Ms. Burbage noted that it is the tasting room that Mr. Lafferty is referencing, and Ms. Firehock is not saying to get rid of that.

Ms. Firehock clarified that she was saying that if you had that, you could come in by special exception and request a waiver – so you are not automatically getting that. She said that this would just allow someone to come in and make the case as to why they do not have regular hours, etc. She said the county is not saying that they can, they are just saying they are letting someone come in and make their case.

Ms. Spain added that this pertained if they have appointment only.

Ms. Firehock agreed.

Mr. Keller noted that the Commission has heard from some folks that is going to be a trend in the industry, and then just as we are amending now, the industry will come back to us and ask us to amend the legislation.

Mr. Lafferty said he would certainly go along with it, but he thinks if they were going to build a tasting room, they would want to advertise their product to the general public.

Ms. Firehock said it is possible they may be working to save up enough to eventually afford the money to build a tasting room, and then they would be in compliance quite easily.

Mr. Keller invited further discussion.

Ms. More said she would ask to keep talking about the limitation on the noise, but it seems Ms. Firehock's motion did not specifically outline Sunday because it is embedded in it.

Ms. Firehock explained she was saying that someone could already ask for that exception.

Ms. More asked for confirmation that a person could ask for an exception on any day of the week and make a case for needing extra hours, and it is more advisable to have a limitation of 10 p.m. and have somebody ask for more – and then the county could say 11 p.m.; then if that is not working, try to change it.

Mr. Blair replied that this is their prerogative, and obviously, the Commission could recommend 11 p.m.

Ms. More said that is what she thought we said before, and she did not want to nitpick about it, but just wanted to be sure that she understands what she is voting for. She stated that she is willing to go along with having the special exception, and she does not know under what circumstance someone wants to be up and being really loud at 11 p.m. on a Tuesday night – but maybe they have a good reason.

Ms. Firehock posed a scenario in which it was the night before the Fourth of July, which falls on a Tuesday, and the neighbors do not mind that it is later, etc.

Mr. Keller asked if they could go around and say whether they would be comfortable with Sunday at 11 p.m., stating that he is comfortable with having Sunday at 11 p.m. along with Friday and Saturday.

Mr. Lafferty said he has already expressed that.

Ms. Spain agreed.

Ms. Riley said she prefers the recommendation of the staff as it is written in the ordinance.

Mr. Dotson said he prefers Sunday at 10:00 p.m.

Ms. Firehock said she prefers Sunday at 10 p.m. because that is a work night for many people.

Ms. More said she was comfortable with it being 11:00 p.m., but she was asking for clarification that whatever it is there would be a special exception for any day.

Mr. Keller noted that there were four Commissioners who said they were comfortable with 10 p.m., and that is why he just wondered what that set was, and so he thinks it is up to whether anybody that was interested in that would want to make a friendly amendment because that simplifies this whole issue. He said that if not, they can let it stay the way it is, but there has to be a special exception.

Mr. Lafferty replied no, he would be comfortable with 11 p.m., stating that in the outlined dates there was Friday, Saturday and Sunday.

Mr. Keller asked if he wanted to make a friendly amendment to that point, because right now it is 10 p.m.

Mr. Blair noted that it adds Sunday.

Mr. Lafferty said that he realized that it was 10 p.m., but they still have the noise ordinance that should prevail.

Mr. Lafferty said he would make the amendment that Friday, Saturday and Sunday should be allowed to go to 11 p.m.

Mr. Keller asked if there is a second.

Ms. More seconded the amendment.

Mr. Keller invited discussion.

Ms. Firehock stated that she did not think it was irrelevant that the county doesn't have enough police officers to enforce the ordinance, but she does not think it is irrelevant, because it is reality. She emphasized that she is trying to represent rural constituents who have contacted her and told her of actual issues that they are experiencing. She stated that she would like to be able to have a guarantee that on Sunday evenings, people can go to bed and get up on Monday for work with a reasonable expectation that we are not disturbed. Ms. Firehock said that as the representative of a largely rural district, she would really like to allow these uses to occur in harmony – and people can still come to Albemarle County and ask for 11 p.m. She stated that they could have a conversation with them and the residents around them to determine why there is a disturbance and whether there are measures to make it less obnoxious. Ms. Firehock said that it could then be handled on a case-by-case basis, but she did not want a blanket provision against her rural network of people and say that it should be 11 p.m. off the bat. She asked why they would do that instead of solving it.

Mr. Lafferty asked in those cases that you got complaints did you report it to zoning.

Ms. Firehock responded that the complaints that I received were specifically from residents in response to this ordinance for tonight, so no - she did not initiate a zoning police action. She said she was simply responding to what they would like to see in the ordinance, and they are capable and have talked to the facilities that have caused disturbance to them. Ms. Firehock emphasized that this was not her job here tonight, and her job was to try to set up a scheme that would ensure that residents would have some reasonable guarantee of quietude on Sunday evenings – and it is that simple. She said that if someone wants to come in and ask for an exception, they can do that and they can even have a conversation with staff – who the Commission has heard are incredibly helpful – to suggest ways that they could perhaps make their use less noxious, and maybe then they can stay open to 11 p.m. She emphasized that she would rather that this be decided individually, because the landscape is quite different, sounds carries differently, and enforcement capacities are different closer into the urban ring than they are in the county. Ms. Firehock said that was all she is going to say.

Mr. Keller asked if there were any other points before voting on the amendment.

Ms. More asked if they were voting on the 11 p.m. item.

Mr. Keller replied that it was changing the curfew to 11 p.m. on Sunday night.

Mr. Blair replied yes, it was changing the curfew to 11 p.m.

Mr. Keller asked for a roll call vote.

Mr. Lafferty voted aye.

Ms. Spain said she has been convinced by Ms. Firehock's argument, and voted no.

Mr. Keller voted no since he has been convinced by Ms. Firehock's argument.

Ms. Firehock voted no.

Mr. Riley voted no.

Ms. More voted no.

Mr. Dotson voted no.

The motion for a friendly amendment failed by a vote of 1:6.
(Spain/Firehock/Keller/More/Riley/Dotson voted nay.)

Mr. Keller suggested that Commission go back to the proposal with the modifications and that has been accepted, and asked if there was any further discussion before voting on that. Hearing none, Mr. Keller said they were ready to call it again.

The motion passed by a vote of 7:0.

Mr. Keller thanked the constituency groups that have spent so much time on this, staff and Commissioners for thinking about this in a thoughtful manner. He asked the Commission take a second for the audience members who are leaving, and then move on to other comments from the public.

Other Public Comments.

Mr. Keller invited other public comments.

Mr. Neil Williamson, with Free Enterprise Forum, stated that he thought the Commission had planned to look at the attendance portion of that ordinance, but what they looked at did not include normal by-right uses. He said that what he thought they wanted to do was to mitigate and limit to 200 the number of people at the event. Mr. Williamson stated that what the ordinance currently reads is that they can only have 200 people at your farm winery. He said that if they have an event with 200 people and have a by-right tasting going on, they would have to either close their tasting room or limit the number of people they think would be coming to the tasting room. He said that he is concerned that they may be getting into some constitutional concerns with the by-right use being limited by the event use, and encouraged them – as you move this forward to the Board – to examine that specific question of whether they are looking to limit the number of events, which is much easier to manage. He emphasized that the wineries now are doing a really good job, and he has seen people turned down for larger weddings because they don't fit the ordinance. He urged them not to limit the number of people at the winery, but instead to limit the number of people at the event in the way that you put it together. Mr. Williamson thanked the Commission very much for their thoughtful comments this evening.

Mr. Keller said that his understanding was if there were multiple entities at one site and the events, and they were just talking about the event with this.

Ms. Firehock noted it says “events” throughout.

Mr. Blair said that he would be happy to speak to Mr. Williamson about this, because he has a different interpretation – as he thinks the 200 solely applies to the events, and not the totality of the winery. He stated that he would be happy to talk to Mr. Williamson and see whether more language is needed to clarify that point.

Mr. Keller said that they all seem to be in agreement and thanked Mr. Blair for following through on the matter.

Old Business

Mr. Keller invited old business. There being none, the meeting moved to new business.

New Business

Mr. Keller invited new business. He asked if they would have a quorum for the meeting in Crozet, and stated that perhaps Mr. Blair could advise on that. He asked Ms. More to tell the Commission about the event.

Ms. More explained that there is an event on Thursday, December 8 in Crozet at Piedmont Place, a new building that houses several businesses opening in Crozet. She said that they are going to have an open house in which people will be able to meet the new businesses, and they will have some concepts for public feedback. She stated that it is an open forum and not an official presentation, and would be held from 4:30 to 7:30 p.m. Ms. More said they would have the owner from the Barnes Lumber property would be present, as well as some of the landscape architect firm that was hired. She stated that they would have staff present and would have storyboards with different concepts on which they want to get feedback from the public. She said that she plans to attend and did not know if other Commissioners were interested in attending. Ms. More said that it is the first sneak peek at the plans for where the civic space would be located, and this is a rezoning application that will be coming to the Commission in the future.

Mr. Lafferty asked Mr. Blair if there is an open forum, if the Commission had to declare their attendance if three members or more were going to be there at any time.

Mr. Blair said that he would just add an abundance of caution at any time, and explained the Freedom of Information Act requirements, which stipulate that if three or more Commissioners are gathered at the same place and talk about public business, it be considered a meeting pursuant to the Freedom of Information Act. He stated that he would advertise it as a meeting if three or more Commissioners planned to be there, simply because they would not want a situation in which a Commissioner wanted to say something to a fellow Commissioner about the proposal but felt like they couldn’t because they did not advertise it as a meeting since that proposal would be coming to them as a Commission.

Mr. Keller asked if adjourning to that without it being advertised sufficient if it is two days ahead.

Mr. Blair stated that it would be sufficient if they wanted to do that.

Ms. Riley suggested determining if three people are planning to attend.

Mr. Lafferty said that he planned to go, but when nobody else was there.

Ms. More said she planned to go.

Mr. Keller said that he would not attend.

Ms. More noted that she thinks a majority of what would be in front of the Commission is the location of the civic space – not as much the concept of design, which is what is going to be discussed at the open house. She said they need to be very careful about what they might all end up at or discuss, but she thinks the primary purpose of the open house is to get feedback about the actual concepts for the civic space, not

necessarily the location – which is something the Commission would deal with more than whether they want an orchard theme or railroad theme. Ms. More said that this event is intended to get feedback from the community for what sort of concepts they like.

Mr. Lafferty asked if he attended a party and there was another Commissioner there, if it could be construed as violation.

Mr. Blair pointed out that if they were at a party, it was best not to discuss public business, and any time three or more of them are gathered at a place, if public business is discussed it is a meeting. He stated that typically people just sit in the audience, listen to a presentation and leave, which is not a meeting, but when they discuss item of business that will be before them, it gets into whether it is a meeting.

Ms. Firehock stated that she would not go.

Ms. Firehock stated that the dual application heard previously was confusing, and in the future she did not want to see an applicant coming forward with two applications – as it sets a tone that an applicant can just bring two proposals forth if they don't really know what they want to do. She emphasized to the planning director that at least one commissioner strongly discourages that approach and cautions applicants against it.

Mr. Lafferty agreed, and said that before the meeting he thought the item should be deferred. He said that the slide show was put together well, but he had difficulty determining what was in the individual blocks.

Mr. Dotson commented that what made it even more difficult was that one proposal was from 2007, and under those old rules – and then there was a new one under rules that are not yet clear. He said that if you stir that all up, you've got a bad brew.

Mr. Keller noted that there was consensus on that issue.

Mr. Keller announced the following: the next Planning Commission meeting will be held on Tuesday, December 13, 2016. He said that the following week they have a joint meeting with the Board of Supervisors on Wednesday and also are working toward a joint date with the School Board for February.

Mr. Gast-Bray said that there is also a date being finalized for CAC meetings in late January.

Ms. Riley stated that she and Ms. Firehock would be meeting with Housing Director Ron White on Thursday, and would be looking at follow up from the Commission study session and the quarterly proffer reports to see about getting additional data from staff, and would be taking additional steps toward the joint City-County meeting on January 24.

Adjournment

With no further items, the meeting adjourned at 9:43 p.m. to the Tuesday, December 13, 2016 meeting at 6:00 p.m. at the County Office Building, Second Floor, Room 241, 401 McIntire Road, Charlottesville, Virginia.

Andrew Gast-Bray, Secretary

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

Approved by Planning Commission
Date: 1-17-2017 sct