A regular meeting of the Board of Supervisors of Albemarle County, Virginia, was held on March 9, 2011, at 6:00 p.m., Lane Auditorium, County Office Building, McIntire Road, Charlottesville, Virginia.

PRESENT: Mr. Kenneth C. Boyd, Mr. Lindsay G. Dorrier, Jr., Ms. Ann Mallek, Mr. Dennis S. Rooker, Mr. Duane E. Snow and Mr. Rodney S. Thomas.

ABSENT: None.

OFFICERS PRESENT: County Executive, Thomas C. Foley, County Attorney, Larry W. Davis, and Clerk, Ella W. Jordan.

Agenda Item No. 1. The meeting was called to order at 6:03 p.m., by the Chair, Ms. Mallek.

_____

Agenda Item No. 2. Pledge of Allegiance.
Agenda Item No. 3. Moment of Silence.

_____

Agenda Item No. 4. From the Board: Matters Not Listed on the Agenda.

Mr. Snow announced that he has been appointed to VACo's Transportation Committee.

Mr. Snow said that he had received a call from a constituent about setting up a payment plan for delinquent property taxes. Mr. Davis explained that penalty and interest would still be due, but in some circumstances payment plans are allowed.

Mr. Snow asked if vehicles are valued at the same value when personal property tax is assessed regardless of the mileage or age of the vehicle. Mr. Davis responded that typically cars are valued at blue book rates, but if citizens have concerns they can bring them to the attention of the Finance Department and have Finance make an evaluation of the car based on the condition. He added that the County uses trade in value and typically the mileage for the age of the vehicle is considered in determining that value.

_____

Mr. Boyd stated that he has received a letter from IMPACT requesting Board participation this year and was not sure how other members were planning to respond.

Mr. Rooker stated that the meeting is scheduled for Monday, March 28, 2011 and he has already indicated that he could not attend because of a prior commitment.

Ms. Mallek said that she was also unsure whether her calendar would permit attendance either.

Mr. Boyd said that he got the impression IMPACT was looking for a yes or no answer again this year. Ms. Mallek and Mr. Rooker said that was also their understanding.

Mr. Thomas indicated that he had been contacted for a one-on-one meeting with an IMPACT member.

Mr. Boyd said that he had not had an individual meeting yet.

Mr. Rooker noted that he is meeting with a representative tomorrow, and would share that information with the Board at their budget work session on Monday.

_____

Ms. Mallek announced that that she has been asked to serve as Vice-Chair of VACo's Agriculture and Environment Committee and she was also appointed as the peanut in the Resolutions Committee.

_____

Mr. Thomas announced that he attended the Kohl's ribbon cutting along with Mr. Boyd and Ms. Mallek. The store and parking lot looks nice and he hopes the road would open soon.

_____

Agenda Item No. 5. From the Public: Matters Not Listed for Public Hearing on the Agenda.

Ms. Mary Miller, a resident of the Scottsville District, said that she serves on the Steering Committee of VSA of Charlottesville/Albemarle. She and Mr. Richie Hay are present on behalf of VSA to thank the Board for its support in helping people with disabilities find their voice through art. The program is supported by the County through Parks and Recreations therapeutic recreation program. She said that VSA of Charlottesville/Albemarle is one of the two most active chapters in the state. She presented the Board members with VSA's 2011 calendar and the 2010 VSA poetry book. It is their small way of saying thanks.

She said that Mr. Hay is a published poet and has several poems in the poetry book. Mr. Hay attends post high and works part time at Martha Jefferson Hospital. Mr. Hay was recently part of the premiere of the story of Ms. Rose, a film about a local woman, Rose Williams, who triumphed over many disabilities to have a successful career and full life. Mr. Hay was part of the film crew. The film was a collaborative work of VSA and the local lighthouse.

Mr. Richie Hay, a VSA participant and Albemarle County resident, read one of his poems from the book entitled "The Magic Carpet."

_____

Agenda Item No. 6. Consent Agenda. Mr. Rooker **moved** for approval of the Consent Agenda. Mr. Snow **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

AYES: Ms. Mallek, Mr. Rooker, Mr. Snow, Mr. Thomas, Mr. Boyd and Mr. Dorrier.
NAYS: None.

_____

Item No. 6.1. Request by Qwest Communications Corporation for Underground Right-of-Way License for facilities at Darden Towe Park.

The executive summary states that in 2006, Qwest Communications Corporation was granted a license by the County and the City of Charlottesville to install underground fiber optic facilities across a portion of Darden Towe Park. The facilities are exclusively for governmental use as a part of a Richmond to Charlottesville link. Darden Towe Park is jointly owned by the County and the City. The installation and initial operation was authorized by a five-year Underground Right-of-Way License Agreement that ran from 2006 to 2010. Qwest is now requesting a renewal of that license. This new Agreement must be authorized by both the County and City.

Qwest Communications Corporation is requesting the County and City to approve the renewal of an Underground Right-of-Way License Agreement permitting continued operation of fiber optic facilities across a portion of Darden Towe Park. The location of the fiber optic facilities does not interfere with park activities. Qwest agrees that if a conflict arises in the future, they will relocate the facilities at no expense to the County or City. Because of legal limitations placed on cities, the term of both the original Agreement and the proposed new Agreement is five years. The County and City are charging a fair market value annual fee for the license. City Council is considering this request at its March 7 meeting.

The Director of Parks and Recreation has reviewed the request and does not object to the proposal. The County Attorney has reviewed the proposed Agreement and finds that it addresses the County's legal issues and concerns.

This request has no budget impact. The proposed Agreement would continue to generate $840.00 of revenue for the County in each year of the five year agreement. $1,680.00 has been determined to be the total fair market value of the license, and the County would receive half of that amount.

Staff recommends that the Board authorize the County Executive to execute the Underground Right-of-Way License Agreement for Darden Towe Park requested by Qwest Communications Corporation after approval to both form and substance by the County Attorney.

By the above-recorded vote, the Board authorized the County Executive to execute the Underground Right-of-Way License Agreement for Darden Towe Park requested by Qwest Communications Corporation after approval to both form and substance by the County Attorney:

UNDERGROUND RIGHT-OF-WAY LICENSE

Permission is hereby granted by the **CITY OF CHARLOTTESVILLE** and the **COUNTY OF ALBEMARLE**, political subdivisions of the Commonwealth of Virginia and the joint owners of the property that is subject to this License (hereinafter referred to as "Licensors") to **QWEST COMIVIUNICATIONS COMPANY, LLC,** a limited liability company authorized to transact business in Virginia (hereinafter referred to as "Licensee") to make excavation into the real property owned by Licensors and as described herein, under the terms and conditions set forth in this License.

1. Term:

This License shall be valid for a period of five *(5)* years beginning January 1, 2011 and ending December 31, 2015, unless this License is terminated as provided herein.

2. Rights Not Exclusive:

Nothing contained in this License shall ever be held or construed to confer upon Licensee, its successors and /or assigns, exclusive rights or privileges of any nature whatsoever.

3. Conditions of Use:

a. Prior to beginning any work on the property subject to this License, Licensee shall submit detailed engineering drawings to the County of Albemarle for approval, and obtain from the County any permits or approvals that may be required by the County or any other governing authority for the installation of a total of 4,500 linear feet of fiber optic cable at the location more specifically described in section 4 herein. Licensee is further required, before beginning any excavation on the property described herein, to contact all applicable utility companies for location of buried cable, water or sewer services or mains, electric lines, gas lines, and the like. All construction allowed under this License shall be accomplished under the supervision and direction of the County Engineer, or such other person as the County of Albemarle may designate.

Licensee shall not unnecessarily obstruct or impair traffic upon any street, road or other public way within Albemarle County and shall comply with all of the County's rules and regulations designed to prevent damage to trees and shrubbery that may be caused by its installation hereunder.

b. Upon making an opening in any portion of the property subject to this License for the purpose of laying, constructing, repairing and/or maintaining Licensee's System, Licensee shall, without unnecessary delay, replace and restore the same to its former condition as nearly as possible, and in full compliance with the provisions of the County of Albemarle's policies, rules, regulations and/or ordinances. Licensee shall re-sod disturbed grassed areas and replace all excavated areas to their original or better condition in order to minimize the disruption of public property. Licensee shall, at its sole cost, repair paving cuts in a good workmanlike manner to specifications outlined by the County.

c. Licensee shall provide safe passageway for pedestrians and vehicles through, in and around the work site areas. Work shall be performed at night, if requested by the County, so as not to impede the regular use of Darden Towe Park. Licensee shall use directional boring in all areas where possible unless otherwise required or approved by the County of Albemarle. Licensee shall meet all local and State requirements for traffic control and notify the County at least 24 hours prior to the commencement of work or the accessing of conduit installed pursuant to this License, except in cases of emergency.

d. Licensee shall not cut or install any ditches or trenches within the root zone of any tree but rather shall bore under the same unless written permission to do otherwise is provided in advance by the County Engineer or his designee.

e. The work authorized by this License shall be the installation, repair and maintenance of two (2) two-inch (2") conduits containing fiber optic cable. All cables, wires, conduits and other facilities or equipment of Licensee within Darden Towe Park shall be placed underground.

f. Licensee shall file with the County Engineer true and correct maps or plats of all existing and proposed installations and the types of equipment and facilities installed or constructed, properly identified and described as to the type of equipment and facility by appropriate symbols and marks and which shall include annotations of all public property, public ways, street, road and conduits where the work is to be undertaken. Maps shall be drawn in a scale and in such detail so as to allow proper review and interpretation by the County Engineer, and the same will be filed with the County not less than ten (10) working days before any excavation or installation of said cable or equipment or facilities commences.

g. If, at any time during the term of this Permit, Licensors shall determine, in their sole discretion, that the conduit, wires, cable, and equipment of Licensee installed pursuant to this License should be relocated, Licensee, upon reasonable notice from Licensors, shall remove, relay and relocate its wires, cables and equipment at its own expense and within reasonable time schedules established by Licensors, to another location mutually agreeable to Licensors and Licensee. Should Licensee refuse or fail to remove its equipment or plant as provided for herein within 45 days after written notification, Licensors shall have the right to do such work or cause it to be done and the full cost thereof shall be chargeable to the Licensee, or in the alternative, to consider such failure by the Licensee to remove its equipment or plant as abandonment of all ownership rights in said property. Upon relocation, Licensee shall prepare at its own expense and provide to Licensors a revised survey plat that shows the new location of Licensee's wires, cables and equipment.

h. Licensee shall keep Licensors fully informed as to all matters in connection with or affecting the construction, reconstruction, removal, maintenance, operation and repair of Licensee's System installed hereunder. Licensee shall report to Licensors such other information relating to the Licensee, as Licensors may consider useful and shall comply with Licensors' determination of forms for reports, the time for reports, the frequency with which any reports are to be made, and if reports are to be made under oath. Licensors may at any time make inquiries pertaining to Licensee's operation of its System within Albemarle County. Licensee shall respond to such inquiries on a timely basis.

i. Licensee shall, install and maintain its wires, cables, fixtures and other equipment in accordance with the requirements of all applicable County codes, ordinances and regulations, and in such a manner that they will not interfere with any existing installations of the County or of a public utility serving the residents of the County of Albemarle or the City of Charlottesville.

4. <u>Permit Specfflcations Payment:</u>

a. The right-of-way occupancy permitted under this License shall be approximately 4,500 linear feet of Licensee's System, to be installed in Darden Towe Park in the location shown on the attached survey plat prepared by Thomas B. Lincoln Land Surveyor, Inc., and dated January 6, 2006, revised February 10, 2006, a copy of which is attached to this License as Exhibit A.

b. The granting of this License is conditioned upon the payment by Licensee to Licensors of the annual sum of One Thousand, Six Hundred Eighty and 00/100 Dollars ($1,680.00), which represents the fee for the use of approximately 45,000 square feet of property in Albemarle County that is subject to this License. Annual payments shall be due and payable on or before January 10th of each year commencing for the year 2011 and shall be due and payable at a like date each year during the term of the Permit. In the event that Licensee's payments are not timely made, a ten percent (10%) surcharge shall be due and payable to Licensors. All payments by Licensee pursuant to this License shall be made to the County of Albemarle, as agent of the Licensors.

5. Safety Requirements:

a. Licensee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage or injury to the public or to constitute a nuisance. Licensee shall install such equipment and employ such personnel to maintain its facilities so as to assure efficient service, and shall have the equipment and personnel necessary to make repairs promptly.

b. Licensee shall install and maintain its System in accordance with the requirements of applicable building codes and regulations of the County of Albemarle and the statutes and regulations of appropriate Federal and state agencies, including but not limited to the Federal Communications Commission and the U.S. Army Corps of Engineers, which may now be in effect or enacted, and in such a manner that will not interfere with any installations of the County of Albemarle or the City of Charlottesville or of any public utility serving residents of the County of Albemarle or the City of Charlottesville.

c. Licensee's System, wherever situated, or located, shall at all times be kept and maintained in a safe operating condition and in good order and repair.

6. Liability and Indemnification:

a. By acceptance of this License, Licensee agrees that it shall indemnify, protect and hold forever harmless the Licensors, their elected officials, officers, agents, representatives and employees, and their successors, legal representatives and assigns, from any and all claims of every kind and nature whatsoever, and from liabilities, losses, costs, judgments, penalties, damages, and expenses, including reasonable attorney's fees and expenses of litigation incurred in the defense of any such claim arising out of or relating to the installation, operation or maintenance by the Licensee of the Licensee's System or the Licensee's failure to perform any of the obligations of this License, including but not limited to claims for injury or death to any person or persons, or damages to any property, as may be incurred by or asserted against Licensors, or either of them, their elected officials, officers, agents, representatives and/or employees, directly or indirectly, by reason of the installation, operation or maintenance by the Licensee of the Licensee's System within the area subject to this License. Licensee shall pay, and by acceptance of this Permit, the Licensee specifically agrees that it will pay all damages and penalties which Licensors, or either of them, may legally be required to pay as a result of installation, operation or maintenance by the Licensee of the Licensee's System or the Licensee's failure to perform any of the obligations of this Permit. These damages or penalties shall include, all damages arising from the installation, operation or maintenance of the System authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this Permit, and Licensors shall not be responsible in any manner for any damage to the System and which may be caused by Licensee or other persons regardless of the cause of damage.

b. Licensee shall pay, and by its acceptance of this License, specifically agrees that it will pay, all expenses incurred by Licensors, or either of them, in defending itself with regard to all damages and penalties mentioned in subsection (a) and (b) above in the following minimum amounts, whichever is greater.

c. Licensee shall maintain, and by its acceptance of this License, specifically agrees that it will provide throughout the term of the Permit, workers compensation insurance in such amounts of coverage as required by the Commonwealth of Virginia and liability insurance coverage with regard to all damages mentioned in subsections (a) and (b) above in the following minimum amounts, whichever is greater:

1. General Liability Insurance-public liability including premises, products and completed operations.

(a) Bodily injury liability $1,000,000 each person $2,000,000 each occurrence

(b) Property damage liability $1,000,000 each occurrence

(c) Or, in lieu of (a) and (b) above, bodily injury and property damage- $2,000,000 combined single limit.

2. Comprehensive Automobile Liability Insurance including owned, non-owned and hired vehicles.

(a) Bodily injury liability $1,000,000 each person $2,000,000 each occurrence

(b) Property damage liability $1,000,000 each occurrence

(c) Or, in lieu of (a) and (b) above, bodily injury and property damage- $2,000,000 combined single limit.

d. Licensee agrees that all insurance contracts providing any of the above- required coverage will be issued by one or more insurance carriers duly authorized to do business in the Commonwealth of Virginia and will contain the following required provisions:

1. Both of the Licensors, their elected officials, officers, agents, employees and representatives shall be named as additional named insureds (as the interests of each may appear) as to all applicable coverage;

2. All such contracts shall provide for thirty (30) days notice to both Licensors prior to cancellation, revocation, nonrenewable or any material change;

3. All "deductible amounts" contained in all such contracts providing such insurance coverage shall not exceed $10,000 in the aggregate; and

4. The notice required by this Section shall be delivered to the persons specified in Section 10 herein by certified mail, return receipt requested. The amount and conditions of said liability and comprehensive insurance may be increased upon sixty (60) days written notice by Licensors should the protection afforded by this insurance be deemed by Licensors to be insufficient for the risk created by this License. At no time, however, will any such increase in the amount of required liability and comprehensive insurance exceed that which is customarily required of other franchises or contractors of services for similar situations of risk.

5. Prior to the commencement of any work pursuant to this License and at least annually thereafter Licensee shall furnish Licensors a certificate from the insurance carrier(s) providing such insurance coverage certifying that such coverage is in full force and effect. Such certificates shall be in such form as is approved by legal counsel for Licensors and shall contain a provision requiring not less than thirty (30) days notice to Licensors prior to cancellation, non-renewal or any material change.

7. Licensors' Rights in License:

a. Licensee shall construct, maintain and operate said System in the locations described in Exhibit A and will at all times comply with all reasonable requirements, regulations, laws and ordinances now in force, and which may hereafter be adopted by the County of Albemarle and be applicable to the construction, repair or maintenance of said system or use of the property subject to this License. Failure of the Licensee to comply with any of the terms of this License or failure to pay the License fees prescribed by this Agreement shall be cause for Licensors to revoke this License. Without limiting the generality of the foregoing, Licensors also reserve the right to terminate and cancel this License and all rights and privileges of the Licensee hereunder in the event that the Licensee: (1) violates any rule, order or determination of Albemarle County made pursuant to this License, except where such violation is without fault or through excusable neglect; (2) becomes insolvent, unable or unwilling to pay its legal debts, or is adjudged a bankrupt; (3) attempts to evade any of the provisions of this License; (4) practices any fraud or deceit upon the Licensors, or either of them or; *(5)* fails to begin construction of its System within one hundred eighty (180) days from the date this License is granted and to continue such construction without unreasonable delay or interruption until completed.

b. Licensors' right to revoke this License may be exercised only after written notice of default and a thirty (30) day period for Licensee to cure such default except for any act of default involving the payment of money or failing to provide any insurance coverage required hereunder in which event said thirty (30) day period shall be reduced to three (3) business days. The right is hereby reserved to the County of Albemarle to adopt, in addition to the provisions contained herein and in existing applicable ordinances, such additional regulations of general applications to all similarly situated Licensees as it shall find necessary in the exercise of its police power provided that such regulations, by ordinance or otherwise, shall be reasonable and not in conflict with the rights herein granted.

8. Assignment:

The License granted pursuant to this Agreement shall not be assigned by the Licensee without the prior written consent of the Licensors, which consent may be granted or withheld in Licensors' sole discretion; provided, however, that Licensee may assign this License to a governmental entity without consent of the Licensors, and provided further that the sale or transfer of a controlling interest in Licensee shall not be considered an assignment within the meaning of this paragraph.

9. Notice:

For the purpose of giving notice as provided for in this Permit, the following addresses are provided:

For the Licensee:

Qwest Communications Company, LLC
700 West Mineral Avenue
Littleton, Colorado 80120
Attention: J.L. Shives
and
Qwest Communications Company, LLC
1801 California Street 52nd Floor
Denver, Colorado 80202
Attention: Meshach Rhodes

For the Licensors:

Maurice Jones
City Manager
P. O. Box 9ll
Charlottesville, VA 22902

With a *copy to:*
S. Craig Brown
City Attorney
P. O. Box 911
Charlottesville, VA 22902

And

Thomas C. Foley
County Executive
401 McIntire Road
Charlottesville, VA 22902

With a *copy to:*
Larry W. Davis
County Attorney
401 McIntire Road
Charlottesville, VA 22902

Unless and until a different address is provided in writing by Licensee to Licensors, the placing of notices in the United States Mail addressed to the Licensee as set forth above by registered or certified mail, return receipt requested, shall constitute compliance with the provisions of this Section.

10. Miscellaneous:

If any section, subsection, sentence, clause, phrase or portion of this Permit is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, independent, and severable provision and such holding shall not affect the validity of the remaining portions hereof. This Permit shall be interpreted and construed in accordance with the laws of the Commonwealth of Virginia. All claims, disputes and other matters in question between the Licensee and Licensors, or either of them, arising out of or relating to this Permit, or the breach thereof, shall be decided in a state or federal court in the Commonwealth of Virginia that has subject matter jurisdiction over the claim or dispute. The Licensee, by accepting this Permit, specifically consents to venue in either state or federal court in Virginia and waives any right to contest venue in Virginia.

WHEREFORE, this Permit has been authorized by the City Council of the City of Charlottesville, Virginia in an open meeting on February 22, 2011 and by the Board of Supervisors of Albemarle County, Virginia in an open meeting on March 9, 2011, and each governing body has authorized the execution of this License by the City Manager and County Executive, respectively, as attested by the Clerk of each governing body, and the Licensee has accepted the terms and conditions of this License as evidenced by its corporate presents which have been executed by and through its authorized officers and the seal of the corporation affixed.

Item No. 6.2. Approve and Authorize Sublease with the University of Virginia for new Ivy Fire Station.

The executive summary states that the City of Charlottesville is relocating its Ivy Road fire station to a new facility located on Fontaine Avenue Extended. This relocation makes it important for the County to establish a fire rescue station to serve the East Ivy area of the County. A fire rescue station is needed to meet the response time goals in this portion of the County's development area and to provide services to the highly populated rural area of the County, particularly the area of the County within five miles of the existing fire station. Staff has identified an opportunity to enter into a long-term sublease with the Rector and Visitors of the University of Virginia (UVA) for space to house two fire apparatus and one ambulance in an existing 5,800 square foot warehouse located on Tax Map Parcel 59-23B1 at 2955 Ivy Road. UVA currently leases that property from Kirtley Family Holdings (Kirtley) pursuant to a lease and purchase agreement dated May 1, 2007. The Prime Lease expressly permits the sublease of the property.

Staff has concluded negotiations with UVA and the attached Deed of Sublease (Attachment A) addresses all the issues identified by the County. The County Attorney's office has reviewed and approved the Deed of Sublease as to form. See Attachment B for a map of the property to be subleased. The warehouse that will be subleased is identified as 640 Ivy Road.

The highlights of the provisions of the Sublease are as follows:

1. The term is 20 years from the commencement date of the Sublease.
2. The rent is $1.00 per year or $20.00 total over the 20 year term.
3. The County is responsible for the design, construction and cost of the improvements to the subleased area for its intended use.
4. The County is responsible for the design, construction and cost of a replacement loading dock, which must be completed before the commencement of the Sublease.
5. UVA can terminate the Sublease fifteen years after the commencement date provided that UVA has provided five years prior written notice. Upon early termination by UVA, UVA must reimburse the County for unamortized costs of County improvements (improvements are amortized over 30 years).
6. The Sublease may be terminated by the County at any time on or before March 31, 2012, or with at least ninety (90) days written notice to UVA thereafter. The Sublease does not include any

provision for the recovery of the County's investment costs for improvements made prior to an early termination by the County.

7. The Primary Lease includes a provision that UVA has a right to purchase the Land from Kirtley. In that event, this Sublease would continue as a direct lease between UVA and the County.

Upon approval of the Sublease, the County will proceed with design, site plan approval and construction of the new Ivy Fire Station. The target date for occupancy of the facility is November, 2012.

The direct cost to the County of the Sublease itself would be only $20.00 total over the 20 year term. The larger cost of the design and construction of the new Ivy Fire station is funded in the FY12 CIP. Operation and maintenance of the facility has been programmed into the Five Year Financial Plan and will be addressed in the FY13 budget.

Staff recommends that the Board approve the Deed of Sublease for the new Ivy Fire Station and authorize the County Executive to sign the Sublease and associated documents after approval to both form and substance by the County Attorney.

By the above-recorded vote, the Board approved the Deed of Sublease for the new Ivy Fire Station and authorized the County Executive to sign the Sublease and associated documents after approval to both form and substance by the County Attorney:

DEED OF SUBLEASE

THIS DEED OF SUBLEASE ("Sublease") is made effective as of the ____ day of _____, 2011, by and between THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA, an educational institution of the Commonwealth of Virginia ("University"), COUNTY OF ALBEMARLE, a political subdivision of the Commonwealth of Virginia ("County"), and KIRTLEY FAMILY HOLDINGS, LLC, a Virginia limited liability company (the "Prime Lessor").

WITNESSETH

WHEREAS, pursuant to that certain Ground Lease and Purchase Agreement dated as of May 1, 2007, by and between the Prime Lessor and University, as amended (the "Prime Lease"), University leases from Prime Lessor certain real property, including land and improvements, identified as Tax Map 59, Parcel 23B1, located on U. S. Route 250 in Albemarle County, Virginia, as shown on Exhibit A (the "Property").

WHEREAS, the Prime Lease expressly permits the sublease of the Property and the improvements thereon without the prior consent of the Prime Lessor.

WHEREAS, County wishes to sublease from University a portion of the warehouse, containing approximately five thousand eight hundred square feet (5,800 square feet) and situated on the Property (the "Building").

WHEREAS, University is willing to sublease to County a portion of the Building containing approximately five thousand eight hundred square feet (5,800 square feet), as shown on Exhibit B (collectively, the "Subleased Premises").

NOW THEREFORE, for and in consideration of the terms, conditions, covenants, promises and agreements herein made and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, University and County agree as follows:

1. **PREMISES.** University leases to County, and County leases from University, the Subleased Premises, together with the right of ingress and egress, in the County of Albemarle, Virginia, subject, however, to all easements, restrictions and covenants of record.

2. **TERM.** The term of this Sublease (the "Term") shall begin on the earlier of (a) the date on which a certificate of occupancy is issued to County for the Subleased Premises, and (b) the date which is one (1) year from the date on which all Permits and Approvals (as defined herein) are issued to County. Such date is referred to in this Sublease as the "Commencement Date." The Term shall terminate, if not sooner, on the earlier of (a) the effective date of termination or expiration of the Prime Lease, or (b) the date which is twenty (20) years from the Commencement Date (the "Termination Date"). The Commencement Date shall be confirmed by University and County by the execution of a written certificate of the Commencement Date following occurrence thereof in the form attached hereto as Exhibit C, subject to the provisions of this Sublease; provided, however, the failure of either party to execute such certificate shall not affect the respective rights and obligations of the parties hereunder.

University and County acknowledge that, pursuant to the Prime Lease, University has a right to purchase the Land (as defined in the Prime Lease) from Prime Lessor. Notwithstanding anything to the contrary contained in this Sublease, in the event University acquires the Land from Prime Lessor during the term of this Sublease, this Sublease shall continue as a direct lease between University, as the owner of fee simple title to the Land, and County, upon all of the terms and conditions of this Sublease.

3. **RENT.** County shall pay University the sum of TWENTY AND NO/100 DOLLARS ($20.00) as rent (the "Rent") for the Term. University acknowledges receipt of Rent from County as of the Commencement Date.

4. **USE OF PREMISES.**

(a) The Subleased Premises are to be used and occupied by County for the operation of a fire station, principally housing fire and rescue vehicles (the "Permitted Use"). County shall not damage the Subleased Premises or any part thereof or allow the same to be done. County shall not allow the Subleased Premises to be used for any illegal purpose and shall not do or allow any act which may unreasonably disturb occupancy of adjoining property (taking into account the Permitted Use) or cause damage to adjoining property.

(b) County shall enforce in the Subleased Premises such restrictions on smoking and the use of other tobacco products by persons as University establishes from time to time for the remainder of the Property, including, without limitation, the Building and adjoining properties owned, leased or otherwise controlled by University.

5. **ALTERATIONS.**

(a) Except as expressly provided in this Sublease, no alterations, additions, or improvements shall be made to the Subleased Premises without the prior written consent of University.

(b) County shall make such improvements to the Building, including the Subleased Premises, and other portions of the Property as it deems necessary and desirable to make the Subleased Premises suitable for the Permitted Use (the "Improvements").

(c) County shall submit all plans and specifications for such proposed Improvements, including, without limitation, such site plan as is required by the applicable governmental authorities of Albemarle County, Virginia (collectively, the "Plans and Specifications") to University for University's review and approval before County commences any such work.

(d) Upon University's approval of the Plans and Specifications, County, at its sole cost and expense, shall submit the same to the applicable governmental authorities of Albemarle County, Virginia in order to obtain all necessary permits and approvals for the Improvements (the "Permits and Approvals"). (The date on which all such Permits and Approvals are issued to County is referred to herein as the "Approval Date"). County shall diligently pursue all such Permits and Approvals. University agrees, at no cost or expense to University, to cooperate with County to the extent reasonably necessary for County to obtain such Permits and Approvals. University and County agree that issuance of such Permits and Approvals is a condition precedent to County obligations under this Sublease. County shall provide prompt written notice to University of the issuance of such Permits and Approvals. In the event that all such Permits and Approvals are not issued to County on or before March 31, 2012, this Sublease shall terminate without further notice. Any revisions to the Plans and Specifications required by the applicable governmental authorities of Albemarle County, Virginia shall be submitted to University for University's review and approval before resubmission of the same.

(e) Upon the issuance of the Permits and Approvals, County shall have the right to proceed with the construction of all approved Improvements (including, without limitation, the Replacement Loading Dock), provided (i) such Improvements are made in strict compliance with the Plans and Specifications, as approved by University and County, and (ii) County shall not have access to the Subleased Premises to construct the portion of the Improvements located therein or for any other purpose until forty-five (45) days after (x) construction of the Replacement Loading Dock has been completed in accordance with this Sublease, and (y) University has accepted the same, which acceptance shall not be unreasonably withheld, conditioned or delayed (or on such sooner date after satisfaction of such requirements as is designated in a written notice from University to County). All such Improvements shall be made at County's expense, either by County or County's contractors approved in advance by University. The construction of the Improvements shall (1) not adversely affect the safety of the Property, the Building or the Subleased Premises or the systems thereof, (2) comply with all building, safety, fire, plumbing, electrical, and other codes and governmental and insurance requirements, (3) be completed promptly and in a good and workmanlike manner, and (4) not interfere with the use of the Building or the Property by University or other tenants in the Building, or disturb University or such other tenants. Such Improvements shall become the property of University upon expiration or termination of the Term of this Sublease. Notwithstanding the foregoing, the Replacement Loading Dock shall become the property of University upon the completion of construction in accordance with this Sublease and University's acceptance of the same.

(f) In addition to the foregoing, to replace a loading dock inside the Subleased Premises presently used by University, County, at its election, shall (i) construct, at its sole cost and expense, or (ii) reimburse University for its actual costs of construction of, a loading dock adjacent to the Building for the exclusive use of University (the "Replacement Loading Dock"). County shall make its election under this subsection (f) promptly after issuance of the Permits and Approvals. Such Replacement Loading Dock shall be constructed in accordance with plans and specifications approved jointly by the parties, in the exercise of their reasonable discretion, and otherwise in accordance with subsections (d) and (e) above.

The parties expressly contemplate that construction of the Replacement Loading Dock shall commence prior to the Commencement Date. In the event County has elected to construct the Replacement Loading Dock, County shall (1) diligently pursue such construction to completion, using best efforts to complete construction within twelve (12) months of the date of issuance of the Permits and Approvals, (2) have access to the Property (but not the interior of the Subleased Premises) for such purpose, but University and County agree that such access shall not constitute occupancy of the Subleased Premises or affect the Commencement Date for purposes of this Sublease, and (3) undertake, at its sole cost and expense, such temporary site improvements as University deems necessary in the exercise of its reasonable discretion to maintain complete vehicular access to the Property, including, without limitation, the Building.

6. **QUIET ENJOYMENT.** So long as County observes and keeps all the covenants, agreements and conditions of this Sublease, University covenants that County shall have quiet and peaceful use and enjoyment of the Subleased Premises throughout the Term of this Sublease and any renewals or extensions thereof, subject, however, to the exceptions, reservations and conditions of this Sublease.

7. **PERSONAL PROPERTY.** All personal property placed in or kept on the Subleased Premises shall be at the sole risk of County or the owner of such personal property and University shall have no liability for loss, damage or deterioration of same for any reason.

8. **ACCEPTANCE OF CONDITION OF PREMISES.** County covenants that it has inspected the Subleased Premises and accepts the Subleased Premises "as is" without any representations or warranties by University as to the condition or usefulness of the Subleased Premises for any purpose.

9. **ASSIGNMENT AND SUBLETTING.** County shall not assign or transfer this Sublease, or sublet any part of the Subleased Premises, without the prior written consent of University, which consent University may withhold in its sole discretion.

10. **ACCESS BY UNIVERSITY.** University and its representatives may enter the Subleased Premises at any time to make emergency repairs, preserve the Subleased Premises or to prevent or abate any nuisance, hazard, or unlawful conditions.

11. **INDEMNIFICATION; INSURANCE.** To the extent permitted by law, County shall indemnify, defend and hold harmless University, and its agents and employees, from all liability, claims for damage, injury or loss of every kind and nature, whether relating to person or property, arising on or within the Subleased Premises or incident to County's use of the Subleased Premises (including, without limitation, incident to County's emergency response from the Subleased Premises). Beginning on the Commencement Date and continuing during the Term of this Sublease and any renewals or extensions thereof, County, at County's expense, shall keep in force, with an insurance company authorized to transact business in Virginia, and in a form acceptable to University, a commercial general liability insurance policy, which shall include coverage for premises and operations, contractual, personal injury, and volunteers; and a fire damage liability limit of $300,000 per fire. The insurance policy shall include University (i.e. The Commonwealth of Virginia, The Rector and Visitors of the University of Virginia, its officers, employees, and agents) and Kirtley Family Holdings, LLC, as additional insureds and have the following minimum limits and coverage: $1,000,000 per occurrence and $2,000,000 aggregate for bodily injury and property damage, to include coverage for premises/operations, contractual, and personal injury. The County shall maintain commercial automobile liability insurance on the fire apparatus and other emergency vehicles located on the Subleased Premises, with a minimum combined limit of not less than $1,000,000 per accident. On or before the Commencement Date, County shall deliver to University a certificate of insurance showing the same to be in force and effect. The policy shall provide for notification to University in the event of cancellation.

In the event that County fails to obtain and maintain the insurance required by this section, University may, at its option, cause the required insurance to be issued and maintained and County shall pay the premiums for such insurance as additional Rent.

12. **COUNTY'**S **WAIVER.** County agrees, to the extent not expressly prohibited by law, that University, its agents, employees and servants shall not be liable, and County waives all claims for damage to property, injury to person and damage to business sustained during the term of this Sublease by County occurring in or about the Subleased Premises or the Building of which the Subleased Premises forms a part or incident to County's use of the Subleased Premises (including, without limitation, incident to County's emergency response from the Subleased Premises), arising at any time and from any cause.

13. **DAMAGE OR DESTRUCTION.**

(a) If the Subleased Premises or the building of which the Subleased Premises forms a part are damaged or destroyed by fire or other casualty, County shall notify University immediately.

(b) If the Subleased Premises or the Building, or any portion thereof, are damaged or destroyed by fire or other casualty and in the reasonable opinion of University, after consultation with County, the Subleased Premises are thereby rendered unfit for occupancy, either University or County shall have the right to terminate this Sublease by notice to the other party within thirty (30) days after the fire or other casualty. If this Sublease is so terminated, Rent shall abate as of the date of such fire or other casualty.

(c) If this Sublease is not terminated pursuant to the provisions of Section 13(b), and University elects, in its sole discretion, to repair and restore the Subleased Premises to their former condition, there shall be a proportionate abatement of Rent for the period during which the said repairs and restoration are being completed for that portion of the Subleased Premises not substantially usable by County.

14. **CONDEMNATION.**

(a) University shall give immediate notice to County of any discussions, offers, negotiations or proceedings with any party regarding condemnation or taking of any portion of the Subleased Premises.

(b) If any portion of the Subleased Premises or any portion of the Property is taken by eminent domain or sold to the holder of such power pursuant to a threatened taking (exclusive of takings that, in the reasonable discretion of University, do not materially adversely affect the use and enjoyment of the Subleased Premises by County), this Sublease shall terminate effective as of the date of the taking. The date of taking shall be the earlier of: (i) the date on which title vests in the condemning entity, or (ii) the date on which the condemning entity takes possession. In the event of a taking, County assigns to University any rights that County may have in and to any portion of a condemnation award, but such an assignment shall exclude any portion that may be due for, or attributed to, County's fixtures, moving expenses and allowances. If the taking does not materially adversely affect the use and enjoyment of the Subleased Premises by County, and so this Sublease is not terminated, Rent shall be equitably adjusted to compensate County for any adverse affect of the taking.

15. **KEYS.** On the Commencement Date, County may install new locks or re-key existing locks on the Subleased Premises; provided County shall deliver to University new keys to the Subleased Premises. Upon termination of this Sublease, all keys shall be surrendered to University.

16. **MECHANICS' AND MATERIALMEN'S LIENS.** County shall not create, place, or suffer the creation or filing of any mechanics' or materialmen's lien against the Subleased Premises by reason of labor or materials provided for or at the request or order of County, or of County's agents or contractors. County shall discharge any such lien within twenty (20) days after the date the same was filed.

17. **MAINTENANCE, REPAIRS, UTILITIES AND OTHER COSTS.** All costs relating to the possession, operation and maintenance of the Subleased Premises shall be the responsibility of County, subject to the following:

(a) County shall keep, repair and maintain, at County's expense, all plumbing, lighting, heating, ventilation, air-conditioning, overhead doors, electrical and mechanical devices and appliances of every kind or nature located on or in the Subleased Premises (whether located on or in the Subleased Premises by University or County) in good working order and condition, and shall, if necessary, make such alterations, additions, and/or modifications to the Subleased Premises and all equipment, electrical and mechanical devices and appliances thereon or serving same so as to comply at all times with all applicable federal, state and local laws, ordinances, rules and regulations pertaining to health, safety, fire and public welfare.

(b) Except as otherwise provided in this Sublease, University shall maintain in good working order and condition the exterior of the Building, as well as utility connections to the Building, including, without limitation, the Subleased Premises. From time to time, but not more frequently than monthly, University may invoice County for County's pro-rata portion of expenses incurred by University in the performance of its obligations under this subsection. University and County acknowledge and agree that County occupies 21.5% of the square footage of the Building, and such percentage shall be used to calculate County's pro-rata portion of such expenses. County shall pay any such invoice within forty-five (45) days of receipt. To ensure timely payment of any such invoice, within thirty (30) days of the Commencement Date, County shall fund a maintenance account with a balance of Fifty Thousand and No/100 Dollars ($50,000.00) (the "Maintenance Account"). On each anniversary of the Commencement Date, County shall fund such additional amounts as are required to maintain a minimum balance of $50,000.00 in the Maintenance Account. The Maintenance Account shall be maintained by County and shall be used by County solely to fund its financial obligations under this subsection and for no other purposes, without the prior, written consent of University. If University expects annual maintenance expenses to exceed $50,000.00 in any one year, it shall endeavor to provide written notice of such expenses to County.

(c) County shall pay directly to utility providers or, if a utility service is submetered to University as additional Rent, all charges for utility services to the Subleased Premises, including, but not limited to, service charges, connection and disconnection charges, use charges and taxes. County shall provide such heating as shall be sufficient to prevent freezing of pipes, plumbing and associated equipment. No interruption in, or temporary stoppage of, any of the aforesaid services caused by repairs, renewals, improvements, alterations, strikes, lockouts, labor controversy, accidents, inability to obtain fuel or supplies, or other cause beyond the control of University shall be deemed an eviction or disturbance of County's use and possession, or render University liable for damages, by abatement of Rent or otherwise or relieve County from any obligation herein set forth.

(d) County shall pay all charges and other levies of any nature against the Subleased Premises and improvements thereon, whether ordinary or extraordinary, foreseen or unforeseen, including, without limitation, all applicable real estate taxes and any payments or use charges in lieu thereof, and assessments.

(e) Pursuant to that certain Agreement dated as of October 3, 1979, and recorded in Deed Book 684, at page 619, in the Office of the Clerk of the Circuit Court of Albemarle County, Virginia (the "Access Road Agreement"), an easement was granted to Prime Lessor to use an access road adjacent to the Property (the "Access Road") which, in part, provides access from U.S. Route 250 to the Subleased Premises. Pursuant to the Prime Lease, University enjoys the same rights as Prime Lessor to use the Access Road and is responsible for the performance of Prime Lessor's maintenance obligations under the Access Road Agreement. University and County acknowledge and agree that they shall share equal (50% University, 50% County) responsibility for such maintenance obligations, to include, without limitation, paving, striping and snow removal, and the costs thereof for which University is responsible under the Access Road Agreement and the Prime Lease. As of the Commencement Date, County shall arrange such maintenance when and as required, but upon written notice from University to County, from time to time, University may change the party responsible for such arrangements. Upon satisfactory completion of maintenance, the party responsible for such arrangements shall pay any invoice therefor and forward such invoice, evidence of payment and other supporting documentation to the other party to this Sublease and such other parties as share responsibility for the costs of maintenance pursuant to the Access Road Agreement or any other agreement. Notwithstanding anything to the contrary contained in the Access Road Agreement, such other party to this Sublease shall reimburse the party responsible for such arrangements in an amount equal to one-half (1/2) of such invoice within forty-five (45) days of receipt of such materials; provided, however, in the event parties other than University and County contribute toward the costs of such maintenance (whether pursuant to the Access Road Agreement or any other agreement), the reimbursement obligation hereunder shall be reduced accordingly, such that each party to this Sublease shall bear equally an amount equal to the difference between (i) the total costs of such maintenance, less (ii) amounts contributed toward such costs by parties other than University and County.

(f) County, at its sole cost and expense, shall install and maintain such traffic control signals and other traffic control devices as are required from time to time by the Virginia Department of Transportation or applicable governmental authorities of Albemarle County, Virginia, to facilitate safe and efficient vehicular and pedestrian access between the Property and U.S. Route 250, at the location of the current access road. In the event any traffic control signal on U.S. Route 250 in the vicinity of the Property, including, without limitation, any traffic control signal installed pursuant to this subsection, is equipped with an emergency vehicle traffic preemption system, County agrees to use best efforts to make such system available for use by University vehicles in connection with ingress to and egress from the Property by such vehicles for delivery purposes.

18. **ENVIRONMENTAL CONTAMINATION.**

(a) County shall not engage in or allow any activity on the Subleased Premises involving: (i) the handling of any toxic or hazardous substances, (ii) the discharge of toxic or hazardous substances to the air, soil, surface water or groundwater, (iii) the storage, treatment or disposal of any toxic or hazardous substances (for purposes of this Sublease, "hazardous substance(s)" shall have the meaning of "hazardous substance" set forth in 42 U.S.C. Section 9601(14), as amended, and of "regulated substance" at 42 U.S.C. Section 6991(2), as amended, and shall further include "medical waste" and "infectious waste"), or (iv) any other substances which may be the subject of liability pursuant to any environmental law of the United States or the Commonwealth of Virginia, except as required in connection with the Permitted Use in strict compliance with applicable federal, state and local laws and regulations.

(b) To the extent permitted by law, County shall indemnify, defend and hold harmless University from any and all claims, suits, judgments, damages, fines, penalties, liability, costs and expenses (including reasonable fees for costs and expenses for any required attorneys, consultants and experts) resulting or arising from (i) the discovery of any toxic or hazardous substance on, in or arising from, or contamination of, the Subleased Premises, or (ii) the violation of any environmental law, which is a result of any activity of County, its agents, employees, contractors or repairmen.

19. **PRIME LEASE.**

(a) County acknowledges that it has received and reviewed the Prime Lease. University represents and warrants to County that the Prime Lease attached as Exhibit D is a true and complete copy of the Prime Lease. County's rights pursuant to this Sublease are subject and subordinate at all times to the Prime Lease and to all of the terms, covenants, and agreements of the Prime Lease. County shall not do or permit anything to be done in, or in connection with County's use or occupancy of, the Subleased Premises, which would violate any of the terms, covenants, or agreements of the Prime Lease.

(b) University shall have the same rights against County with respect to this Sublease as the "Landlord" has against the "Tenant," pursuant to the Prime Lease. County covenants that it will secure the approval of University for all of its actions for which University would be required to secure approval as "Tenant" pursuant to the Prime Lease. University may enforce directly against County any of the rights and remedies granted to the Prime Lessor pursuant to the Prime Lease. Nothing in this Sublease shall be construed or interpreted to grant any greater rights than University has received as "Tenant" from the Prime Lessor pursuant to the Prime Lease.

20. **EVENTS OF DEFAULT; UNIVERSITY'S REMEDIES UPON DEFAULT.**

(a) The following events shall be deemed to be an event of default ("Event of Default") by County under this Sublease:

(i) The failure of County to pay when due any installment of Rent or any other payment required to be made by County under this Sublease and the failure to cure such default within ten (10) days after written notice thereof to County.

(ii) The failure of County to comply with any material term, provision, promise or covenant of this Sublease (other than the payment of Rent or any other payment required to be made by County hereunder) and the failure to cure such default within thirty (30) days after written notice thereof to County.

(b) If University gives written notice to County of a default pursuant to Section 24 of this Sublease and County does not cure such default within the specified period following the notification, then at the expiration of said period, this Sublease shall automatically terminate as completely as if the deadline for curing the default were the date specified as the Termination Date in this Sublease, and County shall then surrender the Subleased Premises to University. If this Sublease shall be so terminated, University may, at its option, without formal demand or notice of any kind, re-enter the Subleased Premises by any unlawful detainer action or by any other means and remove County, or any other person who may be occupying the Subleased Premises, from the Subleased Premises without being liable for any damages therefor. Upon University's exercise of such termination, County shall pay University's costs and expenses incurred in fulfilling County's obligations under this Sublease, including, without limitation, University's reasonable attorney fees and court costs, and this provision shall survive termination of this Sublease.

(c) The failure of University to insist upon the strict performance of any covenant, agreement, term or condition of this Sublease or to exercise any permitted right or remedy upon an Event of Default, and/or acceptance of payment of full or partial Rent or other payment required to be made by County during the continuance of any such Event of Default shall not constitute a waiver of such Event of Default or of any covenant, agreement, term or condition of this Sublease.

(d) If County fails to make any payment or perform any act required by County under this Sublease, University may (but shall be under no obligation to) make such payment or perform such act. All amounts so paid by University and all costs, fees and expenses incurred by University regarding such payment or performance shall be paid by County as additional Rent.

(g) No right or remedy herein conferred upon or reserved to University shall be exclusive of any other right or remedy, and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing at law.

21. **TERMINATION OF SUBLEASE**.

(a) This Sublease may be terminated by County at any time on or before March 31, 2012. Thereafter, County may terminate this Sublease at any time during the Term upon at least ninety (90) days written notice to University.

(b) This Sublease may be terminated by University effective on a date fifteen (15) years after the Commencement Date, or thereafter, provided University provides written notice of such termination to County at least five (5) years prior to the effective date of termination. In the event this Sublease is terminated by University pursuant to this subsection, prior to the expiration of the Term of this Sublease, University shall reimburse County for unamortized costs of the Improvements, including (for purposes of this subsection) the Replacement Loading Dock. For purposes of this subsection, the costs of the Improvements (which shall be furnished by County to University, with detail to University's reasonable satisfaction, within thirty (30) days of completion) shall be amortized, without interest, on a straight-line basis over thirty (30) years.

(c) Agencies of the Commonwealth of Virginia cannot expend funds unless appropriated by the Virginia General Assembly and may not obligate a future session of the Virginia General Assembly. Therefore, notwithstanding any provision in this Sublease to the contrary, if any session of the Virginia General Assembly fails to appropriate funds sufficient for the performance by University of its obligations under this Sublease or the federal government fails to appropriate or allocate funds sufficient for such performance, this Sublease and all

obligations hereunder shall automatically terminate upon depletion of the then currently appropriated or allocated funds.

(d) Notwithstanding any provision in this Sublease to the contrary, if, by operation of law, University shall cease to exist or its powers and authority are limited so as not to permit it to lease the Subleased Premises, then this Sublease and all obligations of University hereunder shall terminate.

(e) At the termination of this Sublease, County shall deliver peacefully the Subleased Premises in as good order and repair as the same were on the Commencement Date, together with the Improvements, reasonable wear and tear excepted.

22. **RIGHTS TO USE OF OTHER UNIVERSITY PROPERTY.** Pursuant to that certain Ground Lease Agreement dated October 3, 1997, by and between University, and the City of Charlottesville, Virginia (the "City") and County (the "Ground Lease"), City has constructed a temporary fire station and related improvements on a portion of the Premises (as defined in the Ground Lease). City has advised University it intends to construct a new fire station at a location on Fontaine Avenue. Once City completes such construction and the new fire station is operational, County will vacate and remise its interest in the portion of the Premises shown on Exhibit E attached hereto and incorporated herein by this reference (the "Remised Premises"), and, notwithstanding anything to the contrary contained in the Ground Lease, remove promptly from such portion the temporary fire station and related improvements. From the effective date of this Sublease and notwithstanding anything to the contrary contained in the Ground Lease, County shall refrain from the further construction of Improvements or Alterations (as such terms are defined in the Ground Lease) on the Remised Premises. Nor shall County (whether in its own right, as a member of the Charlottesville-UVA-Albemarle County Emergency Communications Center, or in any other capacity) have the right to establish a fire station or other emergency response facility on any other property owned, leased or controlled by University. County agrees to execute such amendments to the Ground Lease as are necessary to effect the terms of this section 22, and to use its best efforts to secure the execution of such amendments by City.

23. **BINDING EFFECT; AMENDMENTS.** The covenants, agreements, and rights contained in this Sublease shall bind and inure to the respective heirs, personal representatives, successors and assigns of County and University. This Sublease constitutes the entire, full and complete understanding and agreement between County and University. Notwithstanding the foregoing, from time to time University and County may enter into further agreements to permit and coordinate additional uses of portions of the Property other than the Subleased Premises (without any acknowledgement by University of any right of County to use such other portions of the Property, except as expressly provided in this Sublease). All representations, statements, warranties, covenants, promises or agreements previously made or given by either party to the other are expressly merged into this Sublease and shall be null, void and without legal effect. Neither party, nor any agent of either party, has any authority to alter, amend or modify any of the terms of this Sublease, unless the amendment is in writing and executed by all parties to this Sublease with the same formality as this Sublease. This Sublease and any amendments hereto shall not be effective or binding unless and until signed by all parties.

24. **NOTICES.**

(a) All notices to County required or permitted under this Sublease shall be given by forwarding such notice by certified U.S. mail, postage prepaid, return receipt requested, by commercial overnight courier service, or by hand delivery with signed receipts, addressed to:

County of Albemarle, Virginia
County Executive
401 McIntire Road
Charlottesville, Virginia 22902

(b) All notices to University required or permitted under this Sublease shall be given by forwarding such notice by certified U.S. mail, postage prepaid, return receipt requested, by commercial overnight courier service, or by hand delivery with signed receipts, addressed to:

Lease Administrator
Space and Real Estate Management
P.O. Box 400884
575 Alderman Road
Charlottesville, VA 22903

(c) Where a notice is sent as required by this Sublease, such notice shall be deemed to have been given (i) three (3) days after the date of mailing if sent by certified U.S. mail, postage prepaid, return receipt requested, (ii) the date of delivery if sent by a nationally recognized overnight courier service, or (iii) the date of receipt if sent by hand delivery with signed receipts. Each party to this Sublease shall notify the other party of any new address at which to mail notices, which notice shall be given in the manner provided above, and unless and until such notice of a new address is given, notices to a party hereto shall be sufficient if mailed to such party's address as specified in Section 24(a) or Section 24(b), as appropriate.

(d) Where, under the terms of this Sublease, a notice is required or permitted to be sent by certified U.S. mail, postage prepaid, return receipt requested, and such notice is not sent in such manner, the notice shall be effective if actually received by the party, or its appointed agent, to whom the notice is addressed.

25. **BROKERS**. Each party hereto hereby represents and warrants to the other that, in connection with the leasing of the Subleased Premises hereunder, the party so representing and warranting has not dealt with any real estate broker, agent or finder.

26. **HEADINGS.** The heading of the sections of this Sublease are inserted for convenience only and do not alter or amend the provisions that follow such headings.

27. **ADDITIONAL PROVISIONS.** This Sublease is subject to the following terms, conditions, modifications, additions and/or deletions provided in the following designated attachments, exhibits and riders:

Exhibit A—Property
Exhibit B—Subleased Premises
Exhibit C—Certificate of Commencement Date
Exhibit D—Prime Lease
Exhibit E—Remised Premises

_____

Item No. 6.3. Request from the Reentry Steering Committee to Underwrite the 2011 Prisoner Re-Entry Summit.

The executive summary states that included in the FY 2011 Adopted Budgets for the City of Charlottesville and County of Albemarle are funding allocations totaling $126,385 ($79,131/City & $47,254/County) for the Offender Aid & Restoration (OAR) Reentry Services Program.

This program has been in existence for over forty (40) years and represents a collaborative effort between OAR, local governments and a host of community partners aimed at preparing inmates for successful transition into their communities upon release from incarceration. It improves opportunities for their treatment, employment and housing while on probation, parole, or post-release supervision. Services offered through this program address the risk areas that lead to reoffending and include educational and/or vocational training, financial counseling, basic interviewing and employment skills training and counseling services to address dysfunctional family/partner relationships.

In July of 2003 the National Governors Association (NGA) Center for Best Practices announced that Virginia was one of seven states selected to participate in its Prisoner Reentry Policy Academy. Through the Academy, NGA assisted state teams in developing effective prisoner reentry strategies designed to reduce costly recidivism rates by improving pre-and post-release services. Charlottesville and Albemarle were selected in Virginia's program because of OAR's successful track record with the Reentry Services Program in this community, because both the County's and the City's Departments of Social Services were seen as progressive and service oriented, and because the Albemarle Charlottesville Regional Jail (ACRJ) was willing to participate in this program. The Academy set forth a requirement that the local Departments of Social Services take the lead in establishing a local Reentry Council. The Reentry Council, comprised of community leaders in the criminal justice, health, mental health, business, employment, social service and educational sectors, meet at least twice a year to advise, advocate and eliminate barriers to service integration. The steering committee for the initiative has met on an ongoing basis since 2007 to ensure effective collaboration for the program, to oversee the work of the committees and to report to the Council. This collaboration has resulted in many accomplishments that have improved community response to the challenges faced by men and women who are reentering society after their release from the ACRJ.

Due to the success of the Prisoner Reentry effort in this region, as well as Governor McDonnell's emphasis on this effort, the Reentry Council believes that now is an opportune time to draw the community's attention to this important issue. To this end, the Council is planning to hold a regional summit to promote awareness, provide education and training, and facilitate improved coordination of reentry services to prisoners and ex-offenders in the community.

City Council has appropriated $7,500 to sponsor the summit, and the Reentry Steering Committee requests that the County allocate $3,000 to assist with the cost of the summit. If the Board dedicates resources to this initiative, its funding would be used to compensate speakers who will be traveling from outside of the State to participate in the summit.

If the Board wishes to provide funding for this request, it will be necessary to appropriate $3,000.00 from the 2011 Board Reserve fund. The County's FY11 adopted budget includes a Board reserve fund of $210,372. On February 2, 2011, the Board approved the use of $3,000 to support legislative services offered by VACO during the 2011 session of the General Assembly, bringing the balance of the fund to $207,372.

Staff recommends that the Board authorize the appropriation of $3,000 from the FY2011 Board Reserve fund to fund the 2011 Prisoner Reentry Summit to be held in April 2011.

By the above-recorded vote, the Board authorized the appropriation of $3,000 from the FY2011 Board Reserve fund to fund the 2011 Prisoner Reentry Summit to be held in April 2011.

_____

Item No. 6.4. Fiscal Year 2011 County of Albemarle and State Health Department Local Government Agreement.

The executive summary states that *Virginia Code* § 32.1-31 allows local governing bodies to enter into contracts with the State Board of Health for the operation of local health departments. It also requires that these contracts specify the services to be provided in addition to those required by law and contain such other provisions as the State Board and the governing body may agree on. The County's contract specifies both the scope and costs for the services to be provided locally.

The Thomas Jefferson Health District (TJHD), in cooperation with the Virginia Department of Health, is the primary provider of public health services and programs for Albemarle County and surrounding localities. TJHD offers specific health programs targeted at preventing and controlling infectious diseases as well as initiatives aimed at improving the health of low income women, children and infants. In addition, the Health District provides an inspection and monitoring program to ensure the safety of food and private well/septic systems funded solely by the County and other neighboring jurisdictions. Non-local funding for these TJHD programs is provided by the Commonwealth of Virginia, grants and income from local fees charged to individual clients. The localities served by TJHD provide matching local funds for the allocations made by the state and, as noted above, allocate resources for Local-Only Programs such as food safety. The Virginia Department of Health requires that local governments enter into agreements stipulating the scope of health services to be provided by the TJHD to citizens in their respective jurisdictions. This agreement is provided in "Attachment A" and has been reviewed and approved as to form by the County Attorney's Office. Attachment B is an attachment to the Agreement, and sets forth services to be provided by the TJHD.

Subsequent to TJHD submitting its FY11 funding request to the County in the fall of 2009, several unexpected increases in its operating budget have occurred that are outside of its control and which have impacted its overall budget, including:

a. The General Assembly approved a 3% bonus for all of the State's classified employees. This resulted in an unbudgeted payment of $60,925.95 in November to TJHD staff. The state allocated $24,020.82 towards this; however, the remainder was unfunded.
b. The Virginia Information Technologies Agency (VITA) increased its fee structure for TJHD's information technology services, which resulted in an increase in costs to the TJHD for VITA's services in the amount of $54,115.52
c. The Virginia Department of General Services now manages TJHD's lease and imposed a 3% fee on TJHD's rent, which resulted in an increase in costs to the TJHD for rent in the amount of $1,650.

The above expenditure changes have been partially offset by the General Assembly authorizing increased state fees for environmental health services, including restaurant and septic system permits. It is expected that this increase in revenue will compensate for the lost state funding; however, not for the lost local-match funding. The net result of the fee increases and unexpected expenditure changes yields a decrease of $24,791 in state assistance ($624,855). This shift in state funding technically decreases the County's obligation for state-shared services by $20,431; however, TJHD continues to need these funds to sustain its current food safety program, an important local-only funded initiative.

The County's original FY11 appropriation for the Thomas Jefferson Health District totaled $551,444, of which $531,676 represented the County's required match for Cooperative State and Local Matched Programs. The balance of funds from the County ($19,768) was allocated to the Local-Only (Unmatched) food inspection program and the City/County Public Health initiative. Due to the state funding reductions noted above, the County's required local match for Cooperative State & Local Matched programs decreased by $20,431. The TJHD is requesting that the County reallocate this ($20,431) to its food program to avoid additional reductions in services to County citizens.

Based on the vital nature of the services provided by the TJHD, staff recommends that the Board approve the Fiscal Year 2011 County of Albemarle & State Health Department Local Government Agreement (Attachment A) and that it authorize the County Executive to execute that Agreement. Staff further recommends that the Board reallocate $20,431 previously designated as local matching funds to the TJHD's food safety program; however, the TJHD's total appropriation shall remain $551,444 for FY11.

By the above-recorded vote, the Board approved the Fiscal Year 2011 County of Albemarle & State Health Department Local Government Agreement, authorized the County Executive to execute that Agreement, and reallocated $20,431 previously designated as local matching funds to the TJHD's food safety program; however, the TJHD's total appropriation shall remain $551,444 for FY11.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HEALTH

STATEMENT OF AGREEMENT WITH the Board of Supervisors of the County of Albemarle

Under this agreement, which is created in satisfaction of the requirements of § 32.1-31 of the ***Code of Virginia*** (1950), as amended, the Virginia Department of Health, over the course of one fiscal year, will pay an amount not to exceed **$624,855**, from the state general fund to support the cooperative budget in accordance with appropriations by the General Assembly, and in like time frame, the **Board of Supervisors of Albemarle County** will provide by appropriation and in equal quarterly payments a sum of **$551,444.** These joint funds

will be distributed in timely installments, as services are rendered in the operation of the **Charlottesville-Albemarle** Health Department, which shall perform public health services to the Commonwealth as indicated in Attachment A(1.), and will perform services required by local ordinances as indicated in Attachment A(2.). Payments from the local government are due on the third Monday of each fiscal quarter.

The term of this agreement begins **July 1, 2010**. This agreement will be automatically extended on a state fiscal year to year renewal basis under the terms and conditions of the original agreement unless written notice of termination is provided by either party. Such written notice shall be given at least 60 days prior to the beginning of the fiscal year in which the termination is to be effective. Any increase or decrease in funding allocation shall be made by an amendment to this agreement.

The parties agree that:

1. Under this agreement, as set forth in paragraphs A, B, C, and D below, the Commonwealth of Virginia and the Virginia Department of Health shall be responsible for providing liability insurance coverage and will provide legal defense for state employees of the local health department for acts or occurrences arising from performance of activities conducted pursuant to state statutes and regulations.

   A. The responsibility of the Commonwealth and the Virginia Department of Health to provide liability insurance coverage shall be limited to and governed by the Self-Insured General Liability Plan for the Commonwealth of Virginia, established under § 2.2-1837 of the Code of Virginia. Such insurance coverage shall extend to the services specified in Attachments A(1.) and A(2.), unless the locality has opted to provide coverage for the employee under the Public Officials Liability Self-Insurance Plan, established under § 2.2-1839 of the Code or under a policy procured by the locality.

   B. The Commonwealth and the Virginia Department of Health will be responsible for providing legal defense for those acts or occurrences arising from the performance of those services listed in Attachment A(1.), conducted in the performance of this contract, as provided for under the Code of Virginia and as provided for under the terms and conditions of the Self-Insured General Liability Plan for the Commonwealth of Virginia.

   C. Services listed in Attachment A(2.), any services performed pursuant to a local ordinance, and any services authorized solely by Title 15.2 of the Code of Virginia, when performed by a state employee, are herewith expressly excepted from any requirements of legal defense or representation by the Attorney General or the Commonwealth. For purposes of assuring the eligibility of a state employee performing such services for liability coverage under the Self-Insured General Liability Plan of the Commonwealth of Virginia, the Attorney General has approved, pursuant to § 2.2-507 of the Code of Virginia and the Self-Insured General Liability Plan of the Commonwealth of Virginia, the legal representation of said employee by the city or county attorney, and the **Board of Supervisors of Albemarle County** hereby expressly agrees to provide the legal defense or representation at its sole expense in such cases by its local attorney.

   D. In no event shall the Commonwealth or the Virginia Department of Health be responsible for providing legal defense or insurance coverage for local government employees.

2. Title to equipment purchased with funds appropriated by the local government and transferred to the state, either as match for state dollars or as a purchase under appropriated funds expressly allocated to support the activities of the local health department, will be retained by the Commonwealth and will be entered into the Virginia Fixed Asset Accounting and Control System. Local appropriations for equipment to be locally owned and controlled should not be remitted to the Commonwealth, and the local government's procurement procedures shall apply in the purchase. The locality assumes the responsibility to maintain the equipment and all records thereon.

3. Amendments to or modifications of this contract must be agreed to in writing and signed by both parties.

Attachments: Local Government Agreement, Attachment A(1.)
Local Government Agreement, Attachment A(2.)

LOCAL GOVERNMENT AGREEMENT, ATTACHMENT A(1.)

VIRGINIA DEPARTMENT OF HEALTH
COMMUNITY HEALTH SERVICES

BASIC PUBLIC HEALTH SERVICES TO BE **ASSURED BY** LOCAL HEALTH DEPARTMENTS
INCOME LEVEL A IS DEFINED BY THE BOARD OF HEALTH TO BE MEDICALLY INDIGENT (32.1-11)

For Each Service Provided, Check Block for Highest Income Level Served			
COMMUNICABLE DISEASE SERVICES	Income A only	Defined by Federal Regulations	All (specify income level if not ALL)
Immunizations As provided for in 32.1-46			X
Sexually transmitted disease screening, diagnosis, treatment, and surveillance 32.1-57			X
Surveillance and investigation of reportable disease 32.1-35 and 32.1-39			X
HIV/AIDS surveillance, investigation, and seroprevalence survey 32.1-36, 32.1-36.1, 32.1-39			X
Tuberculosis control screening, diagnosis, treatment, and surveillance 32.1-49 and 32.1-54			X
Refugee health screening		X	
CHILD HEALTH SERVICES	Income A only	Defined by Federal Regulations	All
Children Specialty Services; diagnosis, treatment, follow-up, and parent teaching 32.1-77, 32.1-89 and 32.1-90		X	
Screening for genetic traits and inborn errors of metabolism, and provision of dietary supplements 32.1-65 and 32.1-69			X
Well child care up to age __ (enter year) Board of Health		X	
WIC Federal grant requirement		X	
EPSDT DMAS MOA		X	
Blood lead level testing CDC		X	
Community Education 32.1-11.3 and 32.1-23			X
Pre-school Physicals for school entry 22.1-270		X	
Disabled disability Waiver Screenings DMAS MOA		X	
Services for Children with Special health care needs Title V, Social Security Act		X	
Child restraints in motor vehicles 46.2-1095, 46.2-1097			E
Babycare DMAS MOA – Fluvanna, Greene, Louisa, Nelson only		X	
MATERNAL HEALTH SERVICES	Income A only	Defined by Federal Regulations	All
Prenatal and post partum care for low risk and intermediate risk women 32.1-77, Title V, Social Security Act			Louisa - G
Babycare Services DMAS MOA		X	
WIC Federal grant requirement		X	
FAMILY PLANING SERVICES	Income A only	Defined by Federal Regulations	All
Clinic services including drugs and Contraceptive supplies Family Planning Population Research Act of 1970, Title X		X	
Pregnancy testing and counseling Family Planning Population Research Act of 1970, Title X		X	

ENVIRONMENTAL HEALTH SERVICES
BASIC PUBLIC HEALTH SERVICES TO BE **ASSURED BY** LOCAL HEALTH DEPARTMENTS

The following services performed in accordance with the provisions of the Code of Virginia, the regulation of the Board of Health and/or VDH agreements with other state or federal agencies.	
Ice cream/frozen desserts MOA Agriculture	X
Investigation of communicable diseases 32.1-35 and 32.1-39	X
Marinas 32.1-246	X
Migrant labor camps 32.1-203	X
Milk 3.1-530.4	X

Alternative discharging sewage systems 32.1-163	X
On-site sewage disposal 32.1-163	X
Rabies control 3.2-6500 et seq.	X
Restaurants/eating establishments 35.1.14	X
Sanitary surveys	X
Single home sewage discharge 32.1-164	X
Hotels/Motels 35.1.13	X
Water supply sanitation	X
Wells 32.1-176.2	X
Homes for adults DSS MOA	X
Juvenile Justice Institutions 35.1-23	X
Jail Inspections DOC MOA	X
Daycare centers DSS MOA	X
Radon 32.1-229	X
Summer camps/ Campgrounds 35.1.16-17	X

OTHER PUBLIC HEALTH SERVICES
BASIC PUBLIC HEALTH SERVICES TO BE **ASSURED BY** LOCAL HEALTH DEPARTMENTS

The following services performed in accordance with the provisions of the Code of Virginia, the regulations of the Board of Health and/or the policies and procedures of the State Department of Health	
Medicaid Nursing Home Screening DMAS MOA	X
Comprehensive Services Act 2.1-746, 2.1-751, 2.1-752, 2.1-753, 2.1-754, 2.1-747	X
Vital Records (Death Certificates) 32.1-254-255, 272	X

OPTIONAL PUBLIC HEALTH SERVICES

For Each Service Provided, Check Block for Highest Income Level Served			
COMMUNICABLE DISEASE SERVICES	Income A only	Defined by Federal Regulations	All
Foreign Travel Immunizations			X
CHILD HEALTH SERVICES			
School health services			
Sick child care			
Other:			
MATERNAL HEALTH SERVICES	Income A only	Defined by Federal Regulations	All
Funds for deliveries			
Funds for special tests and drugs			
Diagnosis, treatment, and referral for gynecological problems			
FAMILY PLANNING SERVICES	Income A only	Defined by Federal Regulations	All
Other:			

OPTIONAL PUBLIC HEALTH SERVICES

For Each Service Provided, Check Block for Highest Income Level Served			
GENERAL MEDICAL SERVICES	Income A only	Defined by Federal Regulations	All
Activities of Daily Living			
Community Education			X
General Clinic Services			
Home Health Services (skilled nursing and therapy			
Outreach			
Occupational health services			

Personal care			
Pharmacy services			
Hypertension screening, referral, and counseling			
Respite care services			
Other:			
SPECIALTY CLINIC SERVICES (List)	Income A only	Defined by Federal Regulations	All
DENTAL HEALTH SERVICES	Income A only	Defined by Federal Regulations	All
Preventive Clinic Services – Children			
Preventive Clinic Services - Adults			
Restorative Clinic Services			
Community Education			
Other: Fluoride varnish for pre-school children – Fluvanna, Greene, Louisa, Nelson			E

PUBLIC HEALTH SERVICES PROVIDED
UNDER LOCAL ORDINANCE

Neither the *Code of Virginia* nor Regulations of the Board of Health requires the following services to be provided by the local health department	
Accident Prevention	
Air Pollution	
Bird Control	
Employee Physicals	
General Environmental	
Housing - BOCA & local building codes	
Insect control	
Noise	
Plumbing	
Radiological Health	
Rodent Control	
Solid Waste	
Swimming facilities	
Weeds	
Smoking Ordinances	
Other environmental services (identify)	

OPTIONAL PUBLIC HEALTH SERVICES

For Each Service Provided, Check Block for Highest Income Level Served			
	Income A only	Defined by Federal Regulations	All
Employee physicals			
Primary care for inmates in local jails or correctional institutions			
Other medical services (List)			
Other (please list)			
Preventive dental services for children			

_____

Agenda Item No. 7. **Public Hearing: SP-2010-00020. Century Link Verizon Wireless Tier III PWSF (Signs #50&52).**

PROPOSED: Special Use Permit amendment to replace three (3) existing Alltel microwave dishes and six (6) existing Alltel antennas with new antennas and dishes at various heights on an existing 250 foot tower. The applicant is also requesting use of existing mounting brackets to allow the mounting of up to twelve (12) antennas within a sectored array (which requires a waiver/modification of section 5.1.40.C.3).
ZONING CATEGORY/GENERAL USAGE: [CO], Commercial Office; [EC] Entrance Corridor overlay, [AIA] Airport Impact Area.
SECTION: 23.2.2 (15) Special Use Permit, which allows for Tier III personal wireless facilities in the Commercial Office Zoning District.
COMPREHENSIVE PLAN LAND USE/DENSITY: Office Service in Urban Area 2.
LOCATION: Tax Map 61, Parcel 129C: south side of Rio Road East [State Route 631], approximately 1/8 mile east of the intersection with Route 29 North, and near Fashion Square Mall.
MAGISTERIAL DISTRICT: Rio.
RELATED APPLICATION: SP-2008-00012.
(Advertised in the Daily Progress on February 21 and February 28, 2011.)

Mr. Bill Fritz, Chief of Current Development, said that Century Link is proposing to replace existing microwave dishes and existing Alltel antenna. The tower is located on Rio Road near Fashion Square Mall. He said that one microwave dish would be moved from its present location up approximately 29 feet, with another being moved up one foot and another moving down two feet – along with some size adjustments to the dishes. Mr. Fritz presented a diagram of the three-sectored array that stands off from the tower and doesn't meet current regulations, so the applicant proposes to take the antenna off and replace it with smaller antenna.

He said that the Planning Commission unanimously recommended approval at their February 8 meeting, with minimal comments that indicated the changes would have "minimal impact." Mr. Fritz stated that staff had recommended denial of the application with two concerns – adverse visual impact resulting from the change in height from the dish, and a condition from a prior special permit requiring flush-mounted antenna. The applicant is not proposing flush-mounted antenna.

Mr. Fritz said that the tower is located within the Entrance Corridor. The microwave dishes are going to be smaller –six feet as opposed to eight feet. Staff has provided two draft motions for the Board depending on their decided direction.

Mr. Dorrier asked about whether the changes would provide additional coverage.

Mr. Rooker asked how much surface area the antenna would take up.

Mr. Fritz responded that the applicant should be able to answer those questions. Staff's review is limited to visibility; the visual impact caused by the facility, not the functional capability of the facility.

Mr. Thomas asked if just one foot in height would make the tower more visible.

Mr. Fritz explained that the concern was not over the antenna with the one foot increase, but the one moving from 46 feet to 75 feet above ground level.

Ms. Mallek said that condition #5 references identifying the users, and was not sure exactly what that was referring to.

Mr. Fritz stated that the condition attempts to verify that the antenna location is actually being used, and if it is not being used it should be removed.

The Chair opened the public hearing and asked the applicant to come forward.

Mr. Maynard Sipe, an Attorney with the firm of LeClairRyan, and Stephen Waller, consultant, were present representing Verizon Wireless and Century Link. Mr. Sipe said that in July 2008 approval was granted to add an additional antenna array. Due to some changes in circumstances, he said, the applicant has presented a new plan that is a great improvement over what was previously proposed because it minimizes visual impacts and provides new and better services to everyone. Mr. Sipe reported that when the wireless policy was written the main focus was simply basic cell phone service, but now people rely on it for texting, paging, email, wireless internet and downloading of documents and streaming of video. He stated that Verizon is licensed to have three different technologies, and because of the Alltel merger they now have access to the existing facilities on the Alltel tower. Mr. Sipe said that Verizon is looking to provide the three technologies using existing facilities to minimize the need for additional sites. They have cellular service on the 800 MHz band provided by Alltel, personal cellular service or 3G service which provides faster speeds for downloading data, and long term evolutionary operating on a 700 MHz, known as 4G, which is ten times faster than 3G. The speed matters because it enables these facilities to handle more calls and to provide data streaming that individuals and businesses need.

Mr. Sipe reported that the existing array has some older-style antennas on it known as meta-wave, and Verizon would like to add up to 12 antennas to provide all three license frequency services to the area. In doing so, he said, a newer antenna style would be used that will provide a 35% reduction in surface area. Mr. Sipe stated that because of this new array they would no longer need to add the additional array already approved in 2008, at which time the flush-mounting was imposed.

He noted that there are three microwave antennas that are important, as is the entire site because it serves as a main telephone switching site for the entire area and serves other towers out in the rural area. Mr. Sipe noted that one antenna is being reduced from 6 feet to 2.5 feet, and one antenna is being reduced from 8 feet to 6 feet. He added that they are requesting that the lowest antenna be raised 29 feet, driven primarily by technical reasons that demonstrate the height being requested now is the minimum to ensure reliable signal to the rural area, especially Heards Mountain.

Mr. Sipe then presented some photographs showing the view of the tower from different routes and angles, adding that it is only visible from a few points, particularly right in front of it. He emphasized that because of the reduction in size, the visibility is negligible and would ultimately be reduced. To recap the benefits from this approach, the visual impact will be reduced for both the microwave dishes and the antennas. The previously approved additional array higher on the tower would not be needed. The increasing demand for phone services would be met as this is one of the most highly traffic sites in the Charlottesville-Albemarle area. New technologies including the 4G get deployed and the microwave network will continue to be reliable. He concluded by stating that the future of this would permit continuous strong signals even as the trees grow and other things happen that might interfere with the microwave link.

Mr. Rooker stated that he had read an article recently about a new technology that includes an antenna that is about the size of a cell phone and asked if Verizon had considered this.

Mr. Sipe responded that this is called a micro-cell, and is used primarily to serve a small area such as a building or a city block. He added that in order to handle the high speed data traffic and the services for internet connection some of the antennas on this tower need to be spaced apart and that cannot be done with the existing antennas.

Mr. Rooker said the approach in the article was that you would have more sites, but could put them just about anywhere – on sides of buildings - and there would be almost no visibility.

Mr. Sipe stated that Mr. Waller has indicated that the micro-cell technology mentioned in the news article is an experimental technology at this point. He added that Verizon is always looking at ways to provide better quality service and provide the best coverage possible. The approach taken with this application was designed to reduce the visual impact.

Mr. Rooker commented that the community is always looking at ways to reduce visibility.

Mr. Thomas asked how many people in the Heards Mountain area would have better coverage.

Mr. Sipe responded that the quality of coverage at Heards Mountain depends on the cell antennas there, but all of those calls get channeled back through the microwave network.

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

Mr. Rooker said that he voted against the 2008 array because of its visibility, but what is proposed now has less visual impact than what exists today and what was approved in 2008. He will support the application because he does not think it will add to the visibility.

Mr. Thomas then **moved** to approve SP-2010-20 with the conditions and modifications outlined in the staff report. Ms. Mallek **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

AYES: Ms. Mallek, Mr. Rooker, Mr. Snow, Mr. Thomas, Mr. Boyd and Mr. Dorrier.
NAYS: None.

(The conditions of approval are set out below:)

1. The tower shall not be increased in height;

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

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

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

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

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

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

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

_____

Agenda Item No. 8. **Public Hearing: SP-2010-0027. Nichols/Peck Crossing (Sign #5).**
PROPOSED: Replace an existing concrete culvert bridge with an engineered bridge that spans the Moormans River.
ZONING: RA Rural Areas-Agricultural, forestal and fishery uses; residential density (0.5 units/acre in development lots).
SECTION: 30.5.5.2.d.6.
COMPREHENSIVE PLAN LAND USE/DENSITY: Rural Area in Rural Area 1- preserve and protect agricultural, forestal, open space, and natural, historic and scenic. resources/density (0.5 units/acre in development lots).
ENTRANCE CORRIDOR: No, [but is in the Scenic Stream Overlay and Flood Hazard Overlay].
LOCATION: 6094 Sugar Hollow Road in Crozet.
TAX MAP/PARCEL: 02500-00-00-01800, 02500-00-00-018A0, and 2500-00-00-018B0.
MAGISTERIAL DISTRICT: White Hall.
(Advertised in the Daily Progress on February 21 and February 28, 2011.)

Mr. Glenn Brooks, County Engineer, said that this is a special permit to replace a driveway crossing with a bridge over the Moorman's River in the White Hall District. The Planning Commission voted unanimously for approval. He presented some photos of the area and a depiction of the applicant's plan, noting that this is a fairly standard secondary road VDOT bridge. Mr. Brooks also noted the FEMA floodplain mapping and an engineering analysis that shows a more accurate picture of what the floodplain might look like. He stated that the building of this bridge actually improves the flow in the river.

The Chair opened the public hearing and asked the applicant for comments.

Mr. Michael Nichols addressed the Board, stating that he and his wife acquired the property in 1999 and the bridge had been built in 1982. He said that the culverts were always clogged, stopped the flow of the river and kept the fish from migrating, so they decided recently to move forward with the bridge. Mr. Nichols stated that they consider themselves to be stewards of the land and have put it in conservation easement along with killing invasive species and providing wildlife habitat. He said that the project is very costly, as the bridge must be built to Army Corps of Engineering standards.

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

Mr. Rooker and Ms. Mallek commended the applicant for his interest in preserving and protecting the environment in that area.

Ms. Mallek **moved** for approval of SP-2010-27 subject to the five conditions as presented. Mr. Thomas **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

AYES: Ms. Mallek, Mr. Rooker, Mr. Snow, Mr. Thomas, Mr. Boyd and Mr. Dorrier.
NAYS: None.

(The conditions of approval are set out below:)

1. The applicant shall obtain approval from FEMA for changes to the floodplain, and update the FEMA maps;

2. The applicant shall obtain County Engineer approval of plans for the bridges and abutments;

3. The applicant shall obtain Program Authority approval for an erosion and sediment control plan, and obtain a land disturbance permit according to the Water Protection Ordinance requirements, regardless of whether the project exceeds the minimum disturbance limits;

4. The applicant shall obtain all necessary federal and state agency approvals prior to construction (Army Corps of Engineers, Department of Environmental Quality, etc.); and

5. The applicant shall obtain Program Authority approval of a mitigation plan, and provide mitigation according to the Water Protection Ordinance.

_____

Agenda Item No. 9. **Public Hearing: SP-2010-00033. Four Seasons Learning Center (Signs #73&74).**

PROPOSED: Amend special use permit to increase maximum number of children in daycare from 40 to 64. No residential units proposed.
ZONING CATEGORY/GENERAL USAGE: PUD Planned Unit Development which allows residential (3 - 34 units per acre), mixed with commercial and industrial uses.
SECTION: 20.3.2.1, which allows for child care facilities.
COMPREHENSIVE PLAN LAND USE/DENSITY: Urban Density Residential (6-34 units/acre) in Neighborhood 1.
ENTRANCE CORRIDOR: No.
LOCATION: 254 Lakeview Drive, at the corner of Four Seasons Dr. and Lakeview Dr.
TAX MAP/PARCEL: 061X1-00-00-00500.
MAGISTERIAL DISTRICT: Rio.
(Advertised in the Daily Progress on February 21 and February 28, 2011.)

Mr. Cilimberg said that the location of the center is just south of the intersection of Four Seasons Drive and Rio Road near ACAC. He stated that the center has a lot of history as a daycare center with a number of amendments dating back to 1969's original approval of the Four Seasons development. He referenced the current plan approved for the site, and a site plan amendment showing where parking and fencing and play areas are located. Since 2008 when the Board denied a requested amendment, Mr. Cilimberg said, the changes observed have been less conflict between staff parking on the street and the neighbors, and additional on-street parking by residents also seems to be occurring. He stated that the applicant has secured three offsite, off-street parking spaces at Northwood Apartments across the street, but issues that have not changed are the effect of increased students on traffic. The applicant's original request started with a little over 60 students then went to 42 students and now is for 54 students. Mr. Cilimberg reported that the turns at the intersection are tricky due to site distance, and the driveway into the daycare center is very close to the intersection.

He said that favorable factors include the need for childcare facilities in the County, with Four Seasons being a well-established and liked center, and the additional 14 students on site and associated parking requirements can be accommodated on site, on street and in the other spaces across from Four Seasons Drive. Mr. Cilimberg added that there is potential for increased vehicle traffic and opportunities for conflict at the intersections, and the larger enrollment is more out of scale with this part of the Four Seasons development. He said that staff had recommended denial, but the applicant reduced the number of students to 54 and the Planning Commission did recommend approval with conditions, including an additional condition requiring the Northwood parking spaces and maintenance of an agreement to do so. Mr. Cilimberg said that since the Commission's meeting, staff has made some modifications to the recommended conditions that do not change the intent, but hopefully will make them clearer and easier to administer. He then summarized the following recommended conditions:

1. This permit is approved for an office OR nursery school and day-care center. ***The concurrent use of the property for a nursery school/day care center and an office use is prohibited.*** *(Incorporates PC recommended condition #12)*
2. The site shall be in general conformity with the Minor Site Plan Amendment dated June 26, 2000 prepared by Aubrey Huffman, approved July 18, 2000 by the Department of Planning and Community Development and later approved by Letter of Revision dated December 5, 2000 with the exception that 13 parking spaces are required and are provided on-site and on the allowable street frontage of the site. ***There shall be one (1) business sign located as shown on the Minor Site Plan Amendment which shall not exceed eight (8) square feet in size.***

Conditions #3 – #8 below apply to the nursery school and day-care center:

3. The number of children occupying the nursery school and day care center shall not exceed fifty-four (54) or the number approved by the Department of Social Services, whichever is less, at any time.
4. A ***minimum*** twenty foot ***separation between the building and the property line of*** ~~*buffer shall be maintained between the property and*~~ TMP 61X1-AA-***8 shall be maintained***. *(Clarification)*
5. The concurrent use of the property for a nursery/day care center and a residential use is prohibited.
6. All employees of the day care center, including owners and directors, shall park on-site or in other off-street spaces approved by the Zoning Administrator.
7. The maximum number of employees, including owners and directors, on-site during hours of operation shall be limited to ***eight (8)***. *(Request of applicant that staff can support.)*
8. ~~*The applicant shall provide three employee parking spaces at the Northwood Apartments and keep in force the agreement with the owner of the Northwood Apartments for these parking spaces.*~~ *(Generally covered by Condition #6 which gives more flexibility to the Zoning Administrator.)*

Conditions #9 - #11 below apply to use of facility as offices:

9. The maximum number of employees shall be ten (10).

10. A ***minimum*** twenty foot ***separation between the building and the property line of*** ~~buffer shall be maintained between the property and~~ TMP 61X1-AA-***8 shall be maintained***. *(Clarification)*
11. The concurrent use of the property for an office and a residential use is prohibited.

Conditions #12 & #13 below apply to any use of the property:

12. ~~*The concurrent use of the property for a nursery/day care center and an office use is prohibited.*~~ *(Incorporated into Condition #1)*
13. The small evergreen tree on the Four Seasons Drive frontage at the corner of the parking shall be relocated toward the building, as recommended by VDOT, a sufficient distance to prevent future line-of-sight problems.

Mr. Cilimberg stated that staff would recommend those amended conditions be included should the Board choose to approve the special permit. He added that there are references in the site plan to fences that should remain.

Ms. Mallek asked if this could now be a daycare or office use. Mr. Cilimberg said that an office could operate under this approval instead of a daycare center, but not both simultaneously.

Ms. Mallek asked where the cars would go for arrival and dismissal while the children are unpacked and walked into school. Mr. Cilimberg responded that there are sufficient spaces onsite and on the street to allow for the coming and going of parents to drop their kids off.

Mr. Ron Higgins, Chief of Zoning/Deputy Zoning Administrator, pointed out that the school had a traffic study done and analysis of arrival and peak hours, which showed there was not a concentrated time for arrival and departure. They are spaced out during the day. He added that there are nine spaces on site and room for four along the frontage which County ordinance allows to count towards parking.

Mr. Snow asked if there had been a lot of accidents in that area. Mr. Cilimberg responded that there is no record of that in the area. He added that Mr. Thomas and Ms. Elaine Echols observed the morning peak hours arrival and departures.

Mr. Thomas said that the morning peak was spaced out considerably, but perhaps the traffic is heavier in the afternoon when the road is busier.

Mr. Snow asked how many days per week the daycare operates. Mr. Cilimberg indicated it operates all five work days of the week. He added that the hours of operation are not stipulated in the conditions.

Mr. Cilimberg added that staff asked VDOT if the stop bar could be moved, which seemed to be part of the issue with the intersection, but they indicated it was in an appropriate location and should not be moved.

Ms. Mallek mentioned that there is a very heavily enforced 25-mph speed limit there, with people using it as a route to Whole Foods Market.

At this time, the Chair opened the public hearing and asked the applicant to come forward.

The applicant, Ms. Barbara Kalemba-Silwinski, Director of Four Seasons Learning Center said she is a joint owner with her husband, Krzysztor Silwinski for the last 12 years of the 36 total years of business. Ms. Kalemba-Silwinski thanked the Board and staff for their patience and understanding. She stated that Mr. Cilimberg has done a good job presenting their application and she does not have anything further to add. She will respond to any questions. She also presented support letters from neighbors and from parents of children in the center.

Mr. Thomas asked how many parents are bringing more than one child. Ms. Kalemba-Silwinski responded that about 47 percent of the families have more than one child in the center.

Mr. Snow asked how many children are local, from the Four Seasons neighborhood. Ms. Kalemba-Silwinski said she does not know offhand because it changes from month to month.

Mr. Rooker asked if there is a waiting list for children for the center. Ms. Kalemba-Silwinski said one of the other speakers would respond to that question.

Mr. Steven Harris said that he is a resident on Lakeview Drive and serves on the Four Seasons Board. Mr. Harris said that the center's operators have done a great job with a center, and he has owned the house across the street for about six years now. He stated that he objected to the last enrollment increase and is here to state his opposition to this increase also, as his property value continues to decrease with about a 20% decrease since 2006. Mr. Harris said that he is a proponent of small business and does feel that the center is a great addition to the neighborhood, although he has concerns about the impact of additional children.

Ms. Susie McCormick, a resident of 1448 Monterey Drive, in the Four Seasons neighborhood, said that she is also President of the Homeowners Association. Ms. McCormick said that they wrote a letter to the Board on behalf of the HOA requesting denial of this request. In 2008 the Board denied a request for increased enrollment and very little has changed since then. They appreciate the fact that the center has sought off-site parking for staff. The HOA wants to be good neighbors and appreciates the

center's efforts, but the level of traffic, the safety of intersection and the effect of property values have not changed since 2008. She stated that the scale of the center is out of line with the neighborhood and any increase will exacerbate this situation.

Ms. Linda Terry said that the homeowners are requesting that the Board not approve any increase in children above the current 40. On October 6, Mr. Thomas met with several of the homeowners along with the daycare owners and County staff. Ms. Terry said that they voiced concern for over an hour and a half why the increase in enrollment would not be a benefit to the Lakeview Drive homeowners and the neighborhood. Little has changed in two years ago. She stated that the daycare center is a commercial business, and this is easily lost in the emotions of wanting to take good care of children and the need for more daycare centers in the area. Ms. Terry said that the as a commercial business, the center is the largest building on a residential street that ends in a cul-de-sac. The building, extensive parking lot, and playgrounds all dominates the corner and even the whole street. She stated that the center generates the most traffic on the street and increasing enrollment that it will only enhance that dominance. She added that she would not have purchased a home there five years ago had she known this. Ms. Terry said that tonight she noticed that parents were not able to get into the parking lot at the center tonight, and she is very concerned about traffic turning in and out of Lakeview Drive and off of Four Seasons Drive. With more customers, there will be more traffic in and out all day long along with likely problem of insufficient parking spaces for pickup. She suggested that the County look at traffic on Tennis Drive, the next street over, and compare that to Lakeview Drive. She added this is an accident waiting to happen. Ms. Terry added that she is concerned about noise, noting that she can hear the kids at the daycare center but at ACAC, which she abuts. She asked that this request not be repeated again in another two years.

Ms. Courtney Watson addressed the Board, stating that she has three siblings at the center and supports the increase in enrollment. She has never had a problem with parking at the center.

Ms. Lauren Root addressed the Board, stating that she has been employed at the Four Seasons Learning Center for almost seven years. During this time she has rarely ever seen a parking problem. She said that she has seen neighbors deliberately park their cars in spots that should be for everyone, deliberately trying to make a traffic problem. Ms. Root said that the school has wonderful staff members and works hard to get along with the neighbors. She said that she is at the center from 7:30 a.m. until 4:30 or 5:00 p.m. She supports the request.

Ms. Trishta Kirtley said that she has two children in the center and is expecting a third. She said that she supports the increased enrollment and has never had a problem with parking onsite.

Ms. Laurie Harris addressed the Board, stating that she supports the center.

Ms. Dena Price said that she supports the center.

Ms. Geraldine Robinson said that she lives directly across from the center so all the cars have to pass her house to get there. She said that she has lived there 35 years and has seen the difference in traffic and noise that the center has brought. She does not want to have to continue to come to the Board for the center to increase its enrollment.

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

Mr. Boyd asked if the 54 enrollment was reduced from 60 because of traffic. Mr. Cilimberg responded that at the Commission meeting, the applicant reduced the amount from the 64 originally requested.

Mr. Rooker commented that they are requesting 10 less than they did in 2008.

Mr. Cilimberg mentioned that the Commission had recommended 12 fewer students than the 64 requested, but it was denied by the Board.

Mr. Boyd stated that he would support the application, as he did in 2008. He thinks there is a need for daycare services in the community.

Mr. Thomas said that he has observed firsthand the traffic flow there and cannot see that the learning center is making it worse than it is now. He also supports the application.

Mr. Rooker stated that he views it as a local issue as it is a neighborhood issue, and looks to the Supervisor in the district to see where he stands. He did not support the previous request. He said that it is a difficult balancing act because of the demand for these services in the urban area and this is a densely populated area. Mr. Rooker stated that based on Mr. Thomas' support, he would support it.

Mr. Thomas said that the Health Department has authorized the center for 70 children, and stated that there is a lot of room in the building.

Mr. Rooker noted that the Health Department approval is for 79 children.

Ms. Mallek stated that it is going to have an impact and she supports Mr. Thomas' position.

Mr. Thomas commented that there is always an impact, but the question is to what degree and he does not think the traffic would have that much of an impact.

Mr. Thomas then **moved** for approval of SP-2010-033 subject to the eleven conditions as presented tonight by staff. Ms. Mallek **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

AYES: Ms. Mallek, Mr. Rooker, Mr. Snow, Mr. Thomas, Mr. Boyd and Mr. Dorrier.
NAYS: None.

Mr. Cilimberg asked if he wanted the condition providing parking at Northwood Apartments to be included. Mr. Thomas said that he thought that was a done deal.

Mr. Cilimberg explained that Zoning has had concern about the parking agreement expiring, which would put the applicant in violation of the special permit. Condition #6 allows the Zoning Administrator to approve different locations gives more flexibility, and that is why condition #8 was not recommended by staff although the Commission had recommended it.

Mr. Thomas **amended** his motion to eliminate condition #8. Ms. Mallek **agreed** to the amendment as the second. Roll was called and the motion carried by the following recorded vote:

AYES: Ms. Mallek, Mr. Rooker, Mr. Snow, Mr. Thomas, Mr. Boyd and Mr. Dorrier.
NAYS: None.

(The conditions of approval are set out below:)

1. This permit is approved for an office or nursery school and day-care center. The concurrent use of the property for a nursery school/day care center and an office use is prohibited;

2. The site shall be in general conformity with the Minor Site Plan Amendment dated June 26, 2000 prepared by Aubrey Huffman, approved July 18, 2000 by the Department of Planning and Community Development and later approved by Letter of Revision dated December 5, 2000 with the exception that thirteen (13) parking spaces are required and are provided on-site and on the allowable street frontage of the site. There shall be one (1) business sign located as shown on the Minor Site Plan Amendment which shall not exceed eight (8) square feet in size;

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

3. The number of children occupying the nursery school and day care center shall not exceed fifty-four (54) or the number approved by the Department of Social Services, whichever is less, at any time;

4. A minimum twenty (20) foot separation between the building and the property line of TMP 61X1-AA-8 shall be maintained;

5. The concurrent use of the property for a nursery/day care center and a residential use is prohibited;

6. All employees of the day care center, including owners and directors, shall park on-site or in other off-street spaces approved by the Zoning Administrator;

7. The maximum number of employees, including owners and directors, on-site during hours of operation shall be limited to eight (8);

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

8. The maximum number of employees shall be ten (10);

9. A minimum twenty (20) foot separation between the building and the property line of TMP 61X1-AA-8 shall be maintained;

10. The concurrent use of the property for an office and a residential use is prohibited;

Condition #11 below applies to any use of the property:

11. The small evergreen tree on the Four Seasons Drive frontage at the corner of the parking shall be relocated toward the building, as recommended by VDOT, a sufficient distance to prevent future line-of-sight problems

---

Agenda Item No. 10. **Public Hearing: SP-2010-00048. Music Festival (Sign #75).**
PROPOSED: Five year extension of existing Special Use Permit (SP200900016) to continue allowing an annual special event at the Misty Mountain Camp Resort.
ZONING CATEGORY/GENERAL USAGE: RA Rural Areas - agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots).
SECTION: 10.2.2.50 Special events.
COMPREHENSIVE PLAN LAND USE/DENSITY: Rural Areas - preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/ density (.5 unit/ acre in development lots). ENTRANCE CORRIDOR: Yes.
LOCATION: 56 Misty Mountain Road, approx. three-quarters of a mile west of 64E junction.

TAX MAP/PARCEL: 07100000000300.
MAGISTERIAL DISTRICT: White Hall.
(Advertised in the Daily Progress on February 21 and February 28, 2011.)

Mr. Cilimberg said that this request is for a re-approval from the original request for the three-day music festival held one time per year at the campground, which was originally approved for a two year trial period. He reported that the festival was held in 2009 and 2010, with average attendance of 400 per year, which is less than the maximum granted through the permission. The applicant acquired all required permits and approvals. Mr. Cilimberg said that staff did baseline sound measurements during the October 2009 event and found that the levels complied with the conditions of approval. There have not been complaints from adjacent owners. He presented a drawing and some images of the site and the layout, noting the entrance and festival area as well as the community building.

Mr. Cilimberg said that staff has recommended approval with removal of condition #17, which pertains to the time period. He stated that the Commission recommended approval and included a new time period that grants the permit through June 30, 2016, as they believe that the use needs to be reviewed so as not to create an impact in the area.

Ms Mallek noted that this has been a successful even, very well attended and supported.

Mr. Boyd said he does not understand why the Commission felt the need to add the additional condition. Mr. Cilimberg said there was no discussion; they just felt it needed to be evaluated in the future.

Ms. Mallek commented that customarily a special permit for a business does not expire.

Mr. Boyd commented that this does not do away with the ministerial review.

The Chair opened the public hearing and asked the applicant to come forward.

Mr. Michael Leo, the applicant, said that the festival has been held for three years, with the first year held under a zoning clearance. They have operated with no incidents, traffic problems or law enforcement issues. He asked that the five years not be included in the special permit, but if there are issues or expansion plans he would have to come before the Board anyway.

Mr. Dorrier asked how many groups play at the event.

Mr. Leo responded that it varies, with 40 local musicians in attendance last year along with local restaurants and craft vendors. He said that most attendees stay at the facility, and a lot of regular campers come to the site just for this festival. He added that as of this time almost 75% of their facility is booked for people staying for this year.

No one else came forward to speak, the public hearing was closed, and the matter was placed before the Board.

Mr. Rooker noted that the Planning Commission minutes had very few notes regarding the five-year stipulation, with just some brief comments about Mr. Loach's desire to have the ability to review the permit in five years.

Ms. Mallek said that the first 16 conditions would take care of that oversight, and other Board members agreed.

Ms. Mallek **moved** for approval of SP-2010-048 with the 16 conditions presented by staff. Mr. Snow **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

AYES: Ms. Mallek, Mr. Rooker, Mr. Snow, Mr. Thomas, Mr. Boyd and Mr. Dorrier.
NAYS: None.

(The conditions of approval are set out below:)

1. The use shall conform to any existing applicable special use permits, including but not limited to SP-1994-30, whose terms are hereby incorporated by reference;

2. Development of the use shall be in conformity with the Concept Plan entitled Misty Mountain Camp Resort SP-2009-16 Music Festival, prepared by Albemarle County Office of Geographic Data Services, and signed by Mike Leo and dated August 6, 2009, (hereinafter, the "Conceptual Plan"), as determined by the Director of Planning and the Zoning Administrator;

   To be in conformity with the plan, development shall reflect the following central features within the development essential to the design of the development:
   - location of temporary parking areas 1, 2, and 3
   - location of temporary stage

   All activities related to the music festival shall take place within the area of the site bound by the Rockfish Gap Turnpike, Misty Mountain Road, Stockton Creek and the western parcel boundary. Minor modifications to the plan which do not conflict with the elements above may be made to ensure compliance with the Zoning Ordinance;

3. A music festival special event shall be permitted once every twelve (12) month period, for a maximum of three (3) consecutive days consisting of one (1) week day and two (2) weekend days. Any increase in the number of special events shall require an amendment to this special use permit;

4. A maximum of fifteen (15) vendors shall be allowed to operate on any given day during the music festival;

5. Written approval from the Police Department, Fire and Rescue, and the Health Department shall be required each year prior to the issuance of a zoning clearance to allow the special event use;

6. No tree removal, grading, or disturbance shall take place within the driplines of the trees as shown on the Concept Plan prepared by Mike Leo, and dated March 25, 2009. Any grading or disturbance within ten (10) feet of any dripline shall necessitate submittal of a "Tree Protection Plan" in accord with section 32.7.9.4 of the Zoning Ordinance. No grading or disturbance within ten (10) feet of any dripline shall be permitted until: a) a survey and fencing have been completed and b) the Planning Director approves a plan which shows the grading or disturbance and the surveyed dripline of the existing trees;

7. Hours of operation for the music event shall be between 12:00 p.m. and 10:00 p.m.;

8. Off-site parking shall not be permitted except in authorized parking lots from which people are transported to the special event by shuttle or comparable vehicles;

9. The maximum number of people allowed on the site for the special event on each day shall not exceed five hundred (500) persons;

10. The maximum number of vehicles allowed to be parked on the site for the special event on each day shall not exceed two hundred twenty four (224);

11. A minimum of twenty (20) private security, parking, and traffic control staff members shall be required on site each day of the music festival;

12. Overnight camping outside the designated camping areas shall be prohibited;

13. All outdoor lighting shall be only full cut-off fixtures and shielded to reflect light away from all abutting properties. A lighting plan limiting light levels at all property lines to no greater than 0.3 foot candles shall be submitted to the Zoning Administrator or their designee for approval;

14. The maximum level of noise shall not exceed sixty-five (65) dBA as measured from an adjacent property;

15. The applicant shall reseed and restore the parking area site(s) as required by the zoning administrator within thirty (30) days of the last day of the special event; and

16. The site shall be restored and cleared of all trash, debris, and temporary structures associated with the special event within two (2) days after the final day of the special event.

Agenda Item No. 11. **Public Hearing: SP-2010-00043. Brown Collision Center (Sign #6).**
PROPOSED: To permit an auto body shop in a Highway Commercial District, no residential units proposed.
ZONING CATEGORY/GENERAL USAGE: HC Highway Commercial - commercial and service uses; and residential use by special use permit (15 units/acre).
SECTION: 24.2.2 (17) auto body shops.
COMPREHENSIVE PLAN LAND USE/DENSITY: Regional Service - regional-scale retail, wholesale, business and/or employment centers, and residential (6.01-34 units/acre) in Neighborhood 1.
ENTRANCE CORRIDOR: Yes. LOCATION: 1590 Seminole Trail, approximately 600 feet north of Berkmar Drive on the west side of Seminole Trail (US 29).
TAX MAP/PARCEL: 061000000120E0.
MAGISTERIAL DISTRICT: Rio.
(Advertised in the Daily Progress on February 21 and February 28, 2011.)

Mr. Cilimberg reported that this special permit would utilize the old Brown Auto Sales facility on Route 29 North across from Fashion Square Mall for a body shop operation in the highway commercial district. The operation would occur in the back part of the building and nothing is changing in terms of the site layout. He said that the request is consistent with the land use plan. There are no unfavorable factors identified. Staff and the Planning Commission are recommending approval with a total of three conditions that are standard for a body shop.

The Chair opened the public hearing and asked the applicant for comments.

Ms. Christian Cozup, Manager of the Collision Center, offered to answer any questions.

There were no questions from Board members.

There being no further comments, the public hearing was closed.

Mr. Thomas **moved** for approval of SP-2010-043 with the three conditions presented. Mr. Rooker **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

AYES: Ms. Mallek, Mr. Rooker, Mr. Snow, Mr. Thomas, Mr. Boyd and Mr. Dorrier.
NAYS: None.

(The conditions of approval are set out below:)

1. There shall be no storage of parts, materials or equipment except within an enclosed building;

2. No vehicle awaiting repair shall be located on any portion of the property so as to be visible from any public road or any residential property, and shall be limited to locations designated on the approved site plan; and

3. The site plan (SDP2010-62, Sheet 1 of 1, dated 8/2/10, and prepared by Daggett & Grigg Architects) shall be amended with a Letter of Revision to update the parking space labels and to show all of the previously approved/required landscaping on the plan, and to show the relocated area where vehicles awaiting repair are kept from public view.

_____

NonAgenda. At 7:31 p.m., the Board took a brief recess. The meeting reconvened at 7:37 p.m..

_____

Agenda Item No. 12. **Public Hearing: ZTA-2010-00008. Farm Winery Outdoor Amplified Music.** Amend Sec. 5.1.25, Farm wineries, of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Sec. 5.1.25 to amend the noise standard for outdoor amplified music at farm wineries. *(Advertised in the Daily Progress on February 21 and February 28, 2011.)*

Ms. Amelia McCulley, Zoning Administrator, provided Board members and the public a copy of the updated Executive Summary on this item:

"On May 5, 2010, the Board amended the zoning regulations relating to farm wineries to bring our local regulation into accord with the Virginia Code. Zoning Ordinance Section 5.1.25 (e) established the following standard for sound from outdoor amplified music:

> Sound generated by outdoor amplified music shall not be audible: (i) from a distance of one hundred (100) feet or more from the property line of the farm winery on which the device is located; or (ii) from inside a dwelling unit.

In accordance with the limitations imposed by the Virginia Code, the current regulations are applicable only to sound generated by outdoor amplified music. The sound regulations relating to farm wineries prior to the May 5, 2010 amendment applied to all farm winery events and activities involving the public and utilized the standard Zoning Ordinance maximum decibel levels for the Rural Areas of 60 daytime and 55 nighttime.

Issues relating to the new sound regulation arose last summer and fall with an Albemarle winery's wedding events. On December 2, 2010, staff held a public roundtable to receive input from representatives of the farm winery industry, the public and others as to how the new regulations were working after the first season in effect. The participants requested that we revisit the sound standard, its implementation and enforcement (Attachment A within attachment to Planning Commission Staff Report). On January 5, 2011, the Board of Supervisors adopted a resolution of intent to revisit these sound regulations (Attachment B).

The Planning Commission held a work session and took public comment on January 18, 2011. The Commission asked staff to provide further information to address a) the need for more immediate and direct enforcement, including through the Police Department; and b) a lower sound level than the current Rural Areas decibel levels that would better limit nuisance noise. On February 8th, the Planning Commission directed staff to proceed to public hearing with an audibility standard that would be enforced by the Police Department. This would be accomplished by reference to the general noise standards in Chapter 7 of the County Code rather than from within the Zoning Ordinance. On February 9th, the Board discussed having a decibel-based enforcement ordinance and set a public hearing date of March 9th. The County Attorney indicated that they would draft text amendments for both an audibility standard that would be enforced by the Police Department (Attachment D) and a decibel-based enforcement ordinance (Attachment E).

PUBLIC PURPOSE TO BE SERVED: Establish a sound standard that is reasonable, effective and efficient in its administration and enforcement. This standard and process should better address both the needs of the farm winery industry to preserve its economic vitality and the effect of outdoor amplified music on residents living near farm wineries.

While there are some benefits to an audibility standard and Police enforcement of outdoor amplified music at farm winery events, these benefits do not overcome the costs and difficulties. Staff opinion is that the most appropriate, effective and efficient way to enforce this regulation is using a decibel-based standard with Zoning enforcement in a civil process. The issues pro and con, are outlined in Attachment C, a matrix about sound standard and type of enforcement.

Staff will address the three criteria to consider for all Code amendments:

Administration/Review Process:

An audibility standard is more difficult for a winery to determine if they will be in compliance and to obtain compliance (because it is a higher standard). Police enforcement of an audibility standard is consistent with their enforcement under the general noise standards in Chapter 7.

Changing to a decibel-based sound regulation restores consistency with other land-use sound regulations and it will be easier for Zoning to administer and for a winery to follow. As with the other land-use sound regulations, an applicant's engineer can evaluate a proposed site for compliance prior to commencing the outdoor amplified music.

Housing Affordability:

There are no identifiable impacts on housing affordability caused by either of the attached amendments.

Implications to Staffing/Staffing Costs:

Changing the enforcement to the Police further burdens a department that is currently understaffed and whose priority is public safety even above public welfare.

Because a decibel-based standard is less restrictive than an audibility standard, we expect fewer violations of this standard – resulting in lower staffing costs for administration. Zoning already has the necessary equipment to measure decibel levels, so this is not a new cost.

Staff does not have projected costs for the budget impact of transferring this enforcement responsibility to the Police Department. The result could be a slower response time for higher priority calls, due to limited Police staffing.

There are no new or additional costs associated with Zoning enforcement of a decibel-based ordinance. We currently own the sound meter and have associated requirements for regular calibration and training as a result of the existing land-use sound regulations.

Staff recommends approval of ZTA 2010-08 as provided in Attachment F, which establishes a decibel standard enforced by Zoning. Should the decision be to instead utilize the audibility standard enforced by police, the necessary text amendment language is provided in Attachment E (revised as noted in the Planning Commission meeting). If the Board chooses the latter approach, this item will need to be deferred until the Chapter 7 amendment can be heard.

_____

Ms. McCulley reported that on March 1, the Planning Commission recommended an audibility standard that would be enforced by the Police Department, based on a desire to provide a County response to citizen calls on nights and weekends when many farm winery events occur, and on an understanding that the audibility standard is working for the noise calls that Police receive. Ms. McCulley stated that the three dissenting Commissioners were in favor of a more objective or measurable sound standard that would allow wineries to determine for themselves if they are in compliance.

Ms. McCulley said that it is important to note the public purpose and what is trying to be achieved. She stated that all would agree that the sound standard must be reasonable, effective and efficient in its administration and enforcement. Although the need for an ordinance amendment arose with a particular case, she said, this is a County wide ordinance amendment that would affect every farm winery in the County for now and into the future. Ms. McCulley said that the first criteria to be reviewed to determine that the standard and enforcement measure is appropriate are that it be reasonable. An audibility standard is extremely restrictive, more so than the decibel standard. She said that the County has already established a reasonable community sound standard for the rural and residential districts as expressed in maximum sound levels that are in the Zoning Ordinance Section 4.18, and those standards were enacted after a great deal of study that involved community teams, including a community noise task force. Ms. McCulley noted that there were a lot of sound reading samplings done at different land uses. The current decibel based sound regulations are consistent with those in other localities and have worked well. She said that no new equipment, training, or calibration is required for Zoning to enforce a decibel-based ordinance.

Ms. McCulley stated that Zoning currently has a sophisticated and fully functional sound meter. Zoning's equipment also includes a calibration unit that is used to calibrate the sound meter in the field each time before measurements are taken. She said that the meter is periodically sent back to the manufacturer, and the County receives a written certification that is good for one year. Ms. McCulley said that all Zoning code enforcement staff have read the meter instruction manual and have been trained by a senior officer in its operation, and they use it as part of their job.

She reported that the second criteria for an ordinance change is that it be effective, serve the intended purposes, treat equal situations equally, and allow those who are regulated to determine whether they are in compliance or not. Ms. McCulley stated that staff's opinion is that a decibel based standard is effective, as it treats rural area land uses consistently, and a farm winery is a land use; it best allows wineries to determine they are compliance both before and during an event. She said that staff believes the civil process available through Zoning enforcement is the best process for a long-term solution and allows an injunction, whereby a judge can impose significant sanctions and keep them in effect for as long as needed. Ms. McCulley also stated that due to resource limitations and the low priority of noise violation calls, there is no guarantee that police will be able to respond during the event. She said that Zoning can plan to attend recurring events to confirm compliance and can take necessary action for enforcement as needed.

Ms. McCulley stated that the third criteria is efficiency, and the enforcement needs to be efficient, which includes making sure you have chosen the correct and appropriate resource to use. She said that the County Police Department is currently understaffed by about 20 officers and cannot meet the Comprehensive Plan staffing goal based on population to achieve desirable response times. Ms. McCulley said that noise complaints are lower priority calls and officers can only respond when available, and staff does not feel they are the appropriate resource for this enforcement. She stated that the civil process through Zoning is most capable in achieving the desired result, as a criminal process typically involves a misdemeanor fine for a specific date. Ms. McCulley said that Zoning has learned a considerable amount in this area, and would move much sooner toward an injunction for relief with a repeating and recurring violation.

Mr. Snow asked her to clarify what a continuing violation would be.

Ms. McCulley explained that if the County receives a complaint from a winery, for example, Zoning staff would plan to be at the winery for the next event that involves outdoor amplified music. She said they have always received good cooperation, and staff would take equipment and measure levels, then inform the winery if they are out of compliance. Staff would continue to periodically check random events, but if they comply and continue to comply, there would not be a recurring violation. Ms. McCulley stated that if it continues to be a sound violation, the County would send a notice of violation and they would have the ability to appeal that, but if they still do not comply the County could get an injunction through the court system. The injunction would order them to comply with the regulations and there would be sanctions they could be subject to if they do not comply. Staff would make sure that it is a continued compliant situation before they would stop monitoring the events.

Mr. Rooker asked if a judge would be capable of issuing an injunction in a criminal matter as a relief for that, or if they would be limited to statutory fines.

Mr. Davis replied that under the Zoning Ordinance, one prescribed remedy is to seek an injunction, but that same authority does not exist for a criminal violation unless it rose to the level of being a public nuisance. He said that a citizen could seek this as well. He added that under the ordinance you would have to prove that there is a violation and that the civil fine process is not an adequate remedy to enforce the ordinance. On the criminal side, Mr. Davis said, you would have to prove the activity was a public nuisance.

Mr. Rooker noted that it would be easier to stop a recurring violation with a zoning approach as opposed to a criminal misdemeanor approach, as the standard of proof would be less.

Mr. Davis said that with a zoning injunction, you would have to prove a continuing violation of the Zoning Ordinance, whereas with a violation of a police ordinance, you would have to prove a public nuisance. He added that under Zoning authority, the County has the authority to seek an injunction whenever it feels it is necessary. One factor a court would look at was whether a civil fine was an adequate way to enforce the ordinance. He stated that in some circumstances a fine permitted under the Zoning Ordinance is not an adequate remedy to prohibit someone from continuing to violate the ordinance, and in those situations an injunction could or would be granted.

Ms. Mallek asked if both efforts would be equally covered by the State winery statute.

Mr. Davis explained that outdoor amplified music is an exception in the State regulations so the outdoor amplified music could be regulated either under zoning or under a criminal statute.

Mr. Snow asked how the sound meter equipment works and whether staff goes out and takes an ambient noise level reading as a baseline.

Ms. McCulley responded that it depends on the situation. When they were recently doing sound meter readings at the quarry there was so much external noise they took an ambient reading and then over laid a correction. She said that it is rare that the ambient sound is that loud, so the correction is usually not needed.

Mr. Snow asked where the reading is taken. Ms. McCulley responded that the decibel sound ordinance is measured at the property line. The maximum level is based on the zoning of the receiving property. The receiving property is all rural areas which is the most restrictive sound level you can have in the sound ordinance.

Ms. McCulley concluded by stating that staff recommends approval of the draft ordinance with a decibel standard enforced by Zoning. She then asked Chief of Police Sellers to speak to the issue of police enforcement.

Mr. Sellers addressed the Board, stating that with him is also the Commonwealth's Attorney, Denise Lunsford, in case Board members have any technical prosecution type questions related to the criminal aspect of this issue. He said that the question is not whether the Police Department wants to resolve the conflict but the approach they have to take. He said that one remedy is an administrative approach through Zoning enforcement, and the other is a criminal approach enforceable by police and prosecuted by the Commonwealth's Attorney office. Mr. Sellers explained the process of enforcement of a noise ordinance violation from a criminal standpoint, stating that the Department is already stretched thin and indicating that most winery noise issues occur on Saturday evenings between 5:00 p.m. and 10:00 p.m. He said that this is also the Police Department's peak demand time, when they typically handle 21 calls for service in the County with eight to ten officers covering the entire area. Mr. Sellers said that a

noise ordinance violation is dispatched as a priority three or low priority event, and during that same time period many higher priority calls come in that might require backup officers to respond as a matter of safety and protocol. He added that higher priority calls are going to take precedent, and in reality the noise complaints would likely be held for hours and maybe even the next day.

Mr. Sellers presented three scenarios for noise violations, noting that the Department handles an average of 704 criminal noise violation complaints annually in the County. He said that these get qualified as a low priority response and get put in a queue, and when an officer is free they will then respond. Mr. Sellers stated that these complaints are usually response to noise from an apartment complex, private residence, or motor vehicle, so it is easy to identify the person responsible. He said that the next step is to warn them and tell them if the police have to return a criminal summons would be issued, and 99% of the calls end at that point with compliance by the offender. In many cases, the police respond too late and do not observe a violation.

Mr. Sellers said that the second scenario is getting called back to that location, at which time they identify the person responsible, issue a criminal summons, and provide them with a court date. He indicated that the third scenario is getting dispatched a third time to the same location in the same evening, and at that point someone is going to jail and the Magistrate's office, but that rarely occurs. Mr. Sellers noted that an officer at that point has to stay with the offender and is then taken off the street.

Mr. Sellers stated that in a winery situation, noise violations typically involve amplified music as a result of a special event. He said that the first response would be to warn the winery, but for the second dispatch call the officers would try to find the person responsible for the loud music, and that person may be a DJ, the father of the bride, an employee of the winery, or the manager of the winery if they are present. He added so you could see how sticky that could get and the reasons for his concern in terms of devoting resources to that type of event.

He said that the criminal enforcement for noise violations is complex, and for routine cases it serves its purpose and most good citizens comply. Mr. Sellers said that police presence at a winery event could add additional conflict to an already emotional situation, and he always recommends third party mediation first, followed by civil remedies, and as a last result criminal remedy.

Mr. Rooker noted that the difference between a zoning case and criminal case is a zoning case identifies the perpetrator fairly easily, whereas a criminal case that is less evident.

Mr. Dorrier commented that the police do not normally get an injunction. Mr. Sellers responded that they do not have the ability to get an injunction. He added that he believes that the zoning approach is the more prudent for the long-term. When it comes to public nuisances, there is more involved and other offenses must be involved beyond the noise violation.

Mr. Boyd asked for the Commonwealth's Attorney to provide comments.

Ms. Lunsford addressed the Board, stating that the public nuisance statute in a criminal context involves a place that attracts the use of illegal substances and does not deal with issues of noise. She said that with respect to prosecution of these matters, she will enforce what the law is, but her concern with enforcing this type of situation under Section 7.105 relates to what she is able to prove beyond a reasonable doubt in court. Ms. Lunsford added that the ordinance requirement is that the sound is audible 100 feet from the property boundary, so she has to prove what the boundary is. She said that the General District Court Judge who would handle these cases is very particular in saying that he does not resolve boundary disputes, so it would not go anywhere if the boundary line is questionable. Ms. Lunsford said that she would have to establish whether a person was measuring the sound at 100 feet, and if an officer is involved he can go to the Magistrate's office, but if they cannot get there until the noise has abated, the individual who complains must go to the Magistrate's office. She stated that she has one such case pending now in which an individual obtained the summons, but it will likely be null processed because Magistrates are familiar with State law and not local ordinances. Ms. Lunsford emphasized that when a citizen complain and goes to the Magistrate's office, it has not really been vetted at the Police Department.

She said, her office will do what they can to prosecute the matters, but it is not a fix, even assuming that the police get out in time to observe a violation and a warrant for a summons is issued.

Mr. Rooker said that if it were prosecuted, the remedy would usually be a fine.

Ms. Lunsford responded that that may be true on a first offense, and a typical misdemeanor sentence is up to 12 months in jail and up to a $2,500 fine.

Mr. Rooker noted that one of the down sides on the criminal side is there is no permanent order entered, as it is a one off violation each time.

Ms. Lunsford agreed, stating that in each case the offender may technically be someone different at the winery.

Mr. Dorrier asked if she prosecutes someone for disturbing the peace as a misdemeanor under State law.

Ms. Lunsford responded that she would go back and look at that statute, as she is not sure if it would fit in these cases.

Mr. Boyd said that he is concerned about the inability to pinpoint a specific offender in the winery cases.

Ms. Lunsford responded that you can hold a corporation responsible, even criminally responsible, and if a winery comes before the court a number of times the owners could ultimately be held criminally liable. She added that it is not a quick fix, it is not an easy fix, and it is not a definite fix just to simply make it a violation of the ordinance and to make it a misdemeanor.

Mr. Snow added, plus your department is overworked.

At this time, Ms. Mallek opened the public hearing and noted that the County is the applicant in this proceeding.

Mr. Phil Strother, on behalf of Keswick Vineyards, asked the Board to reject the Planning Commission's recommendation and instead adopt the staff's recommendation. Mr. Strother reported that in 2009 the Virginia Supreme Court took on the issue of a noise ordinance and considered a standard based on a reasonable person standard, but struck it down based on the fact that it was unconstitutionally vague. He said that the audibility standard suggested by the Commission is equally unenforceable and vague, and subject to constitutional challenge as it is different depending on the individual. Mr. Strother emphasized that it has no clear standards and creates a particular problem for farm wineries because they do not know how to comply with the law, which they want to do. He said that Keswick Vineyards is asking for an ordinance that has objective standards that can be measured, using decibels.

Mr. Strother also pointed out that a standard requiring audibility to be measured 100 feet from the property line requires a farm winery to trespass onto someone else's property and is an impossible standard for a farm winery to comply with. He added that the ordinance suggested would also require someone to go into a neighbor's home to see if they are complying with it.

Mr. Strother stated that Albemarle County's Zoning Ordinance Section 4.18 has a decibel standard that applies to all land uses, and events and activities that are part of that land use. He said that Code of Virginia Section 15.2-2288.3, the State Farm Winery Ordinance, says that any local regulation that applies to a farm winery, even a sound ordinance, has to be reasonable, and an audibility standard cannot be achieved. He asked the Board to consider the economic impact of a farm winery. An ordinance that would prohibit outdoor amplified music because of the audibility standard would have a detrimental impact on a farm winery. Outdoor amplified music must be reasonable. Mr. Strother stated that the law is very clear that zoning cannot be delegated to the police force. The General Assembly has delegated this authority to the Zoning Administrator and staff, and does not include the ability for it to be delegated to the police. He added it is not allowed under the Virginia Code.

Ms. Jean Brickwedde said that she lives on Bridlewood Trail. She lives about six walking minutes from Keswick Winery and six walking minutes from St. John's Road. She said that she hears gunshots from Route 231, dogs from Route 22, parties from St. John's Road, but has never heard anything from Keswick Winery on their weddings. Ms. Brickwedde stated that on August 14 she knew there was a wedding at the winery so she drove over to the site entrance and was still not able to hear anything. She said that she hears nothing, and is pretty close. She does not think the winery is doing anyone any harm and would like to see them continue their operations.

Mr. Al Schornberg addressed the Board, stating that he and his wife have owned Keswick Vineyards for 11 years. He said that in 2010 they hosted three weddings with three different DJs providing music, and it became obvious after the first wedding that they would need to consult with sound engineers to find a solution to mitigate sound traveling to neighbors' property. Mr. Schornberg said that in working with consultants they have determined that by utilizing new technology that can control the direction that sound waves travel, they could keep the sound from amplified music from being bothersome to anyone of reasonable senses. He stated that by the third wedding they had the equipment in place and invited Board of Supervisors members to come to an October wedding and observe the sound situation. They were confident that by uses these directional speakers and regulating the maximum decibel level, regardless of the DJ and what type of sound source was used, they would not be a nuisance to their neighbor. Mr. Schornberg said that if the music could be heard 100 feet past the property line it would only be there for a few seconds then disappear. He stated that at a third wedding he and his wife stood with two Board members about 80 feet inside their property line at a point between the sound source and the neighbor's house on equal elevation and listened for 20 minutes. He added that none of them heard any amplified music as the wedding guests danced away.

Mr. Schornberg stated that a bow sound engineer, Mr. Eric Joseph, ran the sound system the entire evening and the volume was controlled at a constant decibel level. Also in the same night, he said, a zoning enforcement officer went to the neighbor's house, stood on their porch, could not hear any amplified music, and then proceeded to four different points approximately 100 feet from the property line where he could only hear an occasional snippet of music for a few seconds. Mr. Schornberg stated that the neighbors insisted he issue a notice of violation for those snippets, but the officer stated that the winery had met the intent of the ordinance. He emphasized that it is because of that subjective difference of opinion and an ordinance that is not worded with objective, measurable metrics that he asks the Board to do the right thing and amend the farm winery sound ordinance as it applies to amplified music to the 55 and 60 decibel metric used for all other sources of sound. Mr. Schornberg asked the Board to not make a subjective ordinance a criminal act. He added that is nuts.

Mr. Marshall Pryor said that he lives in Keene a few miles from the Tri-County Riding Club, which has amplified music on many occasions. He said that he will sit outside sometimes and try to hear the

music, but it does not happen very often, only when atmospheric conditions are right. Mr. Pryor stated that wineries are an integral part of the agricultural landscape in Albemarle County. H added they put people in beds, they put people at tables in restaurants, they put people in bed and breakfasts. They bring a tremendous interest to our economy here, and that money translates into tax dollars for Board members to allocate across budgets. He said that the winery guests cost nothing in terms of County services. The agricultural economy has changed significantly in the area which has made wineries a premiere part of the new rural economy. Mr. Pryor said that he hopes that Board members realize that this is a very important, integral part of this community.

Mr. Ken Webster said that he appreciates the wine industry and attends those events. He encouraged the Board to adopt staff's recommendations to have a decibel standard that is overseen by the Zoning Department, as an audibility standard is much too subjective especially since this has become a very charged issue.

Mr. Jake Bushing said that he is the Manager and Winemaker at Pollock Vineyards in Greenwood. He said that he has been working with County staff since 2003 on sound ordinance issues, and asked that the Board support staff's recommendation for a decibel based standard instead of a subjective audibility standard.

Ms. Barbara Lundgren said that she is with Keswick Vineyards and Barb-Wired Events Management, representing a cross-section of Albemarle County as a business owner, a landowner, and a former musician. She said that she has worked in the events industry for more than 20 years and has organized and entertained groups from 10 to 28,000, working as wait staff, the assistant, and the boss. Ms. Lundgren stated that in the past seven months at Keswick, she has witnessed firsthand the Schornberg's effort to be neighbor friendly with the new sound system installed and barriers put in place. She emphasized that the music from the event tent cannot be heard at the neighbors' property line. The vineyard does not allow bands, with the DJs being controlled at a certain decibel level within the tent. Ms. Lundgren said that all potential couples and clients who tour with the vineyard get an actual example of what they will be getting on the dance floor, and it is pointed out that Keswick Vineyards is not the place for a loud head banging party. She added that keeping the ordinance at an audible level might eliminate outdoor events for their wineries, thus endangering their business, and putting hundreds of people like herself and the ones she represent over my many years out of work, or lessen their work, for a sound you can barely hear, if at all.

Mr. Rooker asked how many weddings are planned at the vineyard for 2011. Ms. Lundgren responded that there are between 16 and 17 weddings planned at this time.

Mr. Mattie Fuller said that he is a musician and played in Keswick in June 2010. He said that a decibel standard will involve a certain amount of self-policing on behalf of the wineries. He said that because this issue has come up Keswick has canceled every other musical event for the rest of the year. Mr. Fuller stated that the Schornbergs have spent a lot of money and have taken great pains to get a sound system for their weddings. He encouraged the Board to consider the more objective decibel standard.

Mr. Eric Joseph said that he is here present representing science and the wineries. He said that they have done extensive testing at the vineyard and there is a law that dictates how decibels are read. Mr. Joseph explained that the inverse square law stipulates that sound will travel so far off and then drop off and dissipate. The decibel level outside of the tent would provide a louder reading but from every doubling of a distance from the tent up to 160 feet, a decibel drop of up to negative 30 decibels would be measured. He said that people speak within 65-70 decibels, but that is within three feet of one another, and you cannot hear that from 100 feet away. Mr. Joseph said that by the time the sound gets to Keswick Vineyards' neighbors it would be negligible although they would hear it because it will be above 0 db. He encouraged the Board to adopt the decibel based ordinance as this would allow for fewer complaints and allow for police to work on more pressing matters.

Ms. Mallek asked him if he has a recommendation as to where to measure the sound.

Mr. Joseph replied that if you use the inverse square law, you can measure it close to the tent and then start multiplying as you move further away. He said that 160 feet away from the tent there would be a 30 decibel drop in sound, so if the property boundary is at least that distance away from the source of sound, the 60 decibel range could be met even if the music exceeds that under the tent. He added as a human, you cannot hear anything other than three-decibel jumps, you are not going to hear a one decibel change as a human being. Mr. Joseph also stated that the speakers are pointed away from the Schornberg's neighbors, positioned on the left and right side of the DJ aiming toward the dance floor, sometimes with enough angling to allow conversation at tables to be heard.

Ms. Iris Luck, a County resident, addressed the Board, stating that she is a staff member of Barb-Wired Event Management and is here to share a statement from someone who could not be here tonight. Ms. Luck read a written statement from a recent past Planning Commissioner of York County of nearly 10 years, as well as past director and first vice-president of the Citizens Planning Education Association of Virginia. The statement said that the issue of noise abatement has always been a key concern in all Virginia jurisdictions, as well as their own experience, holding even more concern when there is a business in a residential area. The letter also said that most businesses in York County dealing with this are indoor and near zoning lines that border the residential areas, and have done some of the same checks as Albemarle's staff to monitor the decibel level. The statement indicated that York County Planning Commissioners have recommended to their Board of Supervisors to limit the hours on weekdays and weekends as well as restricting the type and level of music allowed. The Commissioner's letter

further indicated that this seems to be working and with a few exceptions, and when the owners have been approached with complaints they quickly corrected the situation. The statement also said that the complaint by neighbors, who are a very great distance from the event area and building, is unreasonable and prevents the winery from offering its facilities for special events while limiting revenue to the County. The Commissioner indicated in the statement that the concern would be understandable if it was an everyday nuisance but in this case it is not, and the winery has taken great steps to abate excess noise. The statement encouraged the Board to vote to allow the winery to continue to hold its special events and to use the resolution which is the current allowed decibel level to meet the County Code. This is not a special use permit and it will affect every winery in the County.

Ms. Judy Sommer addressed the Board, stating that the audibility standard is working as intended, as the police use it now for 704 cases per year. Ms. Sommer said that the wineries are all board except for one that had a problem last year. She noted that the Westhampton Beach, NY trustees are now considering removing a code requirement that caps how loud outdoor music can be played in the downtown business district, a move that would also give village police the authority to decide when music is being played too loudly. The deputy mayor led a discussion on possibly removing the current requirement that outdoor music not exceed 65 decibels. The requirement has been a point of contention during ongoing discussions about outdoor music as many have stated it is nearly impossible to enforce the provision. Instead of relying on complaints from residents to monitor the musicians, Ms. Sommer said, the deputy mayor, a former village police officer, suggested that the village might want to give officers the authority to determine when music is being played too loudly. She added that another trustee explained the difficulty in accurately determining the volume of outdoor music with a decibel reader, stating that doing so is almost impossible because it is difficult to single out the sound of music from other noise like traffic and crowds of people talking.

Ms. Sommer said she does not think Albemarle wants to put an ordinance inspector out at the winery every night when the Police Department is already available. Ms. Sommer stated that the police chief who attended the meeting agreed that the decibel reading is largely ineffective, adding that wineries likely already have decibel readers and could install triggers to cut the amps off if the sound level is exceeded. She said that the manufacturer of one such meter states that it can be set by ear, when the music can be heard at the boundary and is too loud. Ms. Sommer added that the system can also record any tampering and the number of times the unit trips and has to be reset. Ms. Sommer said she knows excessively loud music when she hears it and she trusts that the police do too. She asked that the Board keep the audibility standard and trust the police to apply it should it become necessary.

Ms. Cindy Schornberg said that she and her husband own Keswick Vineyards. She said that it is important for farm wineries in the County to have a reasonable sound ordinance as it is essential for them to be able to have outdoor amplified music. She stated that other farm wineries in other counties can host these events, and Albemarle farm wineries are at a competitive disadvantage without being able to. Most farm wineries are boutique in size, they depend solely on foot traffic to generate sales. Offering a one-man band type entertainment on a Saturday or Sunday can help them bring in visitors. Ms. Schornberg said that many visitors come here to see historic landmarks, and wineries provide other attractions to visit, with Virginia ranked fifth in the country for wine production. She said that the State recently allocated an increase of $1.1 million to promote the wine industry and issued a tax credit for up to $250,000, adding that Albemarle County was chosen to host the wine-bloggers conference this July.

Ms. Schornberg explained that weddings provide an opportunity for producers to sell their wine, in addition to other special events, and it does not seem fair that wineries without neighbors nearby can have amplified outdoor music because there is no one complaining. She said that all wineries should have a measurable sound level that is reasonable for both day and night. She added that it is unfair that a neighbor who hears a snippet of music can file a complaint and shut down an event immediately. Ms. Schornberg stated that it seems abusing of a subjective sound ordinance to satisfy another agenda, which is ultimately to drive them out of business. She added that the zoning officer who came to their third wedding did hear snippets of sound but did not find it offensive. She asked the Board to reject the Planning Commission's recommendation and support staff's recommendation for a decibel reading zoning enforced ordinance.

Ms. Elizabeth Nelson, a County resident, said that she is present to support Keswick Vineyards. She believes that the language in the ordinance is subjective and it can be abused by people who have a personal vendetta against a vineyard. The ordinance should be changed to a measurable decibel standard. She stated that the Schornbergs have invested a considerable amount of time, energy and money into preventing noise from being heard off of their property. The music is not offensive. Ms. Nelson added that if the Schornbergs are so willing to compromise, their neighbors should be as well. Ms. Nelson said she thinks that the decibel standard should be adopted. She asked people who support the decibel standard to stand up (approximately 50 people stood), and thanked them for doing so.

Ms. Kris Schornberg addressed the Board, stating that she is the Wine Club Manager at Keswick Vineyards. They have received dozens of letters of support recently. Ms. Schornberg read a letter from Kimberly Wong, who visited with her fiancé and decided to host their wedding at Keswick. Ms. Wong's letter complimented the vineyard and the reception they received there. They were distressed to hear about the pending ordinance and issues surrounding noise. She stated that she received an email from Ms. Cindy Schornberg explaining the situation, but she and her fiancé ended up finding another venue in fear of having their wedding shut down. Ms. Wong's letter stated that while they are disappointed, they hope this venue works out for other couples in the future.

Mr. Stephen Barnard, the Winemaker for Keswick Vineyards, said that he received his training in his native country of Cape Town, South Africa. Mr. Barnard said that he had originally thought of locating

in Napa Valley, but upon speaking to people who wanted to grow wine in Virginia he was taken by their enthusiasm and the fact that the Virginia is where Napa was 30 years ago. He stated that he has been here for nine vintages and has been at Keswick for seven vintages. He is married to Kathy Schornberg and had his wedding at the vineyard. Vineyards are one of the most viable agriculture entities; it supplements the local economy. He added that this could set a precedent for future wineries. Mr. Barnard emphasized that the audibility standard varies depending on the person hearing the noise, whereas a decibel standard is much more objective. He concluded by stating that he enjoys making wine in Virginia.

Mr. Robert Goss said that he and his wife own the Inn at Monticello located on Route 20, which they purchased in 2006 shortly after they became innkeepers there. Mr. Goss stated that they have observed an increasing number of visitors who come to visit the wineries, and also for weddings and special events at the wineries. He said that the wineries have become a significant part of the local economy, which trickles down to bed and breakfasts, hotels and restaurants. Mr. Goss stated that with the balancing of interests, the objective standard being proposed by the staff makes the most sense and is a fair resolution of the issues.

Ms. Lee Beltrone, a resident of 6057 Gordonsville Road next to Keswick Vineyards, said she has lived there with her husband for 24 years. Ms. Beltrone stated that Keswick residents are not opposed to farm wineries or the events they sponsor, but are opposed to outdoor amplified music if it affects the peace and tranquility of the area by being played too loud in violation of the County's noise ordinance. She said that there is no reason why neighbors should not have the same protection from outdoor amplified music than any other County resident, but an exception and enforcement has been made for farm wineries that needs to be rectified to ensure equal protection. Ms. Beltrone said that she is strongly in favor of the Commission's recommendation for an amplified outdoor music ordinance using the audibility standard with police enforcement rather than through zoning staff, who work during normal business hours and not on nights and weekends. If the Board adopts staff's recommendation, it will result in added costs for people to be trained in order to monitor 24 of the wineries in existence in the County. Equipment could be an added cost along with the required maintenance standards in order to counter court disputes which might arise. She asked the Board to keep everything simple and economical with an audibility standard administered by the police. She reiterated the Chief's comments that of over 700 noise complaints there was a 99% success rate in getting the music turned down to the right level.

Mr. Art Beltrone said that since May 2010 there has been no limitation on how many events can be held at farm wineries through the State action. It is not even necessary to have vines to sponsor events. Mr. Beltrone stated that there are currently 24 wineries or cider works located in Albemarle County, and Keswick Cider Works is announcing and advertising the ability to host up to 2,000 guests at an event. He said that only Keswick Vineyards has caused an outdoor amplified noise issue for neighbors and received a noise violation citation for one of three events featuring outdoor amplified music, and the same zoning officer was assigned to attend another event where no violation took place. Later that night, Mr. Beltrone said, the outdoor amplified music at Keswick became overbearing, and one neighbor was told upon calling police that they could not respond because the complaint was about a farm winery event. Mr. Beltrone said that he called the Albemarle County Zoning Enforcement Complaint Line, and played a partial recording of the message whereby callers are told that it may take up to 10 business days to respond. At that time the amplified music was so loud he and his wife could not sleep, and it became louder as the evening wore on. Weeks went by with no investigation to this complaint. He eventually learned that his complaint was logged in the County's complaint database. He stated that of the available options, he supports having police enforcement and making it a criminal offense.

Mr. John Henry Jordan addressed the Board, stating that it is simply not true that neighbors want to shut Keswick Vineyards down; they simply want the County to enforce the ordinance that they chose to put in place in May 2010. He added that simply has not happened. Mr. Jordan said that all the time, money and man hours spent on this issue are because of one vineyard, with the 23 others not having this problem. He lives 2000 feet away from the property line and he has heard the music. It is not a one complaining neighbor issue. He stated that every person speaking on behalf of Keswick Vineyards today either works there or has had an event there, and not one of them has been on a property adjacent to that vineyard during one of those events. Unless someone has lived the event, they have no ability to comment on the event. Mr. Jordan said that zoning enforcement is ineffective, as they are short three of seven zoning enforcement officers, and the police are not quite that short. He added that the County is trying to recreate the wheel, and most of the wineries in Napa Valley do not allow outdoor music because they went through the same issues 30 years ago. Everything he has heard here tonight is about business. He asked what about the residents who have lived here 15, 20, 30 years, why do they have to suffer when someone bought a piece of land in an environment that he knew was going to be a problem. Mr. Jordan noted that the buyer presented his ideas to his neighbor, who told him it was going to be a problem if the ordinance was violated. He asked why those who have lived in the County for a long time have to suffer because of one business. He asked why the Board is changing an ordinance because of one business. The Board's decision tonight carries long term implications. He asked that the Board preserve the rural character that attracted the Schornbergs to this area.

Mr. Rooker clarified that the May 2010 ordinance does not apply to this circumstance because it is an agriculture use.

Mr. Davis explained that the ordinance adopted in December 2009, the nuisance criminal ordinance, exempts agricultural uses and does not apply to this situation. He stated that the May 2010 ordinance that regulates farm wineries has a provision that does regulate outdoor amplified music and does apply the audible standard, which is zoning enforced.

Mr. Rooker confirmed with Mr. Davis that the police enforcement ordinance is not presently applicable to wineries. Mr. Davis said that is correct.

Mr. Jim Puopolo addressed the Board and stated his support for a decibel based standard. He noted that he owns a small business and the economic impact on Keswick and other businesses has been significant as many brides have chosen other venues.

Ms. Charlotte Shelton said her licensed farm winery makes cider. She said that it is unfortunate that the issue here seems to be focusing on one incident. Ms. Shelton said that in order for agriculture to be sustainable in modern times, they need to find reasonable outlets. Sustainability implies economic viability, which is fostered by events at farm wineries. She supports the staff's recommendation for zoning enforcement.

Mr. Bobby Kenning said that he is a property owner beside Keswick Vineyard and has lived there for 20 years. Mr. Kenning said that he never hears noise from their events, and there is nothing but a field in between his home and their event center. He supports whatever it takes to keep business at Keswick Vineyards running.

Mr. David King said that his family owns King Family Vineyards. He served as the Virginia Winery Association's Chair of Legislative Affairs for several years, including the time when the code section at the State level was introduced and passed. Mr. King said they have been dealing with this issue at the State level for at least that period of time, adding that he is asking for the Board to lead the State by supporting the farm winery measure passed by the Board in May 2010. He does not represent the winery association tonight. He stated that no winery wants to be a bad neighbor, as they have to be good neighbors in order to be viable and successful in the industry. Mr. King said that audibility is not certainty, nor is trespassing into a neighbor's yard to check the sound. He stated that he supports the decibel standard and encouraged the Board to continue to lead the State on this issue.

Ms. Elizabeth Lewis Page stated that she has lived on Linden Lane Farm for the past 33 years, and until the last year they have enjoyed a quiet and peaceful existence enjoying the sounds of nature. Ms. Page said that last Fall this peace was abruptly interrupted by some very loud events coming from the winery next door, and the noise was at times overwhelming and very unsettling. They would appreciate anything that can be done to prevent this type of abusive behavior in the future. She stated that she hopes the Board shares the views that the County is worth preserving for future generations and will not yield to the temptation of short term and questionable financial gains. This County is a national treasure of historic magnitude and hopefully the Board will display the courage tonight to rise to the occasion and do the right thing.

Mr. Patrick Cushing said that he is Director of the Virginia Wine Council, representing 191 wineries and over 300 vineyards. Mr. Cushing stated that the Council supports all wineries and certainty when it comes to regulating their own businesses. The Council also strongly endorses the staff's recommendation of a decibel standard. He said that the best data available is from 2005, when there were only one-half the number of wineries, and the direct tax impact of the Virginia wine industry was $35 million for the State, with associated economic impact valued at $345 million. Mr. Cushing emphasized that these associated activities include weddings, events, restaurant activity, etc., which are critical in a rural economic area. Almost ten percent of Virginia wineries are located in Albemarle. He added that only Loudon and Fauquier counties have more wineries than Albemarle. He thanked the Board for what it has done for wineries in the past. They strongly supports the efforts of County staff and their recommendation for the decibel standard.

Mr. Timothy Hulbert, of the Charlottesville Regional Chamber of Commerce, which represents ten of the local wineries, complimented Ms. McCulley and County staff for their professional approach. The Chamber supports the enactment of a reasonable standard. He said that metrics should be used whenever available in determining a standard. The Board should correct the error made by the Planning Commission in their action.

Mr. Dean Andrews said that this May he and his wife will be opening Pippin Hill Vineyards in North Garden as part of Bundoran Farm. Mr. Andrews said that a lot of people have mentioned preserving the rural nature of the area. Farm wineries provide a viable economic use of agricultural land that might otherwise be converted to residential use. He stated that he and his wife invested in land here, due in part to the County's efforts toward encouraging agri-business. They support Zoning staff's recommendation. Mr. Andrews said that the ordinance as presented by staff provides an objective standard, and as a new investor in this industry it is important to have certainty as to where they are going with the kind of regulations and kind of things that need to be complied with. He stated that a single case should not be the single basis for a subjective ordinance. He encouraged the Board to consider the decibel based standard.

Mr. Bert Page said that this is an important matter as it will affect all the wineries in the County as well as all of the adjacent property owners. Mr. Page complimented Mr. Sellers on his police force's professionalism and ability to diffuse emotional situations, but also for their service as an impartial arbiter. He said that neighbors are concerned with the audibility standard because it concerns their health and welfare, and that is stated in the ordinance itself. Mr. Page stated that neighbors met with the Supervisor of their district and indicated they wanted to be part of the solution and not part of the problem. Mr. Page explained that if a decibel reading system could provide reliable results consistent with the existing audibility standard the residents would not be opposition. He and his wife would offer their farm, Linden Lane Farm, to the County for the purpose of conducting such tests if the Schornbergs are willing to do likewise. He said that these tests would determine if a decibel based system could accurately measure

sound levels in their environment, and if so, what decibel levels would be consistent with the current audibility standard.

Ms. Kat Schornberg addressed the Board, stating that she received her Ph.D. in Microbiology at UVA and is currently employed there as a research associate. She stated that she supports the decibel limit of 55/60 for amplified music at farm wineries because as a scientist it is the only logical solution, adding that she could not publish a paper on her research based on subjective interpretations of data. Ms. Schornberg said that having a clear, defined standard would remove the ambiguities in this situation and would allow true violations to be more easily enforced. She added that she is surprised this has been such a debate, as it is in the best interest of all parties. Ms. Schornberg stated that the decibel based standard allows wineries to measure the sound level before it is put out at an event. The wineries want to be able to conduct business in order to maintain this important and fragile industry in Virginia. A site decibel limit of 55/60 ensures that the wineries can hold these events which are critical for business while still maintaining the peace and tranquility of the area.

Mr. Matthew Brecher, a local resident, said that he supports Keswick Vineyards and the decibel standard at agricultural winery events. Mr. Brecher said that restricting sound in a manner that severely hampers businesses that help give the County this charming atmosphere is counter-productive to the goal of preserving the pastoral nature of the area. He also said that an audibility based ordinance is dangerously subjective, a drain on the local police force and legal system, and can be open to misuse by neighbors involved in disputes wholly unrelated to noise. Mr. Brecher said that Albemarle should follow suit with other counties that have objectively measurable sound limits of approximately 60 decibels, or it could be left at a competitive disadvantage. He stated that weddings generate healthy revenue, and it is the policy of local government that creates the environment for small businesses to survive and grow. Keswick Vineyards is an archetypical example of a family-owned business showcasing the County's beautiful outdoor environment. Mr. Brecher added they are not deaf to the concerns of their neighbors and have been willing to take multiple measures as enumerated earlier by the Schornberg family to alleviate sound concerns that the neighbors may have. He supports amending the sound ordinance to an objectively verifiable 55 and/or 60 decibels in order to allow agricultural wineries to compete with those in other counties on fair and even terms.

Mr. Jason Shoemaker said that he is a supporter of Keswick Vineyards. He said that the only logical, practical and equitable solution for this is an objective standard enforced by the zoning authority.

Mr. Don Morin addressed the Board and stated that in 2009 the Board and staff completely redid the noise regulations under Chapter 7 of the ordinance, and while Mr. Davis indicates it may not apply to outdoor amplified music at wineries, Mr. Greg Kamptner told the public that it is not exempted at an agricultural activity. That is also consistent with the State statute cited by the attorney for Keswick Vineyards. Mr. Morin said that the State said in their farm wineries act that when considering outdoor amplified music, the locality shall consider the affect on adjacent property owners and nearby residents. He added that in 2009 after the Tanner case it was established that audibility applies to all outdoor amplified music from any source. Mr. Morin also stated that when the Board enacted the Farm Winery Ordinance itself in 2010, it again adopted the audibility standard, and at that time it was a thorough and complete investigation into whether the audibility standard was appropriate and could be enforced. He reiterated the police data showing that over 700 noise complaints were received last year, and in 99% of cases the music was turned down, with no violation or summons issued. None of those noise complaints were against a vineyard. When Mr. Beltrone made his complaint, he was told the zoning enforcement might get to it in ten days. Mr. Morin stated that there is no additional cost for the police to enforce the audibility standard, and most of the time the issue is resolved with no further action. The winery can comply. On behalf of the Keswick residents, he asked the Board to keep the audibility standard which is the ordinance.

Mr. Jon Hinchley, owner of Skyline Tent Company in Albemarle, said he is responsible for the tent at Keswick Vineyards. Mr. Hinchley said that employees of these types of companies depend on events at farm wineries for their livelihoods and it is critical that there is some kind of standard that is quantifiable and can be enforced. He also stated that the Schornbergs have been extremely focused on making sure they are compliant and would be able to police themselves and comply with a quantifiable standard.

Mr. Reid Henyon said that he is President and Senior Designer at Stage Sound. He is also an acoustician and system designer and has done a lot of work in this area for venues such as noise abatement at the Charlottesville Pavilion. He designed the sound system at the Paramount and the Jefferson Theater, etc. He said that the ordinance needs to have a specific decibel level because the end result of using the audibility standard in a rural environment without an ambient noise floor will disallow all outdoor activities like this that have amplified music. Mr. Henyon stated that when there is no competing noise and it is dead quiet, the sound, depending on atmospheric conditions and other factors, can travel tremendous distances. He added there is nothing they can do at that vineyard that somebody is not going to hear, and at the end of the day, if they know that they have a standard at their property line that they have to hit, he can design a system for them that can do that, and so can other designers. He would need a benchmark that he can achieve.

Ms. Ann Stuart, a staff member at Keswick Vineyards, presented the following petition of signatures from patrons to their tasting room and online, some who are residents and some who are not: "I, the undersigned, am an Albemarle County resident. I enjoy the open space protection and amenities provided by our farm residents. I also appreciate the benefit of substantial tax revenues derived from these local agricultural businesses. It is my desire to see more farm wineries thriving in Albemarle County. These farms are dedicated stewards of our agricultural lands, and promote the unique character of our County, support local values, and commit to the best interests of our community. Farm wineries

pay wholesale, property, and sales taxes, and create a magnet for destination tourism that supports a diverse range of local family businesses. The benefits extend to restaurants, hotels, B&Bs, gas stations, caterers, antique and other retail outlets, as well farmer's markets, local growers of apples, pumpkins, and peaches, and roadside and pick-your-own produce farmers located throughout Albemarle County. I believe that the ability of farm wineries to generate revenue through events, such as weddings, is important to the success and economic vitality of our farm wineries. I also believe that a substantial benefit of such events is an increase in customers and visibility for other Albemarle County businesses, benefiting the County as a whole. As part of those events, I consider it reasonable for farm wineries to have the ability to use outdoor amplified music that is subject to the same decibel standard applicable to all other uses in the rural areas of Albemarle County. Therefore, I request that the Board of Supervisors of Albemarle County follow the County staff recommendation by amending the Albemarle County Zoning Ordinance with regard to outdoor amplified music at local farm wineries, so that the same 55/60 decibel standard applicable to other rural land uses, and enforced by County zoning staff, is applied equitably to local farm wineries."

Ms. Stuart said in the past week, they collected approximately 1,400 signatures.

Ms. Nan Durkee, a resident of Keswick, said that it has become clear to her that there is no way to control sound according to the experts who spoke, but other wineries have taken amplified music and have put it indoors as a solution to that. Albemarle is a unique and beautiful area that cannot be found elsewhere and that is the reason people want to have weddings here. She totally supports the vineyards and their events. She stated that all residents should have equal rights to peace and quiet, and living next to a farm winery should not compromise that. She reiterated that the solution is to take the amplified music indoors.

Mr. Neil Williamson, of the Free Enterprise Forum, said that he does some wine writing and previously operated a winery in Virginia and Napa Valley. Mr. Williamson said that Albemarle is not going to become the next Napa Valley, but might become another Washington and Oregon winery area. He stated that in the Commission meeting there was a lengthy discussion that ended in a 4-3 vote, which is an important factor to consider. Mr. Williamson said that Albemarle had one of the most restrictive event limitations, with 12 per year permitted, but now the policy is a State model. He stated that winery owners and neighbors both have property rights, and the best way to protect them is a decibel level as it protects the authority, the neighbors, the property owner, and the bride who makes the contract. Mr. Williamson said that this is a critical piece in agri-tourism locally. He said that he hopes the Board will proceed with a decibel level reading.

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

Mr. Boyd stated that while this issue originated in his district, there are County wide and statewide implications. He said that both the Schornbergs and the neighbors in the area are very reasonable and sincere people and honest people who really just want to make sure that they do the right thing. Mr. Boyd commended staff for spending a considerable amount of time on this issue, including having a public work session. He said that he sees both sides of the issue as the neighbors are entitled to peace and quiet, and he sees the importance of the winery and agri-business to the community and the State. He said that he has a different twist on Mr. Page's proposal and believes that the only way to have a good ordinance is to adopt a decibel standard. Mr. Boyd added that the only way to enforce this, after hearing from police and the Commonwealth's Attorney, is to enforce this through zoning. He encouraged zoning enforcement to work with the two neighbors and go out to the next two events hosted at Keswick Vineyards. He believes that both groups want to act in good faith and the County should allocate the time and the people to go out and act as an arbitrator for how well the decibel standard works. He supports staff's recommendation.

Mr. Dorrier said that he agrees with Mr. Boyd. As a prosecutor, he cannot recall prosecuting any noise ordinance cases because it is so difficult to get convictions in those cases, and audibility is difficult to prove. He thinks that the 700 cases mentioned by Mr. Sellers may have resulted in only one or two convictions. He stated that the police have been able to diffuse noise issues just by their presence, but the audibility standard was a mistake and a metric system should be adopted. Mr. Dorrier said that he visited the vineyard yesterday and spoke with the zoning official who was present. He added that having a structure rather than a tent will help mute the noise, and it is his understanding that the Schornbergs are planning to move in that direction. He stated there needs to be a metric standard put in place, and he supports staff's recommendation to enact a decibel based system.

Mr. Snow said that he was convinced prior to this meeting that police response would be the best approach, but now feels that having zoning respond is the better tactic, although he is concerned about a two month response time from zoning.

Ms. McCulley explained that zoning can be proactive and go to the next several events and take the sound meter, in addition to meeting with neighbors to let everybody see what they are measuring. She stated that wineries and others are very willing to comply once they realize they are in violation, and take the necessary steps to rectify the situation. It won't take the staff two months to resolve the issue.

Mr. Snow asked how many sound meters the County has.

Ms. McCulley responded that the County has one, and it is very expensive as is the required calibration. She said that it is rare that you would ever need to use more than one at a time.

Mr. Thomas said that he did attend an event at Keswick Vineyards and stood about 100 feet from Mr. Page's property line, with decibel readings of 45 and 50 from their talking, as measured from cell phones, but he could not hear the amplified music at all.

Mr. Rooker stated that if you are going to have a winery that hosts events, you must have some certainty and the people who book those events cannot rely on whether or not the event might be shut down. He thinks it is incumbent upon the County to create something that is objective. He said that it is imperative that a property owner knows whether the noise being produced is going to violate the ordinance in advance, not in arrears. Mr. Rooker commented that it is different dealing with an event than it is dealing with a person who is in an apartment blasting their radio at 1:30 a.m., and it can be very difficult to identify who the responsible party is. He emphasized that relying on who can hear noise and who cannot at a distance from the property line makes enforcement quite uncertain. He said that he thinks a decibel standard of some kind creates that certainty. Mr. Rooker stated that people move into the rural area to have some peace and quiet and are entitled to have that, so the standard that is applied must be one that affords reasonable peace and quiet to neighboring properties. He said that 55/60 could be the appropriate level, and Mr. Boyd's suggestion of adopting an ordinance and determining over some reasonable test period of time is a reasonable way to determine whether or not it is. Mr. Rooker added that another problem with the audible standard is that it requires a person to trespass onto other property in order to be 100 feet from a property line. He said that the Board needs to be willing to look at the 55/60 standard and balance it if necessary.

Ms. Mallek said that she agrees with most of what has been said, as a decibel standard allows for advance measurement of sound level. She said that she understands protecting the serenity of the rural areas, but she is concerned about going after a different decibel level for these activities as compared with other business activities in the rural area. She said that she is clinging to the idea that fairness wise the Board should strive to have the same decibel levels for the different kinds of activities for predictability. She added that the biggest argument of all in the Comprehensive Plan's Rural Area chapter was the prioritization of agriculture and forestry as the primary use in the rural area, as there was a suggestion that all uses be homogenized and equal that was met with great opposition from citizens who felt agriculture and forestry should be prioritized.

Mr. Rooker stated that the question is whether an outdoor party is agricultural, and the State has not really addressed this specifically. A wedding is not an agricultural use. He is not saying that the County should not allow events with respect to the wineries. He added that there has to be a balance achieved between the infliction of noise on people around an area, who may be practicing agriculture themselves but also live on their properties. He noted that the quantity of events permitted may have a much more significant impact than just a few events, and the Board needs to be mindful of that. The Board has already dealt with the issue of the number of events and he is not suggesting going back down that road. Mr. Rooker said that if neighbors do not find a way to work out issues, those matters get legislated one way or another, which can act to the disadvantage of many people. He added that legislation is a blunt tool; it is not a fine grain tool.

Mr. Dorrier said that the current law is clearly not working.

Mr. Davis pointed out that Mr. Kamptner had explained to the Commission that outdoor amplified music is subject to the Chapter 7 police nuisance ordinance; however, a farm winery event is an agricultural activity that is exempt from that regulation. The Board has the option of amending that ordinance to make it applicable, but it would require an amendment of Chapter 7. He said that under the statutory scheme, it is the County Attorney's opinion that the farm winery event is exempt and is only covered by the zoning law. Mr. Davis clarified that what is recommended to the Board today is to change that standard to a decibel standard which is set out in the proposed ordinance under Attachment F.

Mr. Boyd **moved** for approval of ZTA-2010-008 as provided in Attachment F as presented tonight. Mr. Dorrier **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

AYES: Ms. Mallek, Mr. Rooker, Mr. Snow, Mr. Thomas, Mr. Boyd and Mr. Dorrier.
NAYS: None.

Mr. Thomas asked who would be the judge of the decibel reading in the test phase.

Mr. Rooker responded that it is 60 up until 10:00 p.m. and 55 thereafter, measured at the property line, not 100 feet beyond it.

(The adopted ordinance is set out below:)

ORDINANCE NO. 11-18(3)

AN ORDINANCE TO AMEND CHAPTER 18, ZONING, ARTICLE II, BASIC REGULATIONS, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 18, Zoning, Article II, Basic Regulations, is hereby amended and reordained as follows:

By Amending:
Sec. 5.1.25 Farm winery

Chapter 18. Zoning

Article II. Basic Regulations

Sec. 5.1.25 Farm winery

Each farm winery shall be subject to the following:

a. *Uses permitted*. The following uses, events and activities (hereinafter, collectively, "uses") are permitted at a farm winery:

1. The production and harvesting of fruit and other agricultural products and the manufacturing of wine including, but not limited to, activities related to the production of the agricultural products used in wine, including but not limited to, growing, planting and harvesting the agricultural products and the use of equipment for those activities.

2. The sale, tasting, including barrel tastings, or consumption of wine within the normal course of business of the farm winery.

3. The direct sale and shipment of wine by common carrier to consumers in accordance with Title 4.1 of the Virginia Code and the regulations of the Alcoholic Beverage Control Board.

4. The sale and shipment of wine to the Alcoholic Beverage Control Board, licensed wholesalers, and out-of-state purchasers in accordance with Title 4.1 of the Virginia Code, regulations of the Alcoholic Beverage Control Board, and federal law.

5. The storage, warehousing, and wholesaling of wine in accordance with Title 4.1 of the Virginia Code, regulations of the Alcoholic Beverage Control Board, and federal law.

6. Private personal gatherings of a farm winery owner who resides at the farm winery or on property adjacent thereto that is owned or controlled by the owner, provided that wine is not sold or marketed and for which no consideration is received by the farm winery or its agents.

b. *Agritourism uses or wine sales related uses.* The following uses are permitted at a farm winery, provided they are related to agritourism or wine sales:

1. Exhibits, museums, and historical segments related to wine or to the farm winery.

2. Farm winery events at which not more than two hundred (200) persons are in attendance at any time.

3. Guest winemakers and trade accommodations of invited guests at a farm winery owner's private residence at the farm winery.

4. Hayrides.

5. Kitchen and catering activities related to a use at the farm winery.

6. Picnics, either self-provided or available to be purchased at the farm winery.

7. Providing finger foods, soups and appetizers for visitors.

8. Sale of wine-related items that are incidental to the sale of wine including, but not limited to the sale of incidental gifts such as cork screws, wine glasses, and t-shirts.

9. Tours of the farm winery, including the vineyard.

10. Weddings and wedding receptions at which not more than two hundred (200) persons are in attendance at any time.

11. Other uses not expressly authorized that are agritourism uses or are wine sales related uses, which are determined by the zoning administrator to be usual and customary uses at farm wineries throughout the Commonwealth, which do not create a substantial impact on the health, safety or welfare of the public, and at which not more than two hundred (200) persons are in attendance at any time.

c. *Agritourism uses or wine sales related uses; more than 200 person at any time; special use permit.* The following uses, at which more than two hundred (200) persons will be allowed to attend at any time, are permitted at a farm winery with a special use permit, provided they are related to agritourism or wine sales:

1. Farm winery events.

2. Weddings and wedding receptions.

3. Other uses not expressly authorized that are agritourism uses or wine sales related uses which are determined by the zoning administrator to be usual and customary uses at farm wineries throughout the Commonwealth.

d. *Information and sketch plan to be submitted with application for a special use permit*. In addition to any information required to be submitted with an application for a special use permit under section 31.6.2, each application for one or more uses authorized under section 5.1.25(c) shall include the following:

1. *Information*. Information pertaining to the following: (i) the proposed uses; (ii) the maximum number of persons who will attend each use at any given time; (iii) the frequency and duration of the uses; (iv) the provision of on-site parking; (v) the location, height and lumens of outdoor lighting for each use; and (vi) the location of any stage, structure or other place where music will be performed.

2. *Sketch plan*. A sketch plan, which shall be a schematic drawing of the site with notes in a form and of a scale approved by the director of planning depicting: (i) all structures that would be used for the uses; (ii) how access, on-site parking, outdoor lighting, signage and minimum yards will be provided in compliance with this chapter; and (iii) how potential adverse impacts to adjoining property will be mitigated so they are not substantial.

e. *Sound from outdoor amplified music*. Sound generated by outdoor amplified music shall be subject to section 4.18, shall not exceed the applicable maximum sound levels in section 4.18.04, and shall not be deemed to be an exempt sound under section 4.18.05(J).

f. *Yards*. Notwithstanding any other provision of this chapter, the minimum front, side and rear yard requirements in section 10.4 shall apply to all primary and accessory structures established after May 5, 2010 and to all tents, off-street parking areas and portable toilets used in whole or in part to serve any use permitted at a farm winery, provided that the zoning administrator may reduce the minimum required yard upon finding that: (i) there is no detriment to the abutting lot; (ii) there is no harm to the public health, safety or welfare; and (iii) written consent has been provided by the owner of the abutting lot consenting to the reduction.

g. *Uses prohibited*. The following uses are prohibited:

1. Restaurants.

2. Helicopter rides.

(§ 5.1.25, 12-16-81, 1-1-84; Ord. 98-20(1), 4-1-98; Ord. 01-18(6), 10-3-01; Ord. 10-18(3), 5-5-10)

Agenda Item No. 13. From the Board: Matters Not Listed on the Agenda.

There were no other matters from Board members.

Agenda Item No. 14. Adjourn to March 14, 2011, 9:00 a.m., Room 241.

At 10:10 p.m., Mr. Boyd **moved** to adjourn the meeting until March 14, 2011 at 9:00 a.m. Ms. Mallek **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

AYES: Ms. Mallek, Mr. Rooker, Mr. Snow, Mr. Thomas, Mr. Boyd and Mr. Dorrier.
NAYS: None.

_____
Chairman

Approved by Board
Date: 11/02/2011
Initials: EWJ