

An adjourned meeting and a regular meeting of the Board of Supervisors of Albemarle County, Virginia, was held on January 16, 2013, Lane Auditorium, County Office Building, McIntire Road, Charlottesville, Virginia. The adjourned meeting was held at 4:00 p.m., and was adjourned from January 9, 2013. The regular meeting was held at 6:00 p.m.

PRESENT: Mr. Kenneth C. Boyd, Mr. Christopher J. Dumler, 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, Director of Community Development, Mark Graham, Director of Planning, V. Wayne Cilimberg, Clerk, Ella W. Jordan, and Senior Deputy Clerk, Travis O. Morris.

Agenda Item No. 1. The meeting was called to order at 4:02 p.m., by the Chair, Ms. Mallek.

Agenda Item No. 2. **Work Session:** Solid Waste Options Update.

The following executive summary was forwarded to Board members:

The Rivanna Solid Waste Authority (RSWA) met recently to discuss the County's request for the RSWA to provide a no-cost convenience center at Ivy. Staff has worked with RSWA to understand its proposal made in response to the Board's request. Staff has verified that RSWA's proposal addresses the Board's expectations and:

- Continues to provide services at the Ivy Material Utilization Center (MUC);
- Provides municipal solid waste disposal for County residents. This would include routine household garbage as well as other materials, such as old furniture, demolition debris associated with home improvements;
- Provides auxiliary services for County residents, such as disposal of tires and rims, metals, vegetative waste, clean fill material (e.g. concrete or masonry rubble), appliances with and without refrigerants, and pallets; and
- Provides annual or semi-annual household hazardous waste collection, as currently offered and funded by the County and City.

RSWA staff evaluated options for addressing the Board's request, and provided information which indicated a no-cost alternative was not possible given the level of service requested by the County. The RSWA Board of Directors also discussed the options of (1) contracting out services with RSWA oversight and (2) leasing the current site to the County so the County could provide oversight of a contracted service. After discussion, a majority of the RSWA Board determined there was no interest in RSWA providing oversight of a contracted service, but it would consider leasing the site to the County. Given the discussion and decisions of the RSWA, this item has been scheduled for additional discussion by the Board of Supervisors on January 16, 2013.

The County now has two options for consideration, outlined below, which will be discussed further at the January 16, 2013 work session.

Option 1: RSWA as a service provider:

- Annual costs to the County have been estimated at \$223,900 for the Municipal Solid Waste and \$67,400 for the auxiliary services, for a total cost of \$291,300. This cost may be higher or lower depending on actual operational costs. RSWA is providing this as an estimate rather than an agreed upon fixed price. Based on experience with RSWA budget estimates since 2001, staff has found RSWA to be consistently conservative with lower actual costs each year.
- This proposal allows RSWA to continue providing the household hazardous waste collection as historically done.
- This proposal allows RSWA to continue with economies of scale in sharing the personnel costs with the environmental program. It is anticipated those costs will otherwise increase, as described in option 2.
- This proposal allows RSWA to continue with economies of scale in sharing the personnel costs with the McIntire Recycling Center. A new cost sharing agreement with RSWA and the City is required for the continued operation of the McIntire Recycling Center.
- This proposal requires a new agreement with RSWA for cost reimbursement.

Option 2: County managed operations at Ivy MUC:

- This proposal requires the County to obtain a lease for the property from RSWA. The cost of the lease has not yet been established.
- This proposal requires the County to contract for the operation of the facility. The costs cannot be verified in advance of advertising for bids but, based on interviews and comments provided at RSWA meeting by private entities, it appears the services can be provided with little or no additional cost to the contractor.
- This proposal results in the County incurring indirect costs associated with managing the contract, inspections, permits, etc. This cost has not yet been established, but is anticipated to be in the range of \$50,000-\$100,000 annually.

- This proposal requires the County to obtain operational permits, as required by DEQ, to operate this facility. Specific permit requirements cannot be verified at this time and may vary depending on preferences of the selected contractor.
 - It has been estimated by RSWA that the environmental management cost, which would result from the loss of economies of scale between solid waste operation and the environmental management operation when RSWA discontinues its current solid waste operation, will be approximately \$35,000.
 - The draft schedule for this option suggests an interim agreement with RSWA may be needed to cover services after July 1, 2013 and the beginning of contracted services.
 - Potential liability issues under a new lease will also need to be considered with this proposal.
- (1) If the Board decides to continue to contract with RSWA to handle the County's municipal solid waste and auxiliary services as outlined in Option 1 above, the annual cost is estimated to be approximately \$290,000, which staff believes to be a conservative number.
 - (2) If the Board decides to obtain a lease from RSWA and bid out the private operation of a convenience site or transfer station as outlined in Option 2 above, the cost is unknown. While some potential bidders have indicated there would be no cost for the contractor's operation that would need to be determined based on a clear set of requirements by the County in the form of an RFP and after contract negotiation. After that cost is determined, as is noted above, there will be additional cost for County management and oversight, permitting, a lease with RSWA and the environmental management cost which would result from the loss of the economies of scale between the solid waste operation and the environmental management operation when RSWA discontinues its current solid waste operation. Liability issues are also important issues to consider when estimating future costs under this option.

This information is provided as background information for the work session.

Mr. Graham stated that the above-executive summary explains things in detail so he will focus just on the highlights.

Mr. Graham reported that the previous Board direction was to advise the Rivanna Solid Waste Authority that the County was not interested in extending the existing support agreement for services into 2014, which has been done. He said that the County was interested in Rivanna providing services on a self-supported basis, and to try to ensure that services currently provided to residential customers would be continued – such as appliance and tire drop-off. He said that if it appeared that Rivanna would not be able to come up with something self-supported, the County should consider entering a lease of the Ivy facility and contracting the services itself.

Mr. Graham said that the RSWA has responded that a self-supported solution was not found. Second, RSWA is not interested in trying to contract services itself and felt it would be better for the County to do so. Third, RSWA felt it could provide the County desired services for an estimated cost of \$300,000 per year. He said that is not an agreed-upon contract price, it is a budget estimate of projected cost. The amount the County would pay would depend on the actual deficit from operations. Mr. Graham said that historically the Rivanna estimates have been fairly conservative, and the actual deficits have been smaller than what was budgeted. He stated that the estimate includes about \$224,000 for the municipal solid waste side and \$69,000 for the other services – vegetative waste and appliance disposal, etc. Mr. Graham said that the RSWA did not adjust any of the tip fees as part of the adjustment, but came back and said they would only do this per request of the County. He mentioned that this did not include things such as the amnesty day or the household hazardous waste, which are funded separately at the County.

Mr. Graham said that the County has two options: 1) accept the RSWA proposal or 2) the County assumes control of the operations and contracts services itself. With the first option, he said, the estimated budget is approximately \$300,000 for FY14 and the County would need to negotiate a new cost-share agreement for providing those services. He said that the McIntire agreement with RSWA was dependent on the old cost-share agreement, so there would need to be a new agreement for McIntire also. Mr. Graham said that maintaining the service would simplify things such as the future household hazardous waste and amnesty day, as it would continue those programs. If the County takes those services over and contracts them out, it would all have to be contractually arranged. He added that he does not know what it is going to cost for the County to do that and is one of the details that is not yet worked out.

Mr. Rooker mentioned an email Board members received from Van der Linde, stating that they would operate a convenience center. His question is what services proposed by the RSWA would not be included in a convenience center. Mr. Graham responded that back before the Draper Aiden report was done, he participated in the discussions with a number of the contractors and at that point Mr. Van der Linde indicated that he would be providing all of those same services – but the County has not engaged in contract discussions of any kind with the private entities, so all of those details have yet to be worked out.

Mr. Davis said that it would appear that if household hazardous waste services are provided, it would have to be under a permit. Mr. Graham said that is still a question to be answered. If it is collected

by the people who transport it without it actually being stored at that facility, it would not typically require a permit.

Mr. Boyd commented that that's what the County was doing now.

Mr. Graham said that it was, adding that there are a lot of localities that do that type of household hazardous waste collection where they basically contract the service. A company shows up with a truck and people come to drop off their household hazardous waste, which is loaded into drums with a truck and never stored at the facility – so there are no permitting issues. Mr. Graham said that Rivanna has rejected the notion of contracting the municipal solid waste services with a private company. The \$300,000 does not include the household hazardous waste or the County's amnesty program.

Mr. Foley mentioned that Rivanna wants to continue that service. Mr. Graham added that it's a valuable service.

Mr. Graham said that currently through employee sharing between programs, there are certain economies of scale as far as staffing the McIntire center and the environmental programs. He said that if the County accepts the Rivanna proposal, those could continue – but if not, it potentially adds in two additional costs.

Ms. Mallek said that Board members asked several weeks ago what was involved with the supervisory staff effort for the mitigation, such as the personnel at McIntire. Mr. Foley responded that it would be addressed in the discussion of the next option.

Mr. Graham said that with the County assuming control and contracting services, it would have to negotiate a lease with the RSWA for a facility. The County also needs to recognize that it would be assuming some potential liability issues. He said that it is not insurmountable, but there would be several details to work through with that type of lease. It is something that he anticipates is going to be somewhat complex to negotiate. Mr. Graham added that the County would have to contract for services to be provided, which means it would have to follow a public procurement process – with advertising, selecting a bidder, and ensuring that all necessary insurances and bonds are in place before actually providing services.

Ms. Mallek asked if the contractor would not already have liability coverage for their operation. Mr. Graham responded "yes", but the question would be what kind of liability exposure the County has through the lease of the property – both for what exists there currently and what may exist as a result of the activities associated with a convenience center. Mr. Graham emphasized that there are not any issues that are insurmountable, but there are a number of details that need to be worked through.

Mr. Snow said that those issues arise whenever the County leases a building for another purpose, such as a school like Crozet Elementary.

Mr. Davis explained that the difference is the type of liability, which is environmental and pollution liability. Under the County's VACo insurance policy those are specifically excluded so any environmental contamination is an uninsurable liability for the County. He said that the County has a huge surety bond agreement with the State that backs up this type of exposure for Ivy Landfill, but for operational liability he is not sure what the RSWA has.

Mr. Tom Frederick, Executive Director of the Rivanna Water and Sewer Authority, said that RSWA has insurance, which Mr. Lonnie Wood administers. If the County is contracting with a private company it is the County's call – but the County could require in its privatization contract that the private company carry the insurance. He said that RSWA was actually formed in 1990 to handle a liability that was carried by the County and the City, and no partner is getting out of that until post closure ends in 2040+.

Mr. Davis noted that when the County and City and Rivanna were all sued back in 1999, it was determined there was no insurance coverage for any of that environmental liability. He said that for what was being alleged, there was no insurance coverage at that time.

Mr. Frederick pointed out that currently the RSWA manages the site directly, so there is a direct accountability link to the Authority – which is a public agency that has transparency in how it manages the site. He added that if a private company comes in there is another party who may perform activities that could bring additional risks.

Mr. Graham said that there would be additional County costs for managing it, such as environmental permits from DEQ for operation – and whether it is operated as a convenience center or transfer station will make a difference. He said that because there are contracts, the County must be able to regularly inspect the facility and ensure it is being maintained and operated according to the contract provisions. Mr. Graham said that currently the RSWA gets complaints, so that would likely be the case with whatever operation is out there.

Mr. Rooker said that a private operator with a contract could be contracted to handle the complaints. Mr. Graham responded that the County could make the contract to stipulate that, unless the complaints were about the private operator.

Mr. Foley said there would be a contract that the County would have to manage, and the County would have to put some resources to it.

Mr. Graham stated that the point is that it would require staff and financial resources to manage. He said that the County would have to obtain operations permits for the facility depending on the type of services provided and how it is operated there. Mr. Graham said that the County should anticipate additional environmental and McIntire costs, because the economies of scale disappear once the County takes over the facilities since it won't be sharing Rivanna employees. He added that it would likely be an additional cost of \$50,000 - \$150,000 for environmental services and McIntire services. Mr. Graham emphasized that the \$300,000 is not a net cost difference, because some of the operational costs would have to be shifted with the County bearing a large share of that.

Mr. Rooker asked how they would be considered to not operate a transfer station, if the facility is transferring municipal solid waste out. Mr. Graham explained that if it were scaled to the point that DEQ agreed it was a convenience center, the County would get out of a lot of the permitting issues. He said that right now it has to be a transfer station because they are taking commercial waste. If that is scaled back to just be residential waste it should be able to be operated as a convenience center. Mr. Graham said the permit would be a question, but it is possible that none would be needed from DEQ.

Mr. Foley said that Mr. Frederick has done a fair amount of research on this.

Mr. Frederick explained that DEQ permits are not transferrable. If the County contracts with a private company to come in and provide services that require DEQ permits, the private company must obtain a permit in its name. He said that the RSWA is forbidden by regulation to transfer its permit even if it wanted to. The DEQ has said that whether it is called a convenience center or not a permit would be required. The DEQ is going to interpret convenience center or transfer station through the definitions in its rules, not what the County decides to call it. Mr. Frederick emphasized that if it serves commercial, DEQ is going to require a permit in the name of the operator. He said that the DEQ inspector told him that he has never seen anything done in Albemarle County that did not generate enough comment to require public hearing, but it would be based on whether there was substantial public comment.

Mr. Rooker said there is no discussion of capital expense in the report for operating a convenience center and performing the services listed, and asked if there would be any expected capital investment. Mr. Frederick explained that what is included in the budget estimate is a depreciation expense, and that funds capital reserves then used for capital. He said that the capital in this case is not substantial, so it would mostly be maintenance and replacement if needed. Mr. Frederick noted that the depreciation expense funds capital reserves, and capital needs are built out of capital reserve and not direct charges.

Mr. Rooker said within the \$300,000 estimate is a line item for capital reserves. Mr. Graham confirmed that it is built into the Rivanna proposal. Mr. Frederick confirmed that he believes there is an adequate amount within the \$300,000 to cover replacement of equipment.

Mr. Snow asked if the amount included upgrading of the scales. Mr. Frederick responded that it covers maintenance, calibration and repair, assuming the RSWA operates them. He said that the RSWA Board discussed a much smaller operation that would be just residential and municipal solid waste with tag bags, and that option has no scales and has a smaller cost to operate but does not provide the auxiliary services the County requested. Mr. Frederick stated that if the Board wanted hybrids of option, he could provide them – but essentially the plan is scaling back the services as well as scaling back the costs.

Mr. Foley pointed out that staff has already spent a good bit of time trying to define a level of service, and the \$300,000 matches the level of service the Board has desired. He said that a less expensive alternative would mean that citizens could only bring a bag of trash, and they could never bring vegetative waste or bulky items like appliances, mattresses, etc.

Ms. Mallek asked if those are the materials that need scales. Mr. Frederick said that white goods and tires can be provided by the piece. A sticker or proof of purchase can be obtained by some other means and would eliminate the need for a scale clerk and the use of scales. They cannot find a way to provide equitable services for vegetative and clean fill services because they come in different shapes and sizes.

Mr. Foley also stated that Mr. Frederick made the point that by actually keeping a minimal level of commercial waste coming in, it can generate revenue that helps offset costs, and all of that is incorporated into \$300,000.

Mr. Rooker and Mr. Snow said that they were confused by these points. Mr. Rooker said that he thought they were saying that by taking in commercial waste the County would have to operate a transfer station. Mr. Graham responded that the Rivanna proposal includes the provision that they would continue to operate as they have, providing those services as a transfer station. Rivanna would maintain its existing transfer station permit.

Mr. Rooker clarified that this was within the cost Rivanna proposed – the \$300,000 – and that is why he continued to ask about the cost difference. He said that a private contractor proposal said that it would do that also, but didn't indicate what the cost was. Mr. Frederick said he has not seen that document. Mr. Thomas said that the "bid" was in the form of a flyer. Mr. Foley said that the bid was an expression of interest, and was a broad-based set of services that would have to be clarified.

Mr. Boyd asked if it is a lot more expensive to get a transfer station permit and maintain one than a convenience permit, because his thought is that they could get a transfer station permit but operate it as a convenience station. Mr. Frederick responded that there are some details to be worked out, but technically it would be acceptable. He said that if changes are made to operations, they would be required to modify the operations plan and submit it to DEQ, but it is not a substantial effort, and it is not an additional cost. Mr. Frederick pointed out that if you already hold a permit, you do not have to go through the process of starting the application and obtaining a permit, so it is a simpler process. He said that DEQ does not have something called a "convenience center permit; DEQ has a transfer station permit, which is their term as they define "transfer station." He said it does not prohibit operating a convenience center that includes commercial. None of these options discussed include continuing to serve waste haulers. It is scaled down from what Rivanna is doing today.

Mr. Frederick said that the RSWA sees the advantages if it is going to continue to provide a clean-fill service as almost all of that come from commercial sources. If the County plans to offer commercial services at Ivy it will need a scale house and scales – so it might as well operate it for municipal solid waste as well.

Mr. Foley said that the waste management solid waste is the big ticket item the County will no longer be taking, as they are dumping at the County's transfer station. He stated that the County will continue to take the small guys who come in with their business waste which is considered commercial.

Mr. Rooker noted that they would take household waste from individuals, but not from haulers. Mr. Foley responded that that was correct.

Mr. Boyd asked if it would be possible to use a "design-build" type process for solid waste, if there was someone willing to put together a plan under that scenario. Mr. Foley said the County could do that any way the Board wanted to, but the question is whether the County is doing it through a lease, which would require that it go through the permitting process and do the things Mr. Graham has outlined.

Mr. Boyd stated that he is trying to establish the cost of the private sector doing this, and asked if the County could back away from the plan if it did not like the proposal. Mr. Foley said that to do that the County would have to go through a procurement process, and the implications would simply be time and the whole process.

Mr. Davis commented that it is just a different procurement process.

Mr. Boyd said that the County would not have to design a detailed RFP under that scenario. Mr. Davis stated that it would be more work to use the PPEA process than designing an RFP. Mr. Boyd said that is fine then.

Mr. Foley emphasized that the County is not far from being able to issue an RFP because it has a defined level of service, which is really the key issue.

Mr. Boyd suggested just issuing an RFP as the next step, but he wants to ensure that the County can walk away from it if the vendors do not fulfill the needs stipulated in the RFP. Mr. Frederick said that he does not think the County can go through the process of just floating the RFP and then backing up if it does not like it to meet the July 1 schedule and maintain that flexibility.

Mr. Davis added that it may require a permit.

Mr. Frederick said he has suggested to Mr. Foley the possibility of extending the deadline through December. He added that there are Rivanna employees who fear losing their jobs. He said that those people are likely looking for other jobs, so it could be expected that some may leave. Rivanna will not just have the flexibility to find people who are trained to replace them. Another thing is that there are several people who have applied for early retirement under Rivanna incentives. If the requests are granted, Rivanna has to give VRS a fixed date. He suggested extending that July 1 date to the end of December.

Mr. Boyd said that the County shares that concern about personnel, but he does not know how they can accomplish their goal for establishing the most economical, efficient service possible without that risk. He said that his original intent was to put together an RFP and having Rivanna bid on it with everyone else, but it did not work out that way.

Mr. Frederick responded that he would not recommend to the Rivanna Board that it try to compete with the private sector, because it is not an apples-to-apples situation. He said that the Draper Aiden estimate showed that 83% of the revenues that were estimated for the convenience center are to pay for private sector outsourcing costs, because Rivanna does not have processing infrastructure whereas private companies might.

Mr. Boyd said that what the Board is not getting here is the cost of a private sector option, and it will not get that without putting the RFP out. He said he does not have a problem extending out to December if that is needed.

Mr. Rooker said that the County is saying to Mr. Frederick that it wants the RSWA to continue to provide the services until the Board makes a decision. In order to do that Mr. Frederick is saying that July is not realistic.

Mr. Foley emphasized that the main outcome of this particular session was to see if the Board wanted to pursue the private option. If that is the direction then there is a schedule outlined in the Board's packets. He said that they could certainly adjust to a more realistic schedule that Mr. Frederick could use with his staff as well, but the real decision is whether the Board wants to pursue the private option to see if it can beat \$300,000.

Mr. Rooker asked if there were any embedded costs with leasing the facility from RSWA, including insurance costs. Mr. Davis responded that the County would surely incur insurance costs unless they can be passed through. The County has not investigated what that insurance might cost but it is likely to be substantial.

Mr. Rooker said it would be helpful to know that. He does not know if there is a private sector person who would be willing to do all these services and buy additional insurance without compensation for that in the contract. These numbers are getting close enough together that the savings in going that route does not appear to him to be very significant.

Mr. Snow said that the Board does not know.

Ms. Mallek said the Board does not know what the real numbers are on either side.

Mr. Rooker said that they are talking about \$290,000, and comparing that to any community in the country is miniscule by comparison.

Mr. Snow said that he thinks the Board still needs to look at private options for comparison.

Mr. Rooker said the Board could tell the RSWA that it wants to retract some of the services, or add services such as drop-off places around the County.

Ms. Mallek asked if the contractor would have to get a new permit just for this site. Mr. Frederick responded that no private company has a permit to operate at Ivy right now.

Mr. Boyd said that all of those costs should be in the RFP, including covering the permitting process and the insurance so that the County does not end up being the middle person in the services.

Ms. Mallek suggested having a menu of options, such as remote drop-off places.

Mr. Rooker asked if it would include the amnesty days and household hazardous waste days.

Mr. Boyd emphasized that the level of service has already been decided and should be kept the same.

Mr. Rooker said it would definitely need to be in the RFP going out to the private sector, because it is known what the RSWA would charge to do that.

Mr. Frederick explained that if the County takes commercial waste at Ivy on a regular basis, it does not matter whether it is called a convenience center or not – DEQ considers it a "permissible site," and HHW is household waste not commercial. He said that a special collection for HHW contracted with a licensed household waste generator, which the RSWA does now, they would pay a little more because it does not take into account the fact that Rivanna currently provides labor and dries the latex paint so it can be disposed with trash.

Mr. Frederick said RSWA provides the County with what it believes is cost-effective services for what it has been asked in the past to provide. The proposed budget is what RSWA thinks, with its infrastructure, is a cost-effective way to maintain the programs that the County has asked for, and maintain all the other expectations so that the County does not have to worry about significant increases in customer complaints and other issues. Rivanna has a track record and could continue those services.

Ms. Mallek said that she was told recently she would have to dry out her own paint, but wondered if it was still possible to swap half-used paint with other people.

Mr. Frederick responded that there was a "paint exchange program" two or three years ago, but the Rivanna Board along with the Board reduced some costs and eliminated a position – and the paint exchange program was one of those. He said that paint is accepted on special household hazardous waste collection days, but the RSWA separates the latex and oil paints. He said that if you dry your paint it can go directly with the regular municipal solid waste, but most people do not do that so there is a handling process. Mr. Frederick stated that if the County starts accepting hazardous waste on a regular basis, there must be an organization responsible for that with a hazardous waste generator permit, which is a fairly sophisticated process. He said that the RSWA contracts that out currently with MXI Environmental, which is why they do not take it on a daily basis.

Mr. Foley said his understanding is that the Board does want to pursue a bidding process so it can compare that option to the RSWA option, recognizing that Mr. Frederick has pointed out some differences. He said that the best way to handle this is to put it out at the level of service the Board wants to maintain, so changing variables such as adding convenience sites would affect the equation. Mr. Foley stated that the Board could always add services on later.

Mr. Snow said he wants to keep it apples to apples, and Board members agreed. He also said that he has no problem with extending the date to December, so the Board could get everything in by September or October.

Mr. Foley said that staff would come back to the Board with a schedule, if the Board wants to move forward with issuing an RFP.

Mr. Snow said he would like the motion to include some time for the Board to review the RFP. Mr. Foley agreed that was a good idea.

Mr. Rooker asked if the expectation was that the lease to take over the operation by the County from RSWA would be a no-cost lease. Mr. Foley responded that they do not know the answer to that.

Mr. Rooker said that makes a big difference. Mr. Boyd said he has asked for that from the Rivanna Board on several occasions. Mr. Rooker said that if the County has to pay to lease out the facility that changes things.

Mr. Snow asked where the City would come in under that leasing structure since it has already walked out of the agreement. Mr. Rooker said that there would be no obligation there, as the lease would go to the County and the money would go to Rivanna and be pooled to use for other operations.

Mr. Foley noted that the City is overseeing a portion of this as part of the decision-making process on the lease. The attorney for the RSWA needs to advise the Board on this lease. He said that all members of the Authority will weigh in on whether they think there should be a cost or not, which is important for the County to know soon. Mr. Foley said that it takes a majority to decide the lease cost. Rivanna meets next week so they will immediately start on the lease based on the results of this work session.

Ms. Mallek asked if it was fair to expect some solid feedback from Rivanna after that meeting, because it worries her that offering an extension will prolong this discussion into the fall with a December deadline looming. Mr. Foley explained that the Rivanna Board will have to say "yes, it is ready to move forward and lease this to the County," and they will then direct their attorney to develop a lease agreement.

Mr. Rooker said that the attorney is not going to determine whether it is a free or monetary lease – that would be up to the RSWA Board – so why not have that discussion next week. Mr. Boyd said that he will try as he has before but the problem is that City Council wants to go back and have two hearings on it before it makes a decision.

Mr. Foley acknowledged that City representatives wanted to talk to Council before they agreed on whether to lease to the County.

Ms. Mallek said she heard that a few months ago, and was not pleased.

Mr. Foley said that these issues can run parallel, and Rivanna will understand the need to move this quickly.

Mr. Boyd said the Rivanna Board can hold a special meeting if necessary.

Mr. Davis mentioned that notice for the McIntire Recycling Center agreement has to be given by May 1 if it will be extended for a year. One of the terms of that agreement is that the County must continue with the Ivy municipal waste program or the administrative cost of that agreement has to be renegotiated. He said that he assumes there will be an increased cost to both the County and the City for McIntire, at least for the half year that it is anticipated the MUC operation at Ivy would not be in effect. That is another cost that the County and the City would incur under this proposal.

Mr. Graham said that was an important point because there are two agreements involved, and he encouraged the Board to direct staff to work with RSWA staff on this. He said that even if the County shifts to a contracted service whereby the County is leasing land, they need an interim solid waste agreement for support so they can continue to operate after July 1. Mr. Graham said that there is no way it could be up and running by July 1 even if the decision were made today.

Mr. Davis said he assumed they would just continue the agreement they are operating under now.

Mr. Graham said they could use that as a framework. They also need to revise the McIntire agreement to reflect that – so there are two agreements that staff needs to start working with Rivanna staff on.

Ms. Mallek stated that the Board has not held a public meeting to find out what citizens want, and it would be sensible to her to have an organized group meeting in March to get feedback.

Mr. Rooker said that if the Board is trying to do an apples-to-apples comparison, he does not understand how a public meeting will help.

Mr. Foley stated that perhaps the commercial bidders will say they can provide services without cost if they can get increased volume, and if the Board wanted the public to chime in at that point it might

make sense – including people who live around the landfill who may want to have input on the possibility of expansion required to make it cost effective.

Mr. Snow then **moved** to direct staff to develop an RFP to privatize services through a lease with Rivanna at the same level of service as agreed to previously by the Board.

Mr. Thomas asked if Mr. Frederick could have another opportunity to speak.

Mr. Frederick said that prior to RSWA staff making any kind of recommendation to its Board, it must know precisely what the County wants to lease and right now it does not know that. He added that if County staff is comfortable walking the site with Rivanna personnel, it could do that, and it would be important for them to determine whether it is just a ground lease or whether it includes building and garage rental. Mr. Frederick stated that he is not planning to make a recommendation to his Board on the price because there are too many variables yet undefined.

Mr. Rooker said that the Board is talking about having a contractor and RSWA – which would still be responsible for remediation. At this point he is not seeing a huge economy by going to a private carrier. He stated that today they have control over the quality of service, and if they go to a private contractor they may relinquish that. Mr. Rooker added that if this all boils down to saving \$75,000, there are more negatives than positives. The County knows the quality of people today who are providing the services.

Mr. Foley said that is a valid point and will have to be balanced when more information is made available.

Mr. Rooker said when the Board first started talking about this he expected the savings to be substantially greater than it appears they are going to be. He then started seeing less and less advantages. At this point, the most savings the Board will see is \$300,000. He thinks that in actuality it may be about \$125,000 or less, and at that rate he does not see the advantage to moving to a private contractor. Mr. Rooker added that it may come down to just having one contractor bid on it, and that does not necessarily put the County in a great bargaining position for the future.

Mr. Boyd agreed, but said that what the County is headed for right now is a \$600,000 or \$700,000 annual expenditure.

Mr. Rooker said that is before cutting back the services, which would cut back the cost. He stated that he is not against looking at a private option, but the Board needs to be cognizant that it needs to be done in a way that is not disruptive to the current operator so they remain a good option, because they may end up being the best option.

Mr. Foley stated that staff will come back with some options, including outlining the risks.

Ms. Mallek **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Boyd, Mr. Dumler, Ms. Mallek, Mr. Rooker, Mr. Snow and Mr. Thomas.

NAYS: None.

Mr. Graham noted that he still does not have direction from the Board on the agreements, and asked for confirmation from the Board that it wants staff to work on the interim agreement and revised McIntire agreement.

Ms. Mallek **moved** to direct staff to begin work on an interim RSWA agreement and work on a revised McIntire Agreement. Mr. Thomas **seconded** the motion.

Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Boyd, Mr. Dumler, Ms. Mallek, Mr. Rooker, Mr. Snow and Mr. Thomas.

NAYS: None.

Agenda Item No. 3. Closed Meeting: Appointments.

At 5:10 p.m., **motion** was offered by Mr. Dumler that the Board go into Closed Meeting pursuant to Section 2.2-3711(A) of the Code of Virginia under subsection (1) to consider appointments to boards, committees and commissions in which there are pending vacancies or request for reappointments. The motion was **seconded** by Mr. Boyd.

Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Boyd, Mr. Dumler, Ms. Mallek, Mr. Rooker, Mr. Snow and Mr. Thomas.

NAYS: None.

Agenda Item No. 4. Recess.

The Board immediately took a recess.

Agenda Item No. 1. Call to Order. The meeting was called back to order at 6:06 p.m., by the Chair, Ms. Mallek.

Agenda Item No. 1a. Certify Closed Meeting.

Motion was immediately offered by Mr. Dumler to certify the closed meeting by a recorded vote that to the best of each Board member's knowledge, only public business matters lawfully exempted from the open meeting requirements of the Virginia Freedom of Information Act and identified in the motion authorizing the closed meeting were heard, discussed, or considered in the closed meeting. Ms. Mallek **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Boyd, Mr. Dumler, Ms. Mallek, Mr. Rooker, Mr. Snow and Mr. Thomas.

NAYS: None.

Agenda Item No. 2. Pledge of Allegiance.

Agenda Item No. 3. Moment of Silence.

Agenda Item No. 4. Adoption of Final Agenda.

Mr. Boyd stated that he would like to add a brief discussion on the current noise ordinance.

Mr. Rooker said he would like to add a discussion of the long-range transportation plan.

Item No. 4a. Resolution in opposition to House Bill 1430 ("The Boneta Bill").

Ms. Mallek said that she has three pieces of correspondence proposed for the General Assembly and the Governor related to two land-use bills on rural enterprise and one on the signing of regulations that were approved by the Water Control Board over 400 days ago and have been sitting on the Governor's desk since. She suggested that these items be moved to the end of the meeting for discussion.

The final agenda was accepted as amended.

Agenda Item No. 5. Brief Announcements by Board Members.

Mr. Rooker said that the Board will soon receive a copy of the County's Comprehensive Annual Financial Report. He asked Board members to focus on the VRS unfunded liability which the state is now allocating out to localities for financial reporting purposes. The Board will find in the report a large unfunded pension liability which includes everyone except teachers. Next year it will include teachers and the following year it will become part of the balance sheet which will likely lead to a negative net worth. Mr. Rooker said that he asked the Auditors if there was any legal obligation of the County to ever fund an unfunded liability that occurs if everything were to shut down, and they did not think there was a legally enforceable liability of the County to make up unfunded liabilities of the plan. He stated that there will also be some positive changes, hopefully, that will result from reducing the unfunded liability as a result of the increased contributions now being made to the plan based upon what happened recently in the increase in contribution rates.

Mr. Rooker also said that this is the first time the County has been audited that it did not get a management letter which means that the Auditor did not find anything being done internally at the County that was worth commenting on in terms of recommended improvements. He stated that the audit has been unqualified for a number of years, and the County has gotten the highest awards that the accounting standards board offers for the quality of statements, etc. He reiterated that this is the first time the staff has done such a good job that there were no recommended improvements in the pre-audit work that they do.

Mr. Foley said he would like to recognize Ms. Betty Burrell, Director of Finance, for the great work that she has done. He added that the Auditors will present the report at the March meeting for further discussion.

Agenda Item No. 6. From the Public: Matters Not Listed for Public Hearing on the Agenda.

Mr. Eric Arllen said that his home is located west of Scottsville not far from the proposed police firing range. Mr. Arllen said that he heard on the radio a broadcast downplaying the proposed range's impact on property values, citing property value history around the Rivanna Rifle and Pistol Club. He

stated that this is not a valid comparison, as the RRPC has been around for about 60 years and is five miles south of Charlottesville. He said that the Charlottesville-Albemarle Airport has been in commercial service since 1955. In 1950 the County's population was 26,662 with 25,969 living in the City – and just 653 in the County, less than one person per square mile. Mr. Arllen said that in 1960 the population grew to 30,969 with 29,427 in Charlottesville – just 1,452 in the County, less than two people per square mile. Mr. Arllen said that was Albemarle County's demographic nature when RRPC and the commercial airport were built. It was just really rural countryside north and south of Charlottesville whose inhabitants were happy to have a place to shoot and the services of an airport. In addition, they did not really have to notice either one because of the population densities.

Property values near RRPC and the airport did not suffer an adverse impact because both built in largely unpopulated areas. Since then buyers have been aware of the issues inherent in the property near the airport and RRPC.

He said that this is absolutely not the situation now around Keene, a well-established, racially diverse agricultural community. Mr. Arllen said that the Board's decision to approve the police firing range will certainly give those people who live there a financial disaster and many other hardships as well. He asked the Board to consider that as many of the property values fall, so will County tax revenue. The Board's decision to stop this terrible plan should not require much political courage. What little courage Board members may need can easily be acquired by getting engaged and taking the time to do their duty informing themselves of the true facts. Once Board members do that they should vote unanimously to abandon this unworthy project.

Ms. Alicia Morales addressed the Board, stating that she has been a taxpaying resident of the County for over 14 years. She said that she supports the police force's desire to be well-trained, but asked the Board to reject the proposal to build an outdoor firing range at the Keene Landfill. Ms. Morales stated that she and her husband moved to Esmont from another part of the County so they could raise their children in a peaceful, rural, quiet atmosphere. They love having a big garden to raise their own vegetables and have a property where their children can feel safe and explore.

Ms. Morales said that while they willingly pay County taxes to support the excellent schools and other services, they choose to home school their children, and thus they are outside most of the day. They live less than two miles from the proposed firing range and they have numerous concerns about the impacts – noise of weapons firing, risk of errant bullets, increased traffic, potential lead poisoning in the groundwater, etc. Ms. Morales said that there are economic issues as well as safety and quality of life issues. Over the past few years her family has had to learn the difference between "needs" and "wants," and she wonders which one the firing range actually is. She urged the Board to be an example of wise leadership and good stewardship of County tax dollars.

Mr. Michael Morales said that he lives in the Esmont area near the proposed firing range. Mr. Morales said that his family's home has several bird feeders, and over 100 birds come to the feeders every day. He stated that he likes to listen to the bird calls and does not want their songs to be disrupted by gunfire, nor does he want their hens to be upset by the noise and not lay eggs.

Mr. Morales also expressed concern that the firing range could distract him from his schoolwork, and it is possible that the three streams near the landfill could get polluted from the bullets. He said that he might be young, but he understands the damage this firing range might do to their property and other people around. He added that he and many others feel that the Keene Landfill is not the best place for this firing range.

Ms. Cyndra Van Clief said that she is opposed to the proposed outdoor firing range at Keene. Board members have heard the arguments; the process has not been open and inclusive. The proposed firing range is harmful to the rural areas, hurts the County's tax base, dangerous to the schools, churches, children, etc. She said that there has been much discussion among the Board recently about civility, and the local legal community has a reputation for being extremely civil, but this does not mean they do not disagree and have conflict. They respect each other's work and word, and cooperate to reach good, reasonable results for all parties. She said that her frustrated friends, neighbors and fellow taxpayers continue to be extremely civil in tackling the proposed firing range. Ms. Van Clief said that their research is strong, their commitment is strong, and their resolve is strong. She said that she remains hopeful that everyone will continue the civil discourse as they all consider and embrace good reasonable solutions that will benefit everyone. Success is within their collective reach.

Mr. Hal West, a Keene resident, suggested that there are many better training alternatives available to police than the idea of an outdated, open air firing range. Mr. West said that the modern trend in police training as well as the military is the use of state of the art simulator training. He said that top names in shooting simulators include: www.lasershot.com, www.virta.com and www.policeone.com, all of which can be researched easily on the internet. He stated that every situation a police officer could encounter is addressed in one of these scenarios by these companies, and equipment for officer support is also addressed – including flashlight use, pepper spray, vehicle equipment, etc. Mr. West said that it is so advanced that audiovisual and tactical techniques are used effectively to enhance the experience of live firing encounters and situations without having to go through popping targets off in the countryside. He said that this progressive and green technology is tried and proven. Auto driving scenarios can also be done and reviewed with simulators, all while seated in a vehicle or classroom anywhere. Top companies

to review are also located at www.appliedsimtech.com, and www.diresquare.com. These simulators can be used with all types of emergency vehicles – police, fire trucks, and ambulances.

Mr. West stated that a facility such as the Scottsville complex could bring in other agencies to make it a money-making enterprise also. He said that all of this is for the best and most effective police training available without the noise, safety and environmental issues.

Ms. Barbara West said that she lives on Esmont Road in Keene. In agreeing with her husband, she said that the use of highly effective training simulators is so important that the technology cannot be ignored and must be put into practice if the Board of Supervisors and Police Chief are to be as progressive as they claim to be, and if Albemarle is to be considered among the most sophisticated and environmentally friendly. She said that they need to let the landfill rest in peace and utilize more modern training opportunities as a more progressive, efficient, cost-effective and green alternative. Ms. West mentioned the state of the art Nottaway range or the Scottsville Tire Plant complex as a multi-use facility. The latter could adequately accommodate all of the County's training needs and could potentially add to the economy of the surrounding area, and it would be welcome. She asked that the Board step up and use one of the common sense alternatives for the sake of the people it represents, for the sake of the environment and in the interest of the best police training available.

Ms. Mary Ellen Ford said she was present to speak about Route 629, Browns Gap Turnpike. It has come to the resident's attention about people wanting to abandon Route 629. There is serious opposition to this requested abandonment. They have talked to the Historical Society, trail riders, equine people, hikers, et. al., and all they are all concerned that the road not be shut down. She provided Board members with a copy of a letter sent out in June regarding the concerns about the Turnpike and outlining its history.

Ms. Ford said that the Highway Department has done an excellent job of repairing Route 629 to the end of state maintenance. She requested from the Board permission for private citizens to do maintenance on the stretch where state maintenance ends up to the park entrance. Ms. Ford emphasized that they do have financial backing for that, so there would be no cost to the County or the state.

Mr. Boyd asked if there was a process required for the residents to accomplish that. Ms. Mallek said that it is across private property, so that would be an issue. Mr. Davis said that staff would report back to the Board on this matter.

Mr. Tom Polder said that he and his wife, Julie, live about a mile from the proposed firing range site. They only recently have heard about the firing range. He said that they have made significant investment in their home and spend a lot of time there. They would probably have to move if the firing range was approved although that might be difficult if property values were to drop. They are opposed to the proposed firing range.

Mr. Marshall Pryor said that he has lived at 1496 Riding Club Road in Keene for 24 years. He said that he understands that this firing range has been proposed for 17 years. He asked why citizens have not heard about it prior to last April, and why the residents have not been given "a fair shot at this thing." Mr. Pryor asserted that the County is building "a mid 1950s firing range in the 21st Century." He said that is a waste of effort and a waste of money. Mr. Pryor said that the County is on a slippery slope legally also, as it is saying that the decibel level can be more than the 60 limit set because it is a public facility, although it is not a public facility. He reiterated that this is a service facility for the police, not a public facility, and asked that the Board reconsider it.

Ms. Laurel Davis said that she is here to speak on behalf of the people of Esmont with humble home places, those who live closest to the site and will be the most severely impacted. She said that of the 1,500 people in Esmont, 9.1% are single women raising children; 15% are seniors; 31% are children; 26% earn less than \$25,000 per year and 37% are African American. Esmont is the poorest and blackest part of the County which perhaps Board members know, and which would make this decision classist and racist. This plan will hurt real people. Ms. Davis presented photos and brief background information on her neighbors in the area. She asked the Board to not rob them of their peace and the value of the little that they have.

Ms. Sophia Davis addressed the Board, citing a Civil War story as an example of how the soldiers of that time recognized their common humanity, and home sweet home. She asked the Board to consider what "home sweet home" means to them, stating that an open firing range at Keene puts residents' homes under assault at a number of levels. She asked Board members to consider how harmful this proposed plan is.

Dr. Charles Battig said that the Kyoto Treaty died at the end of last year. He said that the United Kingdom Metric Office shows that they have gone 16 years without any net change in global temperatures. He said that the BBC reports that by 2017 temperatures will have remained the same for 20 years. In 2008, he said, that NOAA stated if the models do not work for 15 years they are probably wrong, so it has been 16 years and they are wrong. Dr. Battig said that there were many reports on 2012

being the hottest year, but no one reported that the temperate average was 76.9 degrees and the Climate Reference Network moved it down to 75.6 – making 2012 about 9th or 10th, not 1st. He also mentioned that Al Gore sold the Current Network to the “fossil kingdom of Qatar.” Dr. Battig said that in Fauquier County the “grow local and eat local” mantra was not supported by the Piedmont Environmental Council.

Mr. Rex Linville stated that he is on staff at the Piedmont Environmental Council, reporting that in 2012 over 1,500 acres of land was protected in Albemarle by conservation easements. He said that this success would not have been possible without the commitment and conservation ethic of private landowners who made voluntary decisions to preserve their land, nor would it have been possible without the partnership of various nonprofits and local governments – including two easements accepted by the County through the ACE program totaling 126 acres; eight projects through the Virginia Outdoors Foundation protecting 650 acres; and three projects with the Virginia Department of Forestry protecting 764 acres. Mr. Linville said that the Bowers family donated 160 acres of forest to the PEC along the Hickory Ridge Farm Subdivision near Earlysville, protecting that land from a possible 54-acre subdivision that could have gone in under an 1870s-era PUD. He stated that the 87,000 acres of conserved land in Albemarle protects 377 miles of streams and rivers, 32,000 acres of prime farm soils, 1,100 acres of wetlands, 57,000 acres of forests, almost 23,000 acres along scenic byways, and over 35,000 acres in historic districts. He said that these protected resources make Albemarle County a great place to live, a great place to do business, and thereby are fundamental to the local economy. Mr. Linville stated that a PEC study done a few years ago shows that these conserved resources generate over \$21 billion to the State's economy. He said that Congress reauthorized at the end of last year an expanded federal income tax deduction for people who want to preserve their land, and there is a state land tax credit program that is going strong. Mr. Linville said it is his sincere hope that the Board will do its part by fully funding the ACE Program going forward, and not zeroing it out as it has done in the past. He asked attendees at the meeting to stand up in support of land conservation.

Mr. Jim Bonner said that working people do not have a lot of time to devote to the workings of local government so they have elected representatives whom they trust will be fiscally responsible for their hard-earned taxes, protect the value of their properties and not put them in harm's way. He said that he is appalled and ashamed of the Board for the blatant disregard of the interest of the citizens of Albemarle County for the idea of spending millions of taxpayer dollars for the construction and maintenance of a firing range when there are perfectly good alternatives in nearby state of the art facilities, that have welcomed local police officers. Mr. Bonner said that all that's needed is good management of scheduling and transportation, and there is a pretty big fleet of law enforcement vehicles for that. It just makes no sense, and it is disgraceful for the Board to place his good friends and neighbors and their children in harm's way in the name of public safety, and to subject their properties to devaluation, as if the market has not been harsh enough already. He stated that if there is not some hidden agenda here, then it is a dereliction of the Board's duty and moral obligation to the people of Albemarle. Mr. Bonner said the taxpayers of the County call on Board members for their courage to do the right thing and eliminate the firing range. The residents do not want it nor do they need it.

Ms. Sarah Donnelly, a resident of Esmont, said that she read the vision statement of the joint Charlottesville-Albemarle Planning Commission. These goals and visions are what everyone wants. She said that she is sorry that the development of the firing range in Keene flies in the face of many of these goals and visions. Ms. Donnelly said that the vision of air quality is to encourage clean and environmentally responsible industries, but a layer of pulverized lead from gunshots will settle over the surrounding area and that is neither clean nor environmentally responsible.

She stated that the vision for water quality is to improve water quality in all of the waterways, especially drinking water supplies. The fact is that Totier Creek is fed by several streams that run through the former Keene Landfill. Construction activities in the adjacent area may well release toxins from the landfill into the creek, which supplies Scottsville with drinking water.

The vision for storm water is to improve infrastructure and reduce contaminated storm water runoff. The question is whether this would be done relative to the Keene Landfill.

The vision for agriculture is to strengthen measures that protect agriculture in rural areas. The fact is that the police firing range at the site of the Keene landfill will not protect agriculture. The firing range will devastate agriculture with lead contamination and excessive noise.

Ms. Donnelly said that the vision for land use is that Charlottesville/Albemarle will maintain the distinct character of the rural areas and establish policies that provide for consideration of development impacts on neighboring localities and shared community resources. The fact is that the development of the police firing range near Porter's Precinct and Keene will destroy the distinct character of the rural area.

Mr. Lawrence Barnett addressed the Board, referencing a letter that he had given to each Board member. He said that with 33 years of real estate experience, he can tell Board members that it is a “lose lose situation” if the County builds an open firing range on the Keene Landfill. Homeowners are going to lose, property values are going to go down, and Albemarle County tax revenues are going to go down.

Mr. Barnett said he would love for the Board to refer this back to the Planning Commission to consider two alternatives: 1) Dr. Hurt's tire factory building in Scottsville, and it would have a very positive impact on restaurants there; or 2) operating an indoor facility 24/7 at the Keene landfill site, which would

take care of the environmental and noise problems. He said that he is on the Board of Directors of the Tri-County Riding Club, which was founded in 1941 and has approximately 90 members who meet once per month. Dr. Hurt said that the Club lives off of rentals for weddings and parties, but their revenues will drop and the club could feasibly go out of business.

Dr. Bill Tunner, a retired physician from Alberene Road in Esmont, said that he is here to support the Planning Commission's recommendations for the cidery noise abatement in Cismont. He said that they have the same issue with the Keene Landfill firing range, because noise is not only a nuisance it is toxic – especially for children. He said that it provokes ADHD, learning disabilities, neuro-cerebral psychiatric disorders in children, and stress and endocrine disorders and symptoms in adults. Because of their non-medical background, Board members cannot fully understand the medical health implications. He asked why put children at risk. Dr. Tunner stated that there are many other options for the location of a police gun range, and the police deserve better than a toxic landfill location. Dr. Tunner said that in President Obama's speech today he recommended more police "boots on the ground," and if the County is more financially prudent then Chief Sellers can fill his empty officer slots. He stated that the current president and past president of the Albemarle Medical Society signed the petition opposing the Keene Landfill for health and safety reasons.

Mr. Harold Pillar addressed the Board, asking "is this needed?" He said that there are obviously other locations for this range, such as Galaxy Farm, the Scottsville Tire Factory, or the existing facility in Nottoway County. Mr. Pillar said that \$5 million is a lot of money to spend on a shooting range, and surely Chief Sellers knows about more modern options. There has to be an ulterior motive for this. Mr. Pillar said that his theory is that the Chief wants to build "a sports club for the police officers," and they are going to use County money to do it. He stated that the other issue that he has is why public employees cannot use this site for practice, and teachers should be allowed to practice shooting at a firing range.

Ms. Lisa Bittner, a resident of Glendower Road near Scottsville and Keene, said that she is against the firing range. Ms. Bittner said that in the interest of protecting public safety, it will actually be sabotaged due to the neurotoxicity of lead poisoning. She stated that with the clay soils and acidic rainfall typical of this region, lead quickly dissolves into lead contamination of three perennial streams and downstream to the Totier Reservoir and then into the water supply. Ms. Bittner said that a million rounds per year is a lot of lead oxide. She also stated that the noise level and frequency would be disturbing mentally to the very young and old, and she also heard a figure of 4,000 rounds per day at 86 decibels. Ms. Bittner stated that in an effort to protect the public from unfolding gun violence situations like the recent Connecticut shootings, the Board should not create public health and mental health conditions that give rise to such erratic behavior in the first place. She said that she worries about her three homeschooled children, but also the Yancey children who would have to hear those sounds all day long.

Mr. Alan Van Clief addressed the Board, stating that he is here for concern for himself and his friends and neighbors near the Keene Landfill. He said that it's very important that officers receive the best training possible, but he doesn't understand why they want to put it at this site. He asked what would happen if the buried containers of waste begin to breach and leak, adding that they would end up with a Superfund site that would have to be closed. The County would be of money for the range, no training area for the police, and the taxpayers will face the cleanup bill for the dump. Mr. Van Clief said that this is not the way to support the police, and he opposes the range.

Mr. D. G. Van Clief, a resident of Esmont, said that he is also here to speak on the gun range. He stated that there is growing concern and a growing number of people in the community who have learned about the project. They are in the process of establishing a petition against the range and they are well in excess of 1,000 names now. Mr. Van Clief stated that they have reached out to experts in sound, engineers, and those with expertise in the construction of shooting ranges, and what they are finding is just as disquieting is what they thought they knew earlier on. He said that each Board member has enabled an ongoing dialogue, and the residents thank them for that. Mr. Van Clief said that he sees positive signs from this discourse, and said they are seeing some open minds here. He stated that there are safety issues, health and welfare issues, and the site plan has not changed. He asked the Board to take a look at alternatives because it is never too late to avoid a bit mistake.

Ms. Barbara Lape said she has been a County resident for 35 years. She said that she sympathizes with the people of Keswick and other parts of the County who are fighting for the peace that represents life in beautiful rural Albemarle County. She said that those in southern Albemarle are also fighting for the peace that the outdoor firing range will violate, as the noise will be at least 26 decibels above the level approved by Albemarle County and will affect 78 square miles of the County and its residents. She said that this project will be exposing residents to lead in the soil, in the air, and in the water – as the headwaters of Totier Creek are located in that area, which is the drinking water for Scottsville. Ms. Lape stated that the negative health factors are numerous. She asked the Board to either make it an indoor range or – if that is cost prohibitive – use the state of the art facility in Nottoway, which will be run by the state police and funded by forfeiture money. Albemarle County will pay a nominal fee to use it. The outdoor firing range is not in the best interest of the residents of the County. She stated that it is the Board's job as an elected body to preserve the peace, clean air and water of the County – and lead in soil, air and water does not do that, nor does raising decibel levels. Ms. Lape asked the Board to

examine the facts and make decisions that will make Albemarle citizens proud to have elected Board members to care for their treasures.

Mr. Ken Lape said that he has commuted to Miami, Florida, for 32 years to work, so that he could live in Albemarle. He said that what is missing in this conversation is common sense. He does not understand how the Board could consider putting a firing range in so close to schools and an eldercare facility. This is so ill-advised, no common sense, and they are all frustrated here because they have had no representation. Mr. Lape said that on the last vote on the matter, one Supervisor recused himself and the other was "inherited" due to redistricting. The residents are frustrated. They do not feel they are being adequately represented. He appealed to the Board to let common sense enter here. He encouraged the Board to go to Nottoway or do an indoor firing range.

Ms. Paula Beazley said that she is a member of "Save Rural Albemarle," which now has more than 1,000 signers and many other supporters. Ms. Beazley said that they have spent countless hours, along with County staff and police, "trying to fit a square peg into a round hole." She stated that they all want training that police need, and Chief Sellers has been a strong advocate for his men, but there was no choice or alternative but Keene – with the single advantage being that the County owns the land. Ms. Beazley said that the list of disadvantages is two pages long and includes impacts to soil, wetlands, aquifers, streams, proximity of houses, public health and safety issues, lack of infrastructure, exorbitant road costs, outmoded and environmentally damaging techniques, no nearby facilities or conveniences, low usage – at most 200 days per year, and other issues their liaison has tried to address with police. She said that their members have tried to document the limitations to the scope of the operation to shoehorn it into a rural community. It should be in a location that can accommodate all hours of operation and all activity, and have privacy. Ms. Beazley stated that the residents would like to help the County get this right, to a win/win situation for everyone, create a positive relationship with the police and the community, and be a producing asset for the County in the years to come – creating economic activity and increasing tax revenues rather than depleting scarce tax revenues and degrading property values.

Mr. Greg Quinn said that the New Hope Community Church is his neighbor and he would like Board members to look at that plan again. He said that he shoots out on his property and worries about the liability there, stating that he would like the Church to create more buffers.

Mr. Quinn stated that he is a "Second Amendment" person but does not like the idea of raising a family downrange from a firing range. If the County opens a range everyone should be able to use it to learn to shoot. He said that kids are curious by nature and will get into the range.

Mr. Jeff Werner, speaking on behalf of PEC, said that his cousin is a police officer and they have spoken about the firing range. He said that so many people have called and emailed him about this issue, and he wants to apologize for not getting back to all of them. Mr. Werner said that a question he is asked frequently is why Scottsville is not looked at for the firing range site. The fact that there are many people coming forward who want to keep Albemarle's rural area rural has really energized him and he hopes it has done the same for the Board. He stated that the loss of the rural area is "death by 1,000 cuts," and emphasized that to keep the County rural everyone must come together and speak as one.

Mr. John Eichenberger said that he is a registered professional engineer and a certified industrial hygienist with over 20 years experience in environmental and civil engineering. He said that he is particularly concerned that Albemarle County has failed to consider the true cost to construct and safely operate a range that will protect the residents and water resources. He said that current estimates indicate there will be 4,000 rounds per day, and based on a 9 mm bullet is anywhere from 6,000-8,000 pounds of lead being introduced into the environment. Mr. Eichenberger said this is very troubling to him, because the current design uses low-cost soil berms that do not incorporate any kind of bullet collection system. This is an outdated system that can cause significant bullet fragmentation, which will dramatically increase the amount of lead particulates introduced into the environment.

He stated that the NRCS has classified the soils of the Keene site as being "acidic silt loams," with pH between 4.5-5.5, and lead is soluble in acidic conditions. Mr. Eichenberger said that the lead particulate will solubilize in these low-pH soils and be readily introduced into surface and groundwater. He stated that the Keene site is very steep and is classified by the NRCS as having a high runoff potential, which means it will impact the adjoining wetlands and perennial streams – the headwaters to the Totier Creek. Mr. Eichenberger stated that there has been inadequate funding allocated to the remediation and cleanup of the site. He encouraged and urged the Board to use a different site that would more adequately address concerns.

Mr. Jim Balheim said that he lives on a farm in Keswick and has a neighbor who shoots frequently. It is disconcerting to hear 30 rounds and the context of 4,000 rounds is mind-boggling to him. He said that he thinks this proposed firing range is a bad idea.

Ms. Althea Randolph said she lives just outside of Scottsville. The issue that bothers her the most about this is it seems like a moral issue – and she can only imagine how awful the sound is going to be for the residents there. Ms. Randolph also expressed concern about property values decreasing by 35%,

adding that those properties will never be assessed again as they are now. She said that it will cost money to put the range indoors, but at least it will be fairly allocated on citizens to bear the brunt of the impacts.

Mr. Snow thanked all the speakers for attending.

Agenda Item No. 7. Consent Agenda.

Mr. Rooker **moved** to approve the Consent Agenda as presented. Mr. Snow **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

Mr. Rooker pointed out that the firing range is on the agenda for February 13 and would include a presentation from police. There will be a formal opportunity at that time for people to participate.

Item No. 7.1. Approval of Minutes: November 8 and November 14, 2012.

Mr. Boyd had read the minutes of November 8, 2012 and found them to be in order.

Ms. Mallek had read the minutes of November 14, 2012 and found them to be in order.

By the above-recorded vote, the minutes were approved as read.

Item No. 7.2. SDP-2012-00056. Yves Delorme, Inc - Minor Site Plan Amendment – Critical Slope Waiver.

The executive summary states that the County is reviewing a minor site plan amendment which proposes to build a 24' travel way across TMP 07700-00-00-040M0 to serve vacant TMP 07700-00-00-040C1. In conjunction with the proposal the applicant seeks to disturb slopes greater than 25% on both properties. The subject lots are adjacent to each other, are both zoned Light Industrial (LI), and are currently under ownership by Yves Delorme, Inc. The lots are located on Broadway Street (Rte 1115) near the intersection of Franklin Street, within close proximity (50 feet) to the City of Charlottesville.

The critical slopes being disturbed are on the Northern portion of the properties fronting Broadway Street. These slopes appear to have been developed in part through the construction of Broadway Street; however, the grading and construction of the slopes does not appear on a "valid approved" site plan. County site plan file: SDP1989-086 – Palais Royal shows the slopes as existing prior to the construction of the existing warehouse on TMP 07700-00-00-040M0.

The current site plan, SDP2012-00056 Yves Delorme, Inc, which proposes to disturb these slopes (and requires a critical slope waiver) would have previously been reviewed by the Planning Commission; however, due to a recent State Supreme Court decision, the waiver must now be reviewed/approved by the Board of Supervisors as a Special Exception under Chapter 18 Section 31.8. Staff is recommending approval of this Special Exception request.

Review of the request by Engineering staff:

Description of critical slope area and proposed disturbance: This existing slope is possibly a man-made slope for the construction of Broadway Street. The applicant is proposing to construct a retaining wall and access road to the rear parcel.

Areas	Acres	
Total site	4.145 acres approximately	
Critical slopes	.86	20.75% of site
Critical slopes disturbed	0.13	15.1% of critical slopes

Exemptions to critical slopes waivers for driveways, roads and utilities without reasonable alternative locations: This disturbance is not exempt.

Compliance with Zoning Ordinance 18-4.2:

"movement of soil and rock"

Proper slope construction, control of drainage, and vegetative stabilization will prevent any movement of soil.

"excessive stormwater runoff"

Stormwater runoff will be reduced in this area, as a portion of the slopes will be eliminated.

"siltation"

Inspection and bonding by the County will ensure siltation control during construction. Proper stabilization and maintenance will ensure long-term stability.

“loss of aesthetic resource”

This area is visible from the roads and houses in the neighborhood. Some of the slopes were created with the roads.

“septic effluent”

This neighborhood is serviced by public sewer.

Based on the review above, there are no engineering concerns that prohibit the disturbance of the critical slopes.

Review of the request by Planning staff:

Summary of review of modification of Section 4.2:

Section 4.2.5 establishes the review process for granting a waiver of Section 4.2.3. The preceding comments by staff address the provisions of Section 4.2.5(a). Staff has included the provisions of Section 4.2.5(a)(3), along with staff comment on the various provisions. Under 31.8, the Board of Supervisors may modify or waive any requirement of section 4.2 based on these provisions: (However, no specific finding is required in support of the Board's decision.)

“A. Strict application of the requirements of section 4.2 would not forward the purposes of this chapter or otherwise serve the public health, safety or welfare;”

Granting the modification request could better serve the purpose of this chapter or the public health, safety or welfare by allowing an existing Light Industrial (LI) parcel, served by water and sewer to be accessed and more effectively developed.

“B. Alternatives proposed by the developer or subdivider would satisfy the intent and purposes of section 4.2 to at least an equivalent degree;”

No alternatives have been proposed by the applicant.

“C. Due to the property's unusual size, topography, shape, location or other unusual conditions, excluding the proprietary interest of the developer or subdivider, prohibiting the disturbance of critical slopes would effectively prohibit or unreasonably restrict the use of the property or would result in significant degradation of the property or adjacent properties; or”

The state road frontage of TMP 07700-00-00-040C1 consists entirely of critical slopes, which limit possible access points to the property from the state road. Because of these unusual topographic conditions the developer is attempting to access the lot through an adjacent parcel. Prohibiting the disturbance of critical slopes would effectively prohibit or unreasonably restrict the use of the property and may cause significant degradation to the property.

“D. Granting the modification or waiver would serve a public purpose of greater import than would be served by strict application of the regulations sought to be modified or waived.”

A finding that granting the waiver would serve a public purpose of greater import than would be served by strict application of the regulations can be made. By allowing the proposed disturbance of critical slopes, the County would allow the use of a vacant Light Industrial (LI) zoned parcel served by Public Water and Sewer to be accessed/developed.

Based on the review above, there are no concerns that would cause staff to object to the approval of the critical slope disturbance request.

31.8 SPECIAL EXCEPTIONS

The board of supervisors reserves unto itself the authority to consider and act upon special exceptions as follows:

- a. *Matters requiring a special exception. Notwithstanding any other section of this chapter:*
 1. *Any request for a waiver, modification, variation or substitution permitted by this chapter shall be considered and acted upon by the board.*
 2. *Any requirement for a decision by the planning commission required by this chapter shall be considered and acted upon by the board. For the purposes of this section, a decision by the planning commission does not include the consideration and action by the commission on a preliminary or final site plan under section 32 of this chapter or any action provided in section 32 enabled under Virginia Code § 15.2-2242(1).*
- b. *Consideration and action. In acting upon a special exception, the board shall consider the factors, standards, criteria, and findings, however denominated, in the applicable sections of this chapter, provided that the board shall not be required to make specific findings in support of its decision.*

- c. *Conditions. In approving a special exception, the board may impose reasonable conditions to address any possible impacts of the special exception.*
- d. *Time for action. A request for a special exception shall be acted on by the board within ninety (90) days after the date of the request, or concurrently with a zoning map amendment, special use permit, or site plan appeal, whichever is longer.*
- e. *Request. Each request for a special exception shall be made as provided under the applicable section of this chapter.*

Staff recommends approval of the applicant's request for a critical slopes waiver.

By the above-recorded vote, the approved the applicant's request for a critical slopes waiver, as recommended by staff.

Item No. 7.3. SDP-2012-00065. Shifflett Property - Verizon Wireless Tier II Personal Wireless Service Facility.

The executive summary states that on May 3, 2005, the Planning Commission approved SDP2005-9, the construction of an 83.75 ft. tall Tier II Personal Wireless Service Facility wood monopole, and associated ground equipment, at this location. On February 8, 2012, the Board of Supervisors approved SDP2011-81, an 8.5 foot extension of the existing monopole. The lease area, with the existing monopole and associated ground equipment, is located on the edge of a heavily wooded area in a rural setting of large lot, single family dwellings and farms. Another PWSF is located in close proximity, approximately 23 ft to the northeast.

This is a proposal to install an above-ground generator and propane tank in an expanded lease area to serve an existing personal service wireless facility during power outages. The standard staff report for tower reviews is attached (Attachment A) and provides a more detailed analysis of this proposal. Staff recommends approval of this proposal.

31.8 SPECIAL EXCEPTIONS

The board of supervisors reserves unto itself the authority to consider and act upon special exceptions as follows:

- a. Matters requiring a special exception. Notwithstanding any other section of this chapter:
 - 1. Any request for a waiver, modification, variation or substitution permitted by this chapter shall be considered and acted upon by the board.
 - 2. Any requirement for a decision by the planning commission required by this chapter shall be considered and acted upon by the board. For the purposes of this section, a decision by the planning commission does not include the consideration and action by the commission on a preliminary or final site plan under section 32 of this chapter or any action provided in section 32 enabled under Virginia Code § 15.2-2242(1).
- b. Consideration and action. In acting upon a special exception, the board shall consider the factors, standards, criteria, and findings, however denominated, in the applicable sections of this chapter, provided that the board shall not be required to make specific findings in support of its decision.
- c. Conditions. In approving a special exception, the board may impose reasonable conditions to address any possible impacts of the special exception.
- d. Time for action. A request for a special exception shall be acted on by the board within ninety (90) days after the date of the request, or concurrently with a zoning map amendment, special use permit, or site plan appeal, whichever is longer.
- e. Request. Each request for a special exception shall be made as provided under the applicable section of this chapter.

Tier II tower reviews were previously approved by the Planning Commission and now must be approved as special exceptions.

No budget impact

Staff recommends approval of this special exception.

By the above-recorded vote, the Board approved SDP-2012-00065, Shifflett/ Verizon Wireless – Tier II Personal Wireless Service Facility, as recommended by staff.

Item No. 7.4. Resolution Endorsing Nelson County's Virginia Department of Transportation FY 13-14 Transportation Alternatives Program Application for the Blue Ridge Tunnel Project.

The following request was received from Mr. Stephen A. Carter, County Administrator, Nelson County, to Mr. Thomas C. Foley, County Executive:

"Please accept this communication as Nelson County's request for a resolution of support from the Albemarle County Board of Supervisors for Nelson County's ensuing application to the Virginia Department of Transportation for funding through the Department's Transportation Alternatives Program (formerly Transportation Enhancement Program) for Nelson County's Blue Ridge Tunnel Project. The deadline for the TAP application is February 1, 2013 and, as such, County staff are endeavoring to include project endorsements within the County's funding application to VDOT.

Briefly, Nelson County is optimistic that the forthcoming Transportation Alternatives Program will be a milestone in the County's long and significant effort(s) to accomplish the conversion of the historic railroad tunnel, designed by Claudius Crozet, into a public trail. The County's TAP application to VDOT will seek approximately \$750,000.00 in funding to provide for completion of Phase I of the (overall) project, which encompasses the establishment of trailhead infrastructure on the eastern (Nelson) side of the Blue Ridge Tunnel and the construction of a new universally accessible, multi-use trail into the Tunnel at an approximate distance of 1,000 feet. Once completed and additional funding is secured (approximately \$1.75 million more is needed), the County will then complete Phase(s) II and III which provide for construction of the western trailhead (in Augusta County) and completion of the full restoration of the Tunnel, which will enable this historically significant structure to be revived and shared with the public.

To provide you with additional perspective on the project, to date, the County has completed final construction drawings and the related environmental review, which have been reviewed and approved by VDOT and other state/federal agencies. Thus, the Tunnel project is positioned to be completed. In addition to the February 1, 2013 TAP application to VDOT, Nelson has recently been awarded a technical assistance grant from the National Park Service's "River, Trails, and Conservation Assistance Program", which will be utilized to increase the collaborative aspect of the Tunnel being a regional initiative through the conduct of stakeholder meetings and/or workshops to maximize the involvement of important project stakeholders, such as Albemarle County, and to also maximize the project's success. Additionally, Nelson County submitted a grant application in November 2012 to the U. S. Department of Transportation for \$2.0 million in funding through the Paul S. Sarbanes Transit in the Parks Program (a decision on this application is pending). And, collaboratively, Nelson County is working in partnership with the Claudius Crozet Blue Ridge Tunnel Foundation (established through the County's efforts), which includes representation from Albemarle County, Clan Mohr, an Irish heritage organization, UVA, which recently completed a presentation on the Tunnel through a course established in the University's Department of Architecture (and Planning) and, our neighboring jurisdictions, Augusta County and Waynesboro City, each of which has provided previous endorsements for the project (as has Albemarle County).

As noted, Nelson County is well positioned to realize the accomplishment of its Blue Ridge Tunnel Project. The endorsement of the project by resolution of the Albemarle County Board of Supervisors for Nelson's TAP application to VDOT (the County will request similar resolutions from Augusta County and Waynesboro City) will greatly enhance the ability of Nelson's funding request to be approved. Your cooperation in submitting this request to the Albemarle County Board of Supervisors is sincerely appreciated."

By the above-recorded vote, the Board adopted the following resolution:

**RESOLUTION
ALBEMARLE COUNTY BOARD OF SUPERVISORS
ENDORSEMENT OF NELSON COUNTY, VIRGINIA'S
VIRGINIA DEPARTMENT OF TRANSPORTATION
FY13-14 TRANSPORTATION ALTERNATIVES PROGRAM
APPLICATION FOR THE BLUE RIDGE TUNNEL PROJECT**

WHEREAS, Nelson County continues to lead the ten-year-long, ongoing regional effort to advance its Blue Ridge Tunnel restoration project from a "shovel ready" plan to a fully built success story; and

WHEREAS, being an existing project sponsor of a Transportation Enhancement Project, Nelson County is eligible to apply for Transportation Alternatives Program grant funds under the newly enacted MAP-21 Federal Transportation Bill (the former Transportation Enhancement Grant program); and

WHEREAS, Nelson County staff are developing a proposal in response to the Transportation Alternatives Program grant opportunity announcement by the Virginia Department of Transportation; and

WHEREAS, Albemarle County recognizes that this is a very valuable project for Albemarle County, Nelson County, for the Central Virginia region, and for the entire Commonwealth of Virginia; and

WHEREAS, Albemarle County believes it is an important project for numerous community priorities, including:

- Increasing the local and regional community quality of life, adding to the area's public recreation amenities, and promoting active and healthy communities;
- Strengthening rural economic development and strengthening the local and regional recreation tourism, ecotourism, agritourism, and heritage tourism industries;
- Advancing community goals related to historic preservation and cultural landscape protection; and
- Implementing long-range alternative transportation planning goals.

NOW, THEREFORE BE IT RESOLVED that the Albemarle County Board of Supervisors hereby endorses the submittal of a Transportation Alternatives Program grant application by Nelson County seeking a maximum funding award of approximately \$750,000 for Phase I construction of the Blue Ridge Tunnel Project and additionally resolves to continue its support of the proposed project.

Agenda Item No. 8. **PUBLIC HEARING: ACSA Sales Contract.** To consider granting easements to the Albemarle County Service Authority on and across the East Rivanna firehouse property (Parcel ID 093A1-00-00-00200), adjacent to Glenmore. The property is jointly owned by Albemarle County and the East Rivanna Volunteer Fire Department. The easements would allow the ACSA to locate a water storage facility and water lines on the property to serve the Rivanna Village community, including Glenmore. *(Advertised in the Daily Progress on January 7, 2013.)*

The executive summary forwarded to Board member states that staff has worked in conjunction with the East Rivanna Volunteer Fire Company (ERVFC) to negotiate the sale of permanent easements to the Albemarle County Service Authority (ACSA) for a portion of the unused East Rivanna firehouse property, which is jointly owned by the County and the ERVFC (TMP 93A1-2). The ACSA is seeking to construct a water storage facility on the property to serve the Rivanna Village community, which includes Glenmore.

The property was acquired by proffer when the Glenmore Planned Development was approved in 1990. The six-acre parcel was proffered for a fire station and/or other public facilities. ERVFC currently fully utilizes approximately 2.62 acres for the fire station, leaving a balance of 3.38 acres. The proposed permanent easement for the water tank will utilize approximately .48 acres of the site.

Negotiations related to this transaction are now complete and staff is requesting Board approval for the County Executive to execute the three-party sales contract for ACSA's acquisition of these easements.

The proposed sales contract (Attachment A) has been reviewed and approved by the ACSA and the Board of Directors of the ERVFC. The sales contract provides that the County and the ERVFC will receive \$100,000 from the ACSA and will grant several easements related to ACSA's proposed installation of a water storage tank and/or pump station, including a perpetual easement for the location of the water storage facility, a permanent access easement across the existing ERVFC parking lot onto Steamer Drive, and waterline and temporary construction easements. The proposed location of the easements is shown on the attached sketch (Attachment B). The exact location and dimensions of the easements will be shown on a final plat to be prepared by the ACSA and approved by the County Attorney's Office. The contract also provides for a closing/settlement date no later than December 31, 2014 to allow the ACSA to complete all necessary plan development and review processes for the installation of the tank and associated water lines. The County Attorney's Office has reviewed and approved the proposed sales contract as to form.

Mr. Davis said that this is a request by the Albemarle County Service Authority to purchase an easement over .48 acres of the East Rivanna Volunteer Fire Company site, which is a six-acre site jointly owned by the County and the fire company. He said that the site currently includes a fire station that occupies 2.62 acres of the six-acre site. This is proposed to be the location of a water storage tank that would serve the Rivanna Village community. Mr. Davis stated that there is an agreed sales price with the Service Authority of \$100,000, which would be paid to the County and the fire department. At the conclusion of the public hearing, which is required by State law for the disposition of property, staff would recommend that the Board adopt the proposed resolution that would authorize the County Executive to execute the sales contract and all other legal documents in a form approved by the County Attorney necessary to complete the sale of this easement.

Mr. Davis stated that Mr. Gary O'Connell, Executive Director of the Albemarle County Service Authority, is also present and can respond to any questions about the project. Mr. Lanny Moore, Fire Chief from East Rivanna, is also present to respond to any questions.

The Chair opened the public hearing.

Mr. Snow asked how tall the proposed tank was, as shown in the depiction. Mr. O'Connell said that the height is about 35 feet. They had originally contemplated an elevated tank that was far above the trees – but the initial reaction was “no way,” so they went back to a ground storage tank that could work from an engineering standpoint, keeping it below the tree line. He noted that it would be painted brown and thus pretty well hidden, and from most views it would not be visible.

Mr. Dumler asked if they were planning to meet with the Glenmore community. Mr. O'Connell responded that they are meeting on February 27 at 7:00 p.m. at the East Rivanna Fire Station, and will be sending invitations out to various residents in the area. He said that the meeting will provide information and details about the project, followed by a community discussion to get feedback. He stated that this tank is an emergency backup for the Village of Rivanna and is one of the longest runs in the system, so if there were an outage it could be three, four or five days without water. It's important in terms of sort of trying to look at emergency preparedness throughout the ACSA system.

Mr. Dumler asked how often that has happened historically. Mr. O'Connell responded that it happened once, and the outage was less than three days for that particular line.

Mr. Moore stated that he was there when they did the balloon test. The site for the tank is the lowest part of the property so it is not particularly visible until you pull into the public parking lot of the fire station. He said that the tank will be about the same level as the tree line in that lower area.

Mr. Snow asked if the tank was gravity fed. Mr. O'Connell confirmed that it was pumped in and out.

Mr. Dumler asked if that was required because they weren't going for an elevated tank above the tree line. Mr. O'Connell responded, "yes".

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

Mr. Dumler **moved** to adopt the proposed resolution to authorize the County Executive to execute the sales contract and all legal documents, in a form approved by the County Attorney, necessary to complete the sale of the easements to the ACSA on and across TMP 93A1-2 for the location of a water storage facility and water lines to serve the Rivanna Village community. Ms. Mallek **seconded** the motion.

Mr. Thomas asked what the meeting at Glenmore would be for, if the Board is already voting on this tonight. Mr. O'Connell explained that this vote is an authorization for a future sales contract. It has a two-year period built in whereby they must achieve certain conditions including getting the Board's concurrence that this is a site the Board would be open to selling. Basically ACSA wanted to be sure that it could go to the community and tell them it had a site that would be available. He said that the contract is written so that if the community comes out in opposition, the ACSA has the option of pulling back from the project.

Roll was then called and the motion carried by the following recorded vote:

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

**RESOLUTION TO AUTHORIZE
THE SALE OF EASEMENTS ON AND ACROSS
TAX MAP PARCEL 93A1-2 TO THE
ALBEMARLE COUNTY SERVICE AUTHORITY**

WHEREAS, the East Rivanna firehouse property (Tax Map Parcel 093A1-00-00-00200) is jointly owned by the County and the East Rivanna Volunteer Fire Company ("ERVFC"); and

WHEREAS, for and in consideration of \$100,000, the Albemarle County Board of Supervisors agrees to grant permanent easements and temporary construction easements on and across TMP 93A1-2 to the Albemarle County Service Authority ("ACSA") necessary for the ACSA to locate and install a water storage facility and water lines to serve the Rivanna Village community; and

WHEREAS, the ERVFC Board of Directors has approved the sale of the easements to the ACSA.

NOW, THEREFORE, BE IT RESOLVED that the Albemarle County Board of Supervisors hereby authorizes the County Executive to execute the sales contract and all legal documents, in a form approved by the County Attorney, necessary to complete the sale of the easements to the ACSA on and across TMP 93A1-2.

Prepared by: Albemarle County Attorney's Office
Return to: 401 McIntire Road, Suite 325
Charlottesville, Virginia 22902
Parcel ID No.: 093A1-00-00-00200

THIS SALES CONTRACT, made this 16th day of November, 2012, by and between the COUNTY OF ALBEMARLE, VIRGINIA, a political subdivision of the Commonwealth of Virginia, whose address is 401 McIntire Road, Charlottesville, Virginia 22902; the EAST RIVANNA VOLUNTEER FIRE CO., INCORPORATED, a Virginia non-stock corporation, whose address is 3501 Steamer Drive, Keswick, VA 22947, hereinafter collectively referred to as "Sellers;" and the ALBEMARLE COUNTY SERVICE AUTHORITY, a body politic and corporate created pursuant to the Virginia Water and Waste Authorities Act, whose address is 168 Spotnap Road, Charlottesville, VA. 22911, hereinafter referred to as "Buyer,"

WITNESSETH:

WHEREAS, the Sellers hereby agree to sell and the Buyer hereby agrees to buy the hereinafter described real estate upon the terms and conditions set forth;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties hereby agree as follows:

1. **PROPERTY:** The Sellers agree to sell and the Buyer agrees to buy the following described easements (the "Property"), to-wit:

Water storage tank/pump station easement: A perpetual easement over all that certain parcel of real estate shown as "ACSA Water Tank and Pump Storage Site" on that certain sketch by Michael Baker Jr., Inc., titled "Proposed ACSA Glenmore Pump Station and Water Storage Tank" and dated August 9, 2011 (the "Sketch"), for the construction, operation, and maintenance of a water storage tank and/or pump station. The Sketch does not show the exact dimensions of the easement, only approximate dimensions. The exact boundaries of the easement may vary slightly

based on final design. The Buyer will prepare a plat once all contingences have been satisfied;

AND

Waterline easements: Easements over all those certain parcels of real estate shown as "ACSA Water Main Easement" on that certain sketch by Michael Baker Jr., Inc., titled "Proposed ACSA Glenmore Pump Station and Water Storage Tank" and dated August 9, 2011, for the construction, operation, and maintenance of water pipeline(s);

AND

Temporary construction easements for the installation of the water line: The Buyer will have a ten foot (10') construction easement on either side of the permanent water line easement, which will expire upon completion of construction. For tank construction, the Buyer may need temporary construction easements on a portion of the exiting parking lot, as may be determined by the Buyer;

AND

Permanent access easement for ingress and egress to and from Steamer Drive and the Water Tank site by the Buyer, its successors, assigns, and duly authorized agents and employees, through the existing parking lot onto Steamer Drive. The exact location of the access easement will be shown on the final plat prepared by the Buyer.

2. PURCHASE PRICE: The purchase price for the Property is ONE-HUNDRED THOUSAND DOLLARS (\$100,000), which will be payable to the Sellers at Settlement.
3. SETTLEMENT AND POSSESSION DATE: Delivery of the deed and payment of the purchase price and the possession of the property ("Settlement") will take place at the Albemarle County Attorney's Office within 30 days of all contingencies in the Contract being fulfilled provided, however, that the Settlement shall take place no later than December 31, 2014. Possession, free and clear of all leases and licenses, shall be given at Settlement, unless otherwise agreed in writing by the parties.
4. INSPECTION PERIOD AND RIGHT OF ENTRY:
 - a. For a period until October 31, 2014 (the "Inspection Period") following final execution of this Contract, the Buyer and Buyer's designated agents and employees shall be allowed full access to the Property, upon reasonable notice to the Sellers, for the purpose of making engineering, topographical, and such additional studies as may be deemed necessary or appropriate by the Buyer for its purchase or future development of the Property.
 - b. During the Inspection Period, the Buyer shall also have the right to examine the title to the Property and report such exceptions as it may find objectionable to Sellers. The Sellers agree to use their best efforts to address and remedy such reported exceptions. If the reported exceptions cannot be cured prior to the Settlement Date, the Buyer may (a) proceed to Settlement, at no reduction in the Purchase Price, taking such title as the Sellers may deliver, or (b) terminate this Contract without penalty, whereupon neither party shall have any further liability to any other party to this Contract.
 - c. In the execution of the right of entry granted hereunder, the Buyer covenants that it shall not commit waste nor otherwise damage the Property. The Buyer further waives any and all claims, liens, damages, losses and causes of action which may be asserted by the Buyer's employees, agents or any third party who enters upon the Property or conducts tests related to the Property at the request of or on the behalf of the Buyer or its agents.
 - d. In the event that the Property is not suitable to the Buyer in its sole discretion, the Buyer may terminate this Contract during the Inspection Period without penalty, whereupon neither party shall have any further liability to any other party to this Contract.
 - e. Sellers warrant that no material change(s) to the Property will be made following the conclusion of the Inspection Period. In the event that any material condition of the Property changes following the conclusion of the Inspection Period such that the Property is no longer suitable to the Buyer in its sole discretion, the Buyer may terminate this Contract without penalty.
 - f. Should the Buyer terminate this Contract during the Inspection Period, the Buyer shall provide to the Sellers the results of any and all tests, audits, or surveys accomplished on the Property, at no cost to the Sellers
5. CONTINGENCIES:
 - a. This Contract is contingent upon the following:
 - i. No existing easements, covenants, restrictions or rights in the Property prohibiting or interfering with Buyer's intended use of the Property.
 - ii. Engineering, topographical, environmental audits, surveys and soil studies satisfactory to Buyer in its sole discretion.
 - iii. Adequate water, sewer and electrical service for Buyer's purpose being economically feasible and available to the Property, satisfactory to Buyer in its sole discretion.
 - iv. Virginia Department of Transportation requirements as to roads and road surfaces being satisfactory to Buyer in its sole discretion.
 - v. The Property being and remaining suitable to the Buyer in its sole discretion.
 - vi. The form of the Deed of Easement is satisfactory to Buyer in its sole discretion. The Deed of Easement shall provide, among other things, that the ACSA may restrict access to the "ACSA Water Tank and Pump Storage Site" to the ACSA, its duly-authorized agents, and the Sellers; and that the Sellers shall not interfere with the Buyer's quiet enjoyment of the water storage tank/pump station to be located within the easement area. The Buyer's use of the Property and any structures thereon shall be subject to all applicable federal, state, and local laws, including but not limited to the Albemarle County Zoning Ordinance.

- vii. Waiver by Glenmore Associates Limited Partnership of the buffer requirements set out in a Deed of Gift from Glenmore Associates Limited Partnership to the County of Albemarle, Virginia and East Rivanna Volunteer Fire Co., Inc., dated January 13, 1992, recorded in the Clerk's Office of the Circuit Court of the County of Albemarle, Virginia in Deed Book 1204, Page 201.
 - viii. Determination by the Buyer in its sole judgment that the Glenmore Community Association, Inc., supports the project.
 - ix. Approval of the proposed Improvements by the County of Albemarle
 - x. Appropriation of sufficient design and construction funds by the ACSA Board of Directors.
 - b. Buyer may void this Contract if any one or more of the above contingencies and/or conditions set forth herein are not fulfilled to Buyer's satisfaction.
6. BOARD OF SUPERVISORS APPROVAL: This Contract is subject to approval by the Board of Supervisors of Albemarle County, Virginia, pursuant to *Virginia Code* § 15.2-1800(B). In the event the Board of Supervisors fails to approve this Contract, this Contract shall be deemed canceled, with no penalty or liability to the Sellers, and of no effect.
7. TERMINATION OF LEASES: Sellers covenant that Buyer is not purchasing the Property subject to any leasehold interest and that Buyer shall have no obligation to honor the terms of any lease or other agreement between Sellers and any third-party that may be occupying or using the Property pursuant to a lease.
8. TITLE:
 - a. At Settlement, Sellers shall convey to Buyer good title to the Property by Special Warranty Deed, free of all liens, defects, tenancies, encumbrances and encroachments, except as otherwise indicated herein, and subject only to such restrictions and easements as shall then be of record which do not affect the use of the Property for Buyer's intended use. If a defect is found which can be remedied by legal action within a reasonable time, Sellers shall, at Sellers' expense, promptly take such action as is necessary to cure the defect. If Sellers, acting in good faith, are unable to have such defect corrected within thirty (30) days after notice of such defect is given to Sellers, then this Contract may be terminated by either Sellers or Buyer at the expiration of such thirty (30) day period. Buyer may extend the date for Settlement to the extent necessary for Sellers to comply with this paragraph.
 - b. Sellers agree to pay the expense of preparing the deed and Form 1099-S.
 - c. Prior to Settlement, Sellers shall provide an owner's affidavit with respect to the Property sufficient to enable Buyer to obtain title insurance on the Property.
 - d. Except as otherwise agreed herein, all other expenses incurred by Buyer in connection with this purchase, including, without limitation, surveys, title examination, insurance premiums, and recording costs, loan document preparation costs, shall be borne by Buyer.
9. PROPERTY CONDITION AND RISK OF LOSS:
 - a. Buyer accepts the Property "as is" in its present condition.
 - b. All risk of loss shall remain on the Sellers until the transfer of possession. If there is any material change in the Property prior to transfer of possession, Buyer shall have the option of terminating this Contract.
10. REAL ESTATE COMMISSION: The Sellers and Buyer hereby acknowledge that no real estate agent was involved in this sale and each agrees to defend against any claim for a commission by reason of any action on their part.
11. ASSIGNMENT: This Contract may not be assigned by Buyer.
12. ACCEPTANCE OF THE DEED: The acceptance of the Special Warranty Deed by Buyer shall be deemed to be the full performance and discharge of every agreement and obligation of Sellers herein contained and expressed, unless it is specifically stated to survive settlement and not to merge with the Deed.
13. MISCELLANEOUS: The parties to this Contract agree that it shall be binding upon them, and their respective personal representatives, successors, heirs, and assigns; that unless amended in writing by Sellers and Buyer, this Contract contains the final agreement between the parties hereto, and that they shall not be bound by any terms, conditions, oral statements, warranties or representations not herein contained; and that it shall be construed under the laws of the Commonwealth of Virginia. The Buyer shall exercise due diligence in carrying out its investigations, obtaining approvals, and satisfying contingencies of this Contract.
14. SEVERABILITY: If any provision of this Contract shall be held invalid, the other provisions hereof shall not be effected thereby and shall remain in full force and effect.
15. FURTHER ACTIONS: Each party hereto shall execute and deliver or cause to be executed and delivered any and all instruments reasonably required to convey the Property to the Buyer and to vest in each party all rights, interest and benefits intended to be confirmed by this Contract.
16. RECORDATION OF CONTRACT: This contract may be recorded in the Office of the Clerk of the Circuit Court of Albemarle County, Virginia in order to protect Buyer from the claims of subsequent purchasers or other persons obtaining an interest in this real estate, or from the claims of judgment creditors, if any, of the Sellers.

17. **AUTHORITY OF SIGNATORIES:** Each party to this Contract warrants to the other that the respective signatories have the full right and authority to enter into and consummate this Contract and all related documents. Sellers shall deliver to Buyer such resolutions, certificates of authority and certificates of good standing as the Buyer may reasonably request.

ACCEPTANCE: This Contract when signed by Sellers shall be deemed an offer and shall remain in effect, unless withdrawn, until the 16th day of November, 2012 at 5:00 p.m. If not accepted within that time by Buyer by a delivery of a signed copy of this Contract to Sellers or Sellers' designated representatives, this Contract shall become null and void.

Buyer accepts this Contract at _____ a.m./p.m. on the _____ day of _____, 20_____.

ALBEMARLE COUNTY SERVICE AUTHORITY

By: _____ (SEAL)
Gary B. O'Connell
Executive Director

EAST RIVANNA VOLUNTEER FIRE CO.,
INCORPORATED

By: _____ (SEAL)
Lanny Moore, President

COUNTY OF ALBEMARLE, VIRGINIA

By: _____ (SEAL)
Thomas C. Foley, County Executive

Agenda Item No. 9. **PUBLIC HEARING: PROJECT: SP-2010-00049. Howardsville Camping and SP-2010-00050. Howardsville Canoe Livery.**

PROPOSALS: SP201000049: Howardsville Camping: Campground with 48 tent sites; **SP-2010-00050:** Howardsville Canoe Livery: Canoe-rental livery on campground site (see SP-2010-00049). **ZONING CATEGORY/GENERAL USAGE:** RA Rural Areas - agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots); FH Flood Hazard - Overlay to provide safety and protection from flooding.

SECTION: SP-2010-00049 Howardsville Camping: 10.2.2.20 Day camp, boarding camp (reference 5.1.05); SP-2010-00050 Howardsville Canoe Livery: 30.3.05.2.1 (2): Water related uses such as boat docks, canoe liveries, bridges, ferries, culverts and river crossings of transmission lines of all types.

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: No.

LOCATION: Baber Lane, Howardsville, at the intersection of James River Road (Route 626) and Howardsville Turnpike (Route 602).

TAX MAP/PARCEL: 139A0000001600, 139A0000001700, 139A0000001900, 139A0000002000, 139A0000002100.

MAGISTERIAL DISTRICT: Samuel Miller.

(Advertised in the Daily Progress on December 31, 2012 and January 7, 2013.)

Mr. Cilimberg reported that there are two special use permits before the Board tonight, noting that the Board is fairly aware of the location of this site in Howardsville between the railroad and the river at the confluence of the Rockfish with the James. He presented an aerial photo showing the location, and another aerial showing the area subject to the special use permits. Mr. Cilimberg noted that there is an access road going to an existing boat landing, and that road is in a public right of way (VDOT right of way), and DGIF owns the property where the boat landing is located.

Mr. Rooker asked if the land on the right of the road is included in the special use permit. Mr. Cilimberg confirmed that it was.

Mr. Cilimberg then presented several pictures of the site, noting the location of the campsite and the boat ramp road, which is near the river, and the sites that would be closest to the river. Mr. Cilimberg pointed out existing structures that are to be removed, and noted a wooded common area, the access to the boat ramp, and the access to town from the State road paralleling the railroad in Howardsville.

Mr. Cilimberg explained that there are 48 tent camping spaces and eight portable toilets proposed. The visitor vehicles would remain in the parking area – with parking spaces provided for both campers and canoeists, bus spaces, and fencing along the railroad tracks. He presented the plan as shown to the Planning Commission, which the Commission asked to be modified in its action.

Mr. Cilimberg said that the Comp Plan provides for the possibility of alternative commercial recreation uses in the rural area. In looking at reversibility there is that opportunity because these are primitive campsites and a parking area. He stated that it should be scaled and sited to cause minimal impact. The potential noise impacts have been addressed by the recommended conditions particularly

regarding amplified sound. Mr. Cilimberg stated that there are no structures, and the campsites are not being developed with improved structures. He said that the main visible impact would be the parked vehicles, which would be closest to the road. Mr. Cilimberg stated that the floodplain is located over the entire property, which does raise concerns of public health and environmental issues. Mr. Cilimberg stated that the recommended conditions of approval are intended to address those concerns, including the removal of the portable toilets and any equipment that would be taken away in a flood.

He reported that there would be no new public infrastructure projects necessitated by the use, but the increased number of customers on the site could increase the need for police and fire/rescue services.

Mr. Snow asked if the individual campsites were lined with railroad ties or anything similar. Mr. Cilimberg responded that there are ties on the site, and those are excess ties from the railroad that were being offered for sale but, according to the applicant, are not intended to be used in the campsite.

Mr. Cilimberg stated that police and fire/rescue were both contacted regarding the proposal, and their response in part was that there would be the potential for long response times. Mr. Cilimberg said they did not recommend denial, but there was some focus on campfire safety from the Fire/Rescue Department. He said that the Fire Marshal stated that an evacuation plan was not required but said they would assist the applicant with one if desired. The only access is via the railroad crossing – which could be blocked by slow or stopped trains or by derailment. Mr. Cilimberg said that staff contacted CSX Railway, and they feel blockage would rarely happen. There is a second track in the area that could be utilized for any stopped trains in order to let other trains come through.

Ms. Mallek asked if CSX said where the siding is. Mr. Cilimberg responded that it is just to the east of the road that crosses the railroad that goes into the site. Ms. Mallek said that was Howardsville Road.

Mr. Cilimberg pointed out that this is a remote location so wireless is limited and variable. There are no land lines available on the site – but there is a consideration for a land line in the nearby existing country store structure in Howardsville.

He reported that the CSX Railway's main concern expressed is keeping people off the railway line. CSX supports the safety fence and recommend warning signs at the edge of the wooded area. Mr. Cilimberg added that CSX also indicated that they could work with the applicant with any crossing gates that might be desired at the railway crossing.

Mr. Cilimberg stated that the potential for flooding does exist, and the conditions would require closure of the campground, the canoe rental, removal of all equipment and vehicles during flood warnings, and removal of the portable toilets. There are no structures permitted or proposed. He said that the entire site is in stream buffer. Tree removal in the buffer has taken place over time – but staff has been working with the applicant to reduce impacts on the wooded portions of the buffer to ensure it is retained and benefits the campsite. Mr. Cilimberg said there are areas to remain forested that are identified on the conceptual plan. The conditions of approval recommended by the County Engineer prohibit tree removal within 50 feet of the river bank. He noted that there are replanting requirements that can be part of the mitigation set during the site plan review. There is the requirement that native riparian species be used for replantings.

Mr. Cilimberg said that the boat ramp is owned by the Department of Game and Inland Fisheries, the right of way is owned by VDOT, and the facility will not block the public access. He stated that staff notes favorable factors in its report as reversibility of activities onsite, a requirement of quiet hours, prohibition of amplified sound systems, the requirement to remove portable toilets when there is a major flood event, and the requirement to notify campers of flood events. Mr. Cilimberg stated that unfavorable factors include the location of campsites and the access road in the wooded portion of the site and close to the river bank could impact the wooden stream buffer on the site, but staff has worked with the applicant on that issue – with a recommendation not to have tree removal within 50 feet of the river. He added that the sole access crosses the active rail line.

Mr. Cilimberg stated that the Planning Commission's recommendation was approval with changes for the campground. He said the Commission wanted relocation of campsites near the railroad tracks, a reduction in the parking spaces from 122 to 100, the use of a NOAA weather radio onsite at all times, validity of the special use permit only through the end of 2014 to allow assessment of impacts and requirement of a new special permit were the use to continue, and the requirement of a facility manager to be onsite at all times when the campground is in operation.

He presented the plan for the site, and said that the biggest change is the removal of campsites that were up near the railroad. Mr. Cilimberg said there is still a common area for tree preservation, and there is another open area that could be planted, which would be addressed at the site plan stage. He said that the 50 feet mentioned includes all of the campsites in the area that goes back to the access road.

Ms. Mallek asked if the roadway was going to be graveled in. Mr. Scott Clark, Planner, stated that it is intended for the road to be an unpaved path, and there won't be automobile access down to the individual sites. He said they would have the campers leave their cars in the parking area by the railroad crossing. The only vehicles going down there would be the truck or golf cart of the campground operator that would carry gear down there. Mr. Clark said they would be creating access paths, but they would not be surfaced.

Mr. Rooker asked where the full-time campground manager would be if there are no structures on the site. Mr. Clark responded that they have discussed a few options. The manager could use a tent or a bus used for canoe rental as a base of operations. There has been discussion of using a space in the country store across the road but he does not know how far that has gotten.

Ms. Mallek emphasized that it does not qualify because it is not on the site, and with a bed and breakfast they require the operators to be on the property.

Mr. Rooker said that it does not seem very feasible to say that someone has to live on the campsite 24 hours a day in a tent, without a bathroom. He added that he does not understand that requirement. Mr. Cilimberg stated that it was addressed in the Planning Commission's recommendations. He then summarized the following conditions as recommended by the Planning Commission:

1. Development and use shall be in general accord with the conceptual plan titled "Howardsville Canoe Livery and Campground," prepared by Gregory A. Watson, and dated ~~August 27, 2012~~ Dec. 6, 2012 (hereafter "Conceptual Plan"), as determined by the Director of Planning and the Zoning Administrator. To be in general accord with the Conceptual Plan, development and use shall reflect the following major elements within the development essential to the design of the development, as shown on the Conceptual Plan:

- location of campsites
- location of parking areas
- location of the access roads for the campsite (no less than 50 feet from the river bank)
- absence of structures

Minor modifications to the plan which do not conflict with the elements above may be made to ensure compliance with the Zoning Ordinance.

2. The area north of campsites 16 through 20 and that part of the "Common Area" shown on the Conceptual Plan that is within the existing tree line shall remain forested. No cutting or removal of trees shall be permitted, except for dead or broken trees that pose a direct threat to a campsite or as permitted by Zoning Ordinance Section 4.3c. Gathering of downed wood for firewood is permitted.
3. The portion of the "Common Area" shown on the Conceptual Plan that is outside the existing tree line may be re-forested. All plantings shall use native tree and shrub species listed in Appendix A of the *Riparian Buffers Modification & Mitigation Guidance Manual*, published by the Virginia Department of Conservation and Recreation; the brochure *Native Plants for Conservation, Restoration, and Landscaping: Virginia Riparian Buffer Zones*, published by the Virginia Department of Conservation and Recreation; and/or Appendix 7 of the *Chesapeake Bay Riparian Handbook*, published by the United States Department of Agriculture.
4. There shall be no temporary or permanent amplified sound system permitted for this use.
5. Quiet hours from 9 p.m. to 7:30 a.m. shall be posted and maintained by the applicant.
6. The campground shall be closed and all portable toilets and vehicles shall be removed while a flood warning ~~or flash-flood warning~~ issued by the National Weather Service is in effect for the portion of the James River adjoining the site.
7. Consumption of alcoholic beverages shall be prohibited in the campground.
8. No trees located 50 feet or closer to the river bank shall be removed. Trees felled or broken by wind, lightning, or other natural event may be removed if they pose a threat to a campsite.
9. Compliance with the Virginia State Department of Health regarding water supply shall be verified by the Health Department prior to issuance of a zoning clearance and the commencement of the special use.
10. The use shall not commence before the subject properties are combined into a single parcel.
11. The number of parking spaces shall not exceed 100 or the number determined by the Zoning Administrator to be necessary, under County Code § 18-4.12, whichever is greater.
12. A weather radio equipped with an automatic alert system shall be present on the site and in operation at any time the campground is open.
13. ~~Special use permit SP 2011-00049 shall be valid from January 1, 2013 through December 31, 2014.~~ SP 20100049 shall be valid until December 31, 2014.
14. A campground manager shall be on the premises 24 hours a day when the campground is open.

Mr. Rooker asked how they could have no amplified sound and have radios. Mr. Clark responded that the NOAA weather radio would be allowed.

Mr. Rooker asked if there was a NOAA site that reported on the weather in that area. Mr. Cilimberg said that NOAA has a weather station that reports for this area, but not for specific sections of the James River. He stated that one of the recommendations from staff was to remove the "flash flood warning," because they are for local streams in the event of a storm and can be in a very wide geography – whereas a flood warning along a river is very specific to that river section. Mr. Cilimberg said that as a river, the James receives waters that run from streams upstream, and thus have a much more predictable rise.

Mr. Cilimberg then summarized the following recommended conditions for the canoe livery:

1. Development and use shall be in general accord with the conceptual plan titled "Howardsville Canoe Livery and Campground" prepared by Gregory A. Watson, and dated ~~August 27, 2012~~ Dec. 6, 2012 (hereafter "Conceptual Plan"), as determined by the Director of Planning and the Zoning Administrator. To be in general accord with the Conceptual Plan, development and use

shall reflect the following major elements within the development essential to the design of the development, as shown on the Conceptual Plan:

- location of parking areas
- location of boat launch
- absence of structures

Minor modifications to the plan which do not conflict with the elements above may be made to ensure compliance with the Zoning Ordinance.

2. There shall be no temporary or permanent amplified sound system permitted for this use.
3. The canoe livery shall be closed and all portable toilets, vehicles, trailers and other canoe livery equipment shall be removed while a flood warning ~~or flash-flood warning~~ issued by the National Weather Service is in effect for the portion of the James River adjoining the site.
4. The use shall not commence before the subject properties are combined into a single parcel.
5. The number of parking spaces shall not exceed 100 or the number determined by the Zoning Administrator to be necessary, under County Code § 18-4.12, whichever is greater.
6. ~~Special use permit SP 2010-00050 shall be valid from January 1, 2013 through December 31, 2014.~~ SP 20100050 shall be valid until December 31, 2014.

Mr. Cilimberg stated that this has been forwarded by the Commission with those conditions for each of the special use permits.

Mr. Davis asked about the condition for the fence. Mr. Clark explained that it is shown on the conceptual plan, so condition #1 covers that.

Mr. Snow said that he does not see any specifications on the fence – height, materials, etc. Mr. Clark said it does not specify on the plan what those elements will be. Ms. Mallek stated that it needs to be specified so that it is not a fence that is climbable. Mr. Snow said it would have to be at least six feet tall and something that is not climbable.

Mr. Cilimberg said the Board may want to include the fence in the conceptual plan elements, if it approves the request.

Mr. Snow stated that in meeting with residents they were concerned that people would hike around the fence across the railroad tracks. Mr. Clark said he discussed this with Mr. Kendall from CSX, who supported the idea of the fence and recommended putting up warning signs at the edge of the wooded area telling people to go back to the existing crossing rather than going around.

Ms. Mallek said that it would work to have the whole boundary having a fence, so it would encourage people to go to the crossing and discourage the middle of the night scamper across the tracks to the store to get supplies.

Mr. Snow stated that he was told the store closes at dark.

Mr. Snow asked why there are 100 parking spaces for 48 camping spaces, and wondered if they were just for day people. Mr. Clark responded that some of the spaces are intended for the canoe livery and for people who park there to use the boat ramp. He said that between the campsites and people coming in to rent canoes, the applicants felt they needed that many spaces.

Mr. Cilimberg said it was the maximum recommended by the Planning Commission, and it had been 122 spaces.

Mr. Snow asked what the distance is now between the railroad tracks and the first tent. Mr. Cilimberg responded that he thinks it is about 100 feet.

Ms. Mallek said that she did not realize each campsite was 50 feet deep, and that might actually allow for more people in one spot – potentially raising the number to 200 or more people for the entire campsite. She also asked what the cover is on the parking areas. Mr. Clark responded that it would be settled during the site plan process. The applicants want to keep as little surfacing as possible on there – but that always comes down to the County Engineer's judgment on what is appropriate for the site, which has not been established yet.

Ms. Mallek said that the trucks coming in to service the port-a-potties would require a substantial surface to get in and out, and to remove them when they are full will not work with grass if it is rainy and muddy. She asked staff to point out the location of the port-a-potties. Mr. Cilimberg confirmed that there are four in one location and four in another. During the site plan process the necessary surface for access will be part of the determination.

Ms. Mallek stated that this seems to her to be way outside of the bounds of what the Board has used in the past as use of the buffer, even though it is not a structure. She said it is a lot more heavy traffic, and she also noticed a big difference in the view of the trees in the overhead photograph so obviously a lot of trees have already been removed. She said that she would like to know more about that circumstance and why there is no accountability for that behavior.

Mr. Rooker said there is no prohibition for cutting trees in this situation.

Mr. Thomas commented that he would guess that the trees were probably cut away long ago.

Ms. Mallek said it was done recently. Mr. Thomas said he use to camp out further down the river, and hundreds of trees had been cut out for logging.

Ms. Mallek said that the photos show that the cutting has been done since the aerial was taken.

Mr. Rooker stated that staff just sent out a memo today that says "Tree cutting in the rural area district and in the flood hazard overlay district is not a violation of the Zoning Ordinance."

Ms. Mallek asked about tree cutting in the buffer for development purposes. Mr. Cilimberg clarified that development has a different standard that is applied under the Water Protection Ordinance and under State law, and what can be done in a silvaculture or agriculture case is different. Ms. Mallek responded that this is clearly neither of those.

Mr. Cilimberg emphasized that it is rural area and would not be a violation for the applicants to cut trees. He also stated that the photos show that some of the trees have been cut recently, but others were cut some time ago as shown by the growth that has occurred over them. He added that the applicant may want to speak to this.

Ms. Mallek said that the James River may not rise very fast at this point, but a very large rain event could be 50 miles upstream and hit this area, especially since there is a double watershed where the Rockfish River and the James come together. She said that she does not think the Board should be too quick to dismiss that as a no-risk element, especially when people are sleeping and they have no notice that anything is coming. She also stated that she does not see how anyone can comply with the conditions that all the materials and the port-a-potties will be removed in time when it is the middle of the night. The loss of life is the worst issue, but all of those other elements going downstream is certainly a very serious concern.

Mr. Snow said that he cannot imagine people waiting until the middle of the night to leave if it has been raining for two days.

Ms. Mallek said she thinks the applicants will stay in business as long as they could, and she is just trying to figure out how this would work in a practical sense.

At this time, the Chair opened the public hearing.

Mr. Roger Nelson addressed the Board, stating that he is representing Howardsville Canoe Livery and Campground, and said his partner – Jimmy Crews – is also present. Mr. Nelson said that he will be the General Manager of this campground. He stated that he finds it interesting where he has listened to many, many people talk about not wanting to hear gun shots from a firing range, and now he is up against a group of people who do not want to hear children laughing and playing ball in a field.

Mr. Nelson stated that the property on the right going into the road is owned by Mr. Crews but is not part of the campground. That is his private property and has structures that have been on it for a long time – including a building that is the remnants of his uncle's store and a cinder block well house. Mr. Crews use the one building as a little private kitchen – church groups meet there, civic organizations, political rallies, etc.

Mr. Rooker asked what takes place in the structures that are on the property. Mr. Nelson responded that they are buildings that have been on that property for many years, one of them being a small kitchen and stove that is still used.

Mr. Rooker noted that those are not part of the site plan and have nothing to do with the canoe livery. Mr. Nelson responded that that was correct.

Mr. Nelson said that the trees Ms. Mallek mentioned were knocked down by a storm and were subsequently cut up and carried off, leaving a tall stump. He stated that nothing has been removed, and once they learned of the Watershed Protection Ordinance no trees were cut from there. Mr. Nelson said that the whole idea of the riparian buffer is stream bank preservation, and if a huge tree is hanging out over the river falls it takes a big radius out of the stream bank and the sediment is then washed in the river. He stated that this could be prevented by a professional tree expert, and they have one that works with them. Mr. Nelson stated that in their site plan they have committed to cutting damaged, diseased or dangerous trees, but want to leave a canopy as shade for campers. He added that they are not trying to abuse this site.

Mr. Nelson stated that he owns a teepee and wanted to use that on the site as a temporary structure, and felt that it would be a novelty in the area, but obviously it must be a bad idea. He said that they have eight port-a-johns, and he could always use one of those as a bathroom. Mr. Nelson then stated that he would prefer to respond to questions Board members may have.

Ms. Mallek asked what is proposed for communication for emergencies, and if he's planning to bring in a landline. Mr. Nelson responded that he has several options – installing a pay phone at the Howardsville General Store, which is right across the railroad tracks; installing a telephone in the old church, which is rented by Mr. Crews; or installing a land line onsite if they can get the infrastructure and get someone to pay for a \$7,000 bore under the railroad tracks.

Ms. Mallek said there is no option to have instant communication for emergencies on the property. Mr. Nelson said that was not true. When he came before the Planning Commission, Mr. Cal Morris

indicated that he was able to make calls from his Blackberry. Mr. Nelson stated that he has made calls from the boat dock, but the service has been intermittent.

Ms. Mallek said that the maps from the cell phone companies make it look "pretty uncovered." Mr. Nelson stated that Mr. Crews owns the property and knows the spots onsite where there is better service.

Ms. Mallek said that her concern is middle of the night emergencies. Mr. Nelson said that for middle of the night emergencies, it would take some time to get vehicles there anyway, but the Howardsville General Store is not too far away to make an emergency phone call. People do all kinds of backwoods and wilderness things a long way from a telephone. Mr. Nelson added that a telephone at the store would probably take care of it.

Mr. Boyd asked if there would all be primitive sites, with no hookups. Mr. Nelson confirmed that they are all primitive sites.

Mr. Nelson stated that regarding vehicles and service trucks coming in, he had originally suggested a heavy mulch trail, but the Fire Department advised against it because of fire issues and recommended leaving it a natural trail. Mr. Nelson said that the septic contractor has a four-wheel drive pickup truck to pick up port-a-johns, and already serves remote sites throughout Nelson County, Amherst, and southern Albemarle.

Mr. Nelson stated that the opposition cites numerous environmental complaints, and to get this far in the process he had to go through the Albemarle County Health Department and contact the State Health Commissioner. He said he described the full operation to the local Health Department and then it went to Richmond – and the Commissioner granted all the waivers. Mr. Nelson said that Commissioner Rimley said in her letter of approval that she sees "no threat to the public," and "no threat to the environment" if the campground operates in the manner proposed.

Mr. Nelson emphasized that they are just trying to offer families with young children someplace to interact with nature – get the children away from a computer monitor and virtual games, and provide a family-oriented, environmentally friendly camping site.

Mr. Snow asked if the parking spaces are not constructed, where people park now for the canoes. Mr. Nelson explained that they are in the parking lot to the right as you come in, and that would continue as it is public parking.

Mr. Snow asked about alcohol and large groups of people showing up, and if an onsite manager would take care of that. Mr. Nelson responded that they were not planning to have large groups showing up, unless it is a church group, civic group or family reunion. He said that "no alcohol" will be their policy, and if they enforce it then noise should not be an issue. Mr. Nelson stated that he spoke with Ms. Sherrie Fritz, whose parents operated the Red Hill KOA for several years, and she managed it for approximately five years in the late 1980s. He said that when he mentioned to her that vehicles would not be in the campground at campsites, she said that he would not have any noise.

Mr. Snow said that in the past there have been loud rowdy groups at the site, but it seems they have been run off, and asked about across the river. Mr. Nelson responded that that is going to be a problem. He said that there is already a campground across the river in Nelson County operated by James River Runners – and they occasionally get a little noisy because it is completely unregulated. Mr. Nelson said that no staff is there and they do not have water, and sometimes it is really messy there. They can hear their vulgarity on this side of the river, and the only thing they can do in that case is call 911.

Ms. Mallek asked about the provision of fresh water on the site. Mr. Nelson said they have a well on the property with water available on the campsite side of the property, and that has been there since before Hurricane Camille. He stated that he has worked with Mr. Jeff McDaniel and Mr. Eric Myers at the Health Department, and they have taken care of that with the one remaining item being to finish up the provisions requested in the permit. Mr. Nelson stated that they are delaying that until receiving final approval from the Board, before investing any more money and time.

Mr. Steve Blaine addressed the Board, stating that he represents Ms. Cara Eisenberg, who was unable to be at the meeting in person. Mr. Blaine said that his client owns an historic residence that literally overlooks the proposed campground and canoe livery site. He said that Ms. Eisenberg's property, known as Westcoat, is a registered historic landmark built in about 1830 on the site of the original Howard Plantation. He said that his client opposes the applicant's proposal. Mr. Blaine stated that he has visited the site and has met several of the neighbors in Howardsville, and the community is in complete unity in their opposition to this proposal. He said that after considering the negative factors, it seems inconceivable that the Board would approve this transient, intensive use at a confluence of all these potential hazards.

Mr. Blaine stated that there are those here tonight who are better equipped to elaborate on that, but the thrust of their comments will be that the answers the Board hears to the proposed risks are really not adequate. The issues include: unreliable cell phone coverage, flood hazard risks, the inadequacy of a NOAA support system, and the possibility of train wrecks. Mr. Blaine said that the resident's testimony will demonstrate the essential finding that the health, safety and welfare of the public will be protected by approving this proposal; the Board simply cannot make that finding. He emphasized that there are lots of reasons why the proposed conditions cannot adequately address the risks, and one speaker will talk about

recent history and the track record on enforcement of conditions. Mr. Blaine added that one speaker will address the impact of the proposed use on the character of the district, which is a very unique historic site in the community. He concluded his remarks by asking the Board to deny the application.

Mr. Victor Woolley said that he lives on James River Road in Howardsville located downstream from the confluence of the Rockfish and James Rivers and the campsite. Mr. Woolley said that he and his wife kayak on the river and purchased their property there because it has a great view of the James River. He stated that he wanted to raise issues about flooding and river safety. The entire campsite and canoe livery will be within the 100-year hazardous floodplain. Mr. Woolley said there have been three catastrophic floods since Hurricane Camille in 1969, one that crested 40 feet above the regular river level. He stated that there have been 39 major floods over the past 30 years that have either partially or totally inundated the area of the campsite. Mr. Woolley said that the annual floodplain where the campsite is planned flooded twice this past year alone, and that was a drought year. He noted that in the latest site plan, half of the tent sites are in the annual floodplain only four or five feet above the normal level of the James River. There are 19 tent sites in the river run fringe, which can rise rapidly and sweep almost everything out of its path. Mr. Woolley said that these tents could be pitched at the top of the river bank, barely five feet above the river's annual flow level. He stated that the river could rise before the campers are aware of it, with little or any time to flee. There is a long history of heavy bank erosion at the site and serious flooding several times a year exacerbated by the confluence of the Rockfish River just above the campsite.

He mentioned that the sites have been cleared, with many of the buffer trees gone along with all of its shrubbery and low-level vegetation. Mr. Woolley said that it is now nearly all mowed grass, in direct contradiction to the County's stream buffer guidelines, which state that "each stream buffer must be retained and incorporated into design of the land development to the fullest extent possible" and that "no indigenous vegetation within the stream buffer shall be disturbed." Mr. Woolley stated that under this plan, the site is in serious danger of hazardous fecal matter, chemical waste, and creosote railroad ties heading toward the Chesapeake Bay due to the near impossibility of clearing the campsite in case of a flood. Because it will be extremely difficult to service this site in case of a flood, he asked that the Board reject the applicant's request.

Mr. Tom Schlesinger said that he and his wife have lived in the old Howardsville School since 2005. He said that Mr. Woolley pointed out that the campground raises safety concerns, particularly the precise location of the site, which is one of the more hazardous places on the James River because of the confluence with its biggest tributary – the Rockfish River, which is particularly troublesome because it floods quickly, suddenly, violently and repeatedly. He said that the whole site is part of the Flood Hazard Overlay District, and according to Section 30 of the County Code, camping facilities are not among the special use permit activities that are allowed in flood hazard districts. Mr. Schlesinger said that the Planning Commission dealt with the communications issue by requiring a NOAA radio, but there are no NOAA flood warning stations on the Rockfish River. He noted that there are no NOAA flood warning gauges on the James River in all of Albemarle and Nelson, or adjoining counties, with the closest one being in Botetourt County – 85 miles from Howardsville. The NOAA radio will not be a helpful tool in event that the site needs to be evacuated. Mr. Schlesinger said that rather than specific timely information, you will hear general warnings about flood possibilities in Central Virginia, making it difficult to plan an evacuation. He stated that he has submitted a map of the NOAA gauges, and some of the other speakers will talk about ways in which the Planning Commission fell short in researching and placing conditions on the proposal.

Mr. Schlesinger said that speaking only for himself, it seems the Mr. Crews is a good fellow and when he says he wants to be a good neighbor, he wants to believe him. He added that it just seems to him that mother nature, a busy railroad track, the difficulty in getting reliable communication to distant emergency services, and the County ordinances are all stacked against Mr. Crews. Mr. Schlesinger urged the Board to reject the proposal as it is currently written, and echoed an earlier speaker who emphasized common sense. He asked why Albemarle County would want to be the county that approves a campsite on a floodplain, next to a railroad track, in a community that opposes the project.

Mr. Marvin Ripley said that he has lived in Howardsville for the past 64 years. He is here tonight to express safety concerns about the busy railroad line and its' close proximity to the campsite. He said that there have been three train derailments and collisions at the proposed site or very close to it in the last 25 years. He has provided Board members with a set of photographs of these accidents. Mr. Ripley stated that with these accidents, people were injured and coal cars were scattered all over the road in the site of the proposed campground. In each case, it was a complete mess. He said that the only way in and out of the campground is a single, unguarded railroad crossing. Many times in the past this crossing has not been available for pedestrians or vehicles due to accidents, major track repair, signal malfunctions, or because very long trains are completely stopped. In 1989 a derailment closed the crossing for two days.

Mr. Ripley stated that normally 15 to 20 trains pass through Howardsville each day. Most of the trains are coal, but some will carry fuel and chemicals. Each train averages about 130 cars and is approximately 1.5 miles long, traveling at 45 mph and takes about an hour to stop when the brakes are applied. He said that there would be no chance of halting in time if children, animals and adults are on the line, even if the County installs safety barriers, lights and bells. Mr. Ripley said that the cost to taxpayers to upgrade the railroad crossing will be between \$150,000 and \$250,000. Because the campsite will be enclosed by two dangerous rivers and the rail line, there will be no way to evacuate campers in the event of a train derailment or get into the camp for another kind of accident.

He said that in talking to CSX, they wanted the proposed fencing to go the entire length of the campsite and to be of substantial standard. He said they wanted warnings signage to be posted along the fence line that directed pedestrians to use the crossing, and wanted all camp staff to take the rail safety course. Mr. Ripley stated that CSX was particularly anxious that the campsite insert a warning and disclaimer about the dangers of crossing the track written into every camper's contract. Mr. Ripley said that they suspect that because of the general store immediately across the road children and adults will circumvent the fence and cross it anyway – as well as hanging around the railroad property. There is also a very appealing trestle bridge behind a spare line that regular houses dangerous railroad maintenance equipment. He concluded by stating that having a campground immediately adjacent to this busy freight line would be a reckless endangerment to the public.

Mr. Ripley also asked to see the photograph again showing the buildings on the subject property, and once viewing them said he could tell Board members for certain that none of the buildings were there before Hurricane Camille.

Mr. Leighton Turner said that he has lived in Howardsville for the past 29 years as a retiree. Mr. Turner said that he loves his neighbors there and loves the location, and is just very happy there. He stated that they just do not need hundreds of people coming into the community for this campsite. He presented pictures of a train derailment and a recent flood in which the water on Route 602 was completely over the road. He added that this location is pretty dangerous.

Ms. Danielle Johnson said that she has lived in Howardsville with her husband for the past four years and would share their concerns about emergency response in the event of a serious accident at the campsite. Ms. Johnson stated that the campsite is situated within the floodplain of two rivers and is adjacent to both a busy freight line and James River Road, where vehicles regularly speed along the straightaway. She said that immediately across the busy roads and an unguarded railroad crossing is a general store that sells candy, snacks and alcohol – which poses a double safety hazard to children, animals, the elderly and those who have been drinking. Ms. Johnson noted that there is no sidewalk or pedestrian crossing over the road. From the coverage maps she provided it is evident that there is no cell phone reception at the campsite nor in the village at all. None of the residents can use our cell phones in our homes and no land line is installed – so there will be no way for camp staff to contact emergency services is a camper is in a serious situation. She mentioned that there is no requirement for onsite EMTs or first responders, or for first aid and basic firefighting equipment. Ms. Johnson said that the applicants all reside in other counties, and their assurances that they are only a phone call away are neither enforceable nor realistic. She said that it takes at minimum 30 minutes for the nearest fire and rescue squad to arrive from Scottsville. Frequent long trains could mean substantial delay in emergency response time as well as increased risk of accidents, dramatic injury and death.

Ms. Johnson stated that the simple answer to mitigating these concerns is only with taxpayer and County money, such as reducing the speed limit, installing additional road signage and a pedestrian crossing, and increasing police presence to enforce these measures. She said that mitigating the railroad concerns would require a high, secure fence, additional warning signage, and updating the crossing barriers – all to assist a business that is not even based in Albemarle County, will not employ Albemarle residents, and will return almost no taxes to the County. Ms. Johnson said that it has been reported that the general store owner is in favor of the proposal, but that is not true. The store owner is actually worried about more break-ins and shoplifting, and the community is deeply worried that there will be a sharp rise in crime and break-ins, and that campers paying a minimum amount will stay as long as they like, wander the community, and vandalize homes. They, as a united community, are vehemently opposed to this campsite and will be vigilant in their observing and reporting any serious violations to the police, the Supervisors, and the County Planning staff, as they occur. She asked the Board to deny the request.

Ms. Karen Firehock, a resident of 10955 Howardsville Turnpike, said that the entire community of Howardsville is opposed to the request to have overnight camping along the James and Rockfish Rivers. Flooding, lack of adequate emergency response time, no phone service, visual intrusion, pollution from porta potties washed away in floods and many other hazards make this site inappropriate as a public campground, and a special use permit should not be granted. Ms. Firehock stated that the site of the confluence of two rivers is unsafe, and the entire campground is within the 100-year flood plain. This area used to contain the business district of Howardsville which was wiped out by a massive flash flood from Hurricane Camille and subsequent floods in 1974 that were actually higher than Camille. She stated that none of the applicants has managed a campground before, and they are ill-equipped, unwilling, or unable to undertake the steps necessary to operate this site in a safe and professional manner. Ms. Firehock pointed out that Mr. Crews does not have a positive track record for meeting County and State codes, and they have cut some of the trees down already in anticipation of getting them out of the way for the campsite.

She said that Mr. Crews has already built a house in the flood plain, and the County discovered it and had him remove it; he has already cleared trees and shrubs – most of them healthy and large – removed without seeking permission. Ms. Firehock said that the applicant has not been cooperative with state agencies or the County, and erected a gate across the public right of way that has never been closed by VDOT. Mr. Crews also claimed that the DGIF boat ramp was his boat ramp, and that was in the application that the Planning Commission received. Ms. Firehock said that Mr. Crews never had the right to open and close a boat ramp or a road, yet he gave himself this right. She stated that the residents had to alert the County and DGIF as citizens to make him reopen the road and the ramp, yet he still has "Keep Off" signs posted on the Game Commission property. Camping is already occurring at this site, and Mr. Crews is already running his canoe livery from there. Ms. Firehock mentioned that neighbors alerted staff to this situation, but were told that they could not tell if this was occurring, although his website clearly says to "meet at the campground to be picked up" even though the applicants reside in Buckingham County.

She said that the Board needs to be aware not to trust what the applicant is saying. The first time she met the applicant he was quite inebriated right next to the campground site where the "no drinking" would be allowed.

Mr. Tim Lewis said he lives in the old Howardsville Bank, which is just around the corner from the proposed campsite. Mr. Lewis said there are numerous reasons why the Board cannot find that the health, safety and welfare of the community are protected by the two special use permits before it. He stated that there is no practical way to assure the safety of campers and canoers in this location because of the unpredictability of flood waters from the James and Rockfish Rivers. The proposed NOAA warning system will be totally ineffective for reasons stated earlier. Mr. Lewis said that the confluence of these two rivers is so dangerous that after Hurricane Camille, VDOT itself relocated its road bridge above the confluence. He stated that there is an added risk of the site confined on the other side by the railroad tracks, and it would be virtually impossible to evacuate campers in the event of a train derailment or to get into the campsite in the event of a train accident. Mr. Lewis said that approving a 24/7 intensive use in this area, knowing that there is no cell phone reception in the campsite – and there is not – and no landline, and that the general store owner is opposed to the campsite and will not want a payphone, as she is worried about break-ins and petty larceny. In an emergency, campers will be knocking neighbor's doors – that's what will be happening."

He stated that in addition, the proposed use poses an unacceptable risk of degradation of the general environment as well as adjoining properties. Mr. Lewis cited concerns over the creosote railroad ties, port-a-potties containing 50 gallons of chemicals and up to three tons of human waste, 48 barbecue pits, 12 teepees, and up to 100 vehicles on the site, and it will be totally impracticable to remove all of that equipment in the event of a heavy storm or sudden rise of the river. Mr. Lewis emphasized that the other factor to consider is the severe impact it will have on the rural and historical character of the surrounding area. He stated that Howardsville is one of the founding communities of Albemarle and predates the County, having been founded by some of the greatest names of Central Virginia – including the Allens, Howards, and Cabells. Mr. Lewis said that their responsibility is to protect the rural heritage and forge a plan to allow growth and provide jobs for the rural economy, which this plan does not. They need good jobs in sound rural businesses that will promote tourism such as wineries, apples and peach orchards, and camping, birdwatching, etc. They are in favor of all of these activities if they are well-run and represent industries that are safe, create jobs, enhance the rural character and take advantage of the tremendous and huge tourist potential of the area. They do not need a desperately unsafe and ill-conceived proposal that will provide no employment for County residents and cost the taxpayers of Albemarle.

The Chair asked the applicant if he had any additional comments.

Mr. Nelson reminded the Board that the Planning Commission sent this with their recommendation, which was forwarded to them through the recommendation of Community Development staff. He said that all seven Commissioners voted in favor of this proposal and made a sound decision. The campground will only be intermittent use – five months of the year – and they have a two-year probationary period for compliance. Mr. Nelson said that he has heard many storm warnings on the radio, and you cannot protect everyone. He stated that all of these people are citing woe and misery and drunken debauchery at this campground, yet they participated in this meeting by driving here on a rainy night. Mr. Nelson added that there are already two campgrounds in southern Albemarle – one in Scottsville, and one at Hatton Ferry, and there are not big issues there with emergencies, or fire departments and ambulances being called in. He said that there is an occasional accident everywhere, but it certainly should not be a problem. Mr. Nelson stated that if there is a life-threatening situation, Pegasus can lift people out in the event the train is blocking the road.

He said that Mr. Crews having built a house there was a mistake because he thought he was grandfathered, and the house is gone. Mr. Nelson mentioned that he is a soil evaluator and designs drain fields for residential and commercial establishments, and several of the speakers have drain fields that run right into the creek – which would not be permitted now. Currently those drain fields are in full violation of the County Code. One of the neighbors, Mr. Lewis is putting chloroform bacteria in the stream that runs into the Rockfish River and then into the James River so the applicants are not the only bad guys.

Mr. Nelson said that Mr. Smith from the Planning Commission made a statement after hearing the opposition at the meeting: "You know Howardsville sounds like such a dangerous place, I'm surprised that any of you moved there." Mr. Nelson said there are no train wrecks in Howardsville that kill people; the railroad crossing does not get blocked. There are concerns expressed about sound disturbance, yet the trains come through there and rattle the windows with their engine noise. He also stated that campers will be allowed to have radios, but they will be asked to turn them down if adjacent campers can hear them. Mr. Nelson said he cannot do anything about the trains; they come through on a regular basis. If the ground is flooded, they would not let people in the campsite. He added that only a few of the people in the community can see or hear the campsite. Mr. Lewis' house is over 1100 feet around the bend; he cannot see or hear the campsite. Mr. Nelson stated that the opponents cite numerous requirements from CSX, but he finds it ironic that the railroad has not initiated any correspondence with the applicants to address those concerns.

Mr. Snow asked if there were any railroad ties are being used at the campsite or the parking area. Mr. Nelson responded that there will be none used in the campsites themselves, but in a meeting with Community Development staff it was suggested that railroad ties be used. He said that they do not expect to be operating at capacity. They have enough area to move cars around so they can keep natural vegetation established – but there will be no railroad ties.

Mr. Rooker said that someone distributed a list of permitted uses in a floodway and a flood fringe area, and it didn't seem to indicate that campsites were allowed. He asked Mr. Davis if this is a floodway area or a flood fringe area. Mr. Clark responded that the entire site is in a floodway according to FEMA.

Mr. Rooker said that if that was an accurate description of the ordinance, he is not sure he understands what allows a campsite location within a floodway. He stated that it seems that campsites are allowed in the flood fringe by special permit, but not in the floodway. If that is correct in terms of the ordinance, he does not see how this use can be permitted. Mr. Cilimberg said that a zoning determination is made with each application that the application can be legally reviewed, and zoning has cleared this application for review. He said that Mr. Francis McCall from Zoning might be able to speak to that clearance.

Ms. Mallek said that it is either in the floodway or it is not, and the Board needs to get clarification to get that sorted out.

Mr. Rooker said he wants an answer before the Board continues this discussion. Mr. Davis said it is an accurate depiction of the Code. He added that he was not familiar with the zoning determination in this case, but it appears that it most likely would have to have been classified as a water-related use.

Ms. Mallek stated that it would apply to the canoe livery, but not if you are sleeping there.

Mr. Rooker said if that is an accurate description of the Code, he does not see how this can be approved. Mr. Frances McCall, Planner, stated that the use is listed under the by-right uses as "recreational uses," but it does not specifically call out campgrounds. That was the interpretation that was made, that that's the recreation going on – people are camping.

Ms. Mallek said that hiking and day-use things are recreational, but she does not see camping as falling under that.

Mr. Rooker stated that in the discussion of camping, it says it can be permitted by discretion in the fringe areas – not in the floodways. It is not listed as a use that is allowed by special use permit.

Mr. McCall said that the use that's permitted by the special use permit is the day camp in the RA, and that is where the campground comes in as the use permitted as a by-right use in the rural area. He explained that under the by-right uses in the floodway, it lists recreational uses that exclude structures of any kind and uses involving human habitation – such as parks, swimming areas, and golf courses.

Ms. Mallek said that human habitation is camping. Mr. McCall stated that the definition refers to "living in dwellings" and "structures." He said that the KOA was approved as a day camp, and those sites near Red Hill are campsites.

Mr. Rooker asked if that was that in the floodway. Mr. McCall responded that it was not.

Mr. Davis clarified that the zoning interpretation is that it is an RA special use, but within the floodway it is also considered a recreational use which is a by-right use in the floodways. The only special use permit required is that required by the RA zoning. The floodway does not require a special use because it has been classified by zoning as a recreational use.

Ms. Mallek asked if it had been classified by interpretation or classified by Code. Mr. Davis responded that it was classified by interpretation of the Code.

Mr. Rooker said to him it seems to be a fairly constrained interpretation.

Mr. Nelson stated that he heard complaints about erosion potential, but the soils are classified in the County's soil survey as tocooa and becumbe soils, which are highly permeable and not an erosion hazard. He said that he has done his research. His background is in geology and soils, and geomorphology. He stated that FEMA's floodway designation is not the actual floodway, in actuality the floodway is defined by the channel, which contains the floodwaters. He said that once the floodwaters slow down they drop their sediment load and create a natural berm – beyond that it is ponded water. The heavy sediment load settles out on the edge of the floodway and the floodway fringe begins right there. Some of the campsites are in the floodway but some of them are technically in the floodway fringe.

Ms. Mallek said that like it or not FEMA is the authority in this circumstance, and the Board cannot just disregard what they say.

Mr. Rooker stated that he would not support this application. This is in a unique historic site. Special use permits are discretionary. There is no 'right' to have this use here. Mr. Rooker said he really questions the interpretation which even permits the use there, because it seems to him the Code is fairly clear and that it is not allowed. He said that the Code makes it clear what adjacent properties think about a special use permit application, and the Board is not supposed to approve something that is a substantial detriment to adjacent properties. Virtually everyone who is anywhere near this proposal is opposing the application. These are people with property rights also, and their property rights are recognized in the County's ordinance. Mr. Rooker stated that given the combination of the floodway location and railroad track with significant volume he cannot think of a worse combination from a safety standpoint. There are going to be people coming who are not familiar with the area and who will likely have children and pets. In his opinion, this is just a recipe for disaster. Howardsville has had 39 floods there in the last 30 years where this property was underwater, and it has had a number of train derailling there.

Mr. Rooker said that the applicant did a very good job of making his case, but a special use permit runs with the land. There is no assurance that this will continue to be owned and managed by this party. He also asked how the conditions would be enforced, such as the radio warnings and management presence onsite. It seems to him to be impossible to enforce the conditions, and that is to the detriment of the people who would be there and also the people in the surrounding properties. Mr. Rooker said there is no active police coverage down there frequently, and enforcement will likely be very expensive. He noted that this is not something that will provide a shot in the arm for economic vitality in the area, so the question is whether the Board should approve a discretionary use for the benefit of a party when there are all these other factors on. He does not think the application should be approved and will not support it for the reasons he has stated.

Mr. Snow said that he and his family have camped in places that are prone to flooding. The Health Department checked off on the proposal stating that it has no problem with the proposal. The Police, and Fire and Rescue Departments checked the proposal off with no problem. CSX Railroad has indicated that they have a sidetrack in the event trains get stuck. The State does not appear to have a problem with the proposal. The campsite will have quiet hours. The special permit is on a two-year trial basis. If there are complaints and the use does not work out, the Board can remove the permit. There are no guarantees in life and without exception every other agency has checked this off as being a suitable area for camping on a temporary basis. For those reasons, he will support the request.

Mr. Rooker said that the police and fire and rescue do not usually weigh in on applications, nor do railroad departments, so he does not attribute a whole lot of value to their opinions.

Mr. Boyd stated that the last train wreck was 20 years ago – 1993 – and a lot of things have already been put in motion for this, such as the fence. He said that this is a two-year approval so it will come back to the Board. The conditions will also stay with the special permit even if someone else were operating it. Mr. Boyd said that the community itself has already said it will be policing the site. He is sure that any violations will be reported to the County.

Mr. Rooker said that someone cannot be cited for violations unless the Zoning Department actually witnesses it.

Mr. Boyd stated that he was referring to environmental issues and such, adding that there was very little that was mentioned by the people opposed to this that had to do with the impact on them. He said that there were concerns about vandalism and looting, and knocking on doors to make a call – but that would not bother him if someone was in trouble. He will support the request because he thinks there has been adequate good work by County staff and good work by the applicant to bring forth mitigation of the negative impacts. Mr. Boyd stated that he has been camping in locations that are far more remote than this, and his thoughts did not pertain to the proximity of emergency services. He did not have access to cell phones when he camped, and it was not a major issue.

Ms. Mallek commented that Mr. Boyd probably was not in danger of getting swept away by a flood though.

Mr. Boyd asked staff how quickly a flood could come down as a flash flood.

Ms. Mallek stated that the topography of Nelson is almost vertical, like West Virginia, and the water moves very fast in a flood situation. They are talking about a galloping river here. She said that she disagrees strenuously with staff on the danger regarding flooding. Her lake is 100 feet lower in elevation than her house, and although she knows her house will not flood, but even with just four inches of rain her lake can rise 10 or 15 feet in five minutes when the right collection of water happens. Ms. Mallek mentioned a recent story from West Virginia in which a whole group of campers got washed away from just this same type of occurrence. It also came to her mind that during last summer's derecho in which no one took seriously the warnings given for occasional thunderstorms. She said that if they could get advanced NOAA warning, that would help, but in this situation it may not be possible to get that information and pack up in the middle of the night – especially with an outside vendor for the porta potties. It just does not seem practical to her. She also agrees with many of the other comments about the lack of proper ability to care easily for the property without tearing it all up and removing the contents of the porta potties, etc. She said that she thinks it is a terrible burden to put on community members to say the Board is going to let this happen and you all are in charge of keeping track and making sure that they do it right. Ms. Mallek said that it is up to the Board to ensure that this is something that can function appropriately and can be done successfully and safely. Bad things happen but she would rather not be the one that causes that to happen by giving permission someplace where it is not useful.

Mr. Thomas commented that one of the residents made a statement in the Planning Commission minutes that the delay from Nelson to Howardsville is 24 hours. He said that he thinks people will be safe there. He said that he has camped on the river many, many times even through storms.

Mr. Rooker reiterated the flooding history of 39 floods in 30 years.

Mr. Dumler said that he feels kind of bad for the applicant as he has worked hard with staff to come up with conditions to try to ameliorate some of the bad conditions inherent with this use, but he agrees with Mr. Rooker and Ms. Mallek that some parcels just are not suitable for some uses, and that is why this process exists. It is on the wrong side of the tracks, at the confluence of two rivers, in a historic district, and he cannot in good faith support this request.

Mr. Thomas commented that on a fishing trip, going from the Rockfish into the James, upon meeting the waters there it completely flipped his boat. He noted that it was not a flood stage.

At this time Mr. Snow **moved** to approve SP-2010-00049 subject to the conditions as recommended.

Mr. Davis said that there was a suggestion that condition #1 add an element for the location of the fence at a height of not less than six feet. Mr. Snow **agreed** to include that amendment in his motion.

Mr. Thomas asked about the warning signs along the fence.

Mr. Clark said that he spoke with the railroad company about the signs, but they did not mention the height of the fence.

Mr. Snow noted that it was something he had brought up.

Mr. Boyd **seconded** the motion. Roll was called and the motion **failed** by the following recorded vote:

AYES: Mr. Boyd, Mr. Snow and Mr. Thomas.

NAYS: Mr. Dumler, Ms. Mallek and Mr. Rooker.

Mr. Davis noted that there is also a canoe livery special permit request before the Board.

Ms. Mallek said that there is a possibility of a very successful day use for the livery. It was the overnight sleeping she was most concerned about.

Mr. Rooker said he would also support the canoe livery.

Mr. Snow **moved** to approve SP-2010-00050 with the six conditions as recommended. Mr. Rooker **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Boyd, Mr. Dumler, Ms. Mallek, Mr. Rooker, Mr. Snow and Mr. Thomas.

NAYS: None.

(The conditions of approval are set out in full below:)

1. Development and use shall be in general accord with the conceptual plan titled "Howardsville Canoe Livery and Campground" prepared by Gregory A. Watson, and dated Dec. 6, 2012 (hereafter "Conceptual Plan"), as determined by the Director of Planning and the Zoning Administrator. To be in general accord with the Conceptual Plan, development and use shall reflect the following major elements within the development essential to the design of the development, as shown on the Conceptual Plan:
 - location of parking areas
 - location of boat launch
 - absence of structures
 - length of fence at a height of no less than six (6) feetMinor modifications to the plan which do not conflict with the elements above may be made to ensure compliance with the Zoning Ordinance.
2. There shall be no temporary or permanent amplified sound system permitted for this use.
3. The canoe livery shall be closed and all portable toilets, vehicles, trailers and other canoe livery equipment shall be removed while a flood warning issued by the National Weather Service is in effect for the portion of the James River adjoining the site.
4. The use shall not commence before the subject properties are combined into a single parcel.
5. The number of parking spaces shall not exceed one hundred (100) or the number determined by the Zoning Administrator to be necessary, under County Code § 18-4.12, whichever is greater.
6. SP-2010-00050 shall be valid until December 31, 2014.

Note: At 9:01 p.m., the Board took a brief recess, and then reconvened the meeting at 9:13 p.m.

Agenda Item No. 10. **PUBLIC HEARING: PROJECT: SP-2011-00002. Cider, SP-2012-00018. Castle Hill Cider Pond & SP-2012-00019. Castle Hill Cider Stream Crossing (Signs #30&32).**

PROPOSALS: **SP-2011-00002:** Special Use Permit for farm cidery with special events for up to 3,000 attendees on total of 310.47 acres. **SP-2012-00018:** Request to permit fill in the floodplain for an existing pond and stream crossing on 185.06 acres. No dwellings proposed. **SP-2012-00019:** Request to repair existing stream crossing in the floodplain and repair culverts.

ZONING: RA Rural Areas - agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots); FH Flood Hazard – Overlay to provide safety and protection from flooding

SECTION: SP-2011-00002: 10.2.2.53 Farm winery uses authorized under section 5.1.25 (c) SP-2012-00018: 30.3.05.2.1(1), which allows for dams, levees and other structures for water supply and flood control. SP-2012-00019: 30.3.05.2.1(2), which allows for water related uses such as boat docks, canoe liveries, bridges, ferries, culverts and river crossings of transmission lines of all types.

ENTRANCE CORRIDOR: Yes.

COMPREHENSIVE PLAN: Rural Areas – preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/density (0.5 unit acre in development lots).

LOCATION: 6065 Turkeysag Road, Keswick.

TAX MAP/PARCEL: 049000000018B1, 049000000018B2.

MAGISTERIAL DISTRICT: Rivanna.

(Advertised in the Daily Progress on December 31, 2012 and January 7, 2013.)

Mr. Cilimberg reported that SP-2011-0002 is for special events that would be above and beyond what are allowed by-right with wineries, and although it is a cidery it is considered a winery under state law and local regulations.

He explained that Castle Hill was proposing 15 events per year that would be between 200 and 500 attendees and one annual festival for 500 to 3,000 attendees. He said that the recommendation that the Planning Commission has made to the Board is for one festival annually with up to 3,000 attendees, and it would be valid for a period of two years then reviewed again. Mr. Cilimberg stated that the location is accessed off of Turkey Sag Road and is immediately to the west of Gordonsville Road – Route 231 – and just below the Southwest Mountains. He said that he has several aerial views of the pond as well as the building itself where the events are held. He noted that the location of the stream and floodplains that cross through the property as well as the cidery property itself. Mr. Cilimberg showed a view from Turkey Sag Road and the turn that would go into the cidery and the road to the west where it becomes an unsurfaced road over the Southwest Mountains. He noted the location of the access over the stream crossing that goes back to the site, the building itself, the pond, and the beginnings of the orchard for the cidery.

Mr. Cilimberg reported that they reviewed this with guidance from the Comp Plan as a designated rural area, and the preservation and protection of agricultural, forestal, open space, and natural, historic and scenic resources is emphasized. He said there is a goal to encourage creative and diverse forms of rural production and to support land uses that provide rural landowners with economic viability, and events have been considered something that can do that. Mr. Cilimberg stated that the large cider festival would promote an agricultural product made on this property. He said that there is nothing in the Comp Plan currently along the lines of measures and metrics for determining appropriateness of size or frequency of events. He said that that staff does have guidelines on is it a reversible situation, and the structures are there. He said that there would be a new entrance road but generally it is a reversible situation if the events were not to be held.

He reported that it should be scaled or sited to cause minimal impacts from rural surroundings, and there is a traffic management condition to address those impacts to the roads that serve the location as well as adjacent properties. Mr. Cilimberg stated that noise impacts have been addressed with a noise management condition, and the visual impact is minimal due to the event building location. He said that it should be minimal in terms of public health and environmental impacts, and there is significant acreage onsite for the applicant to provide water and septic fields for large uses. He stated that the traffic impacts can be addressed with traffic management conditions, with the one exception being the Turkey Sag condition as it crosses the Southwest Mountains. Mr. Cilimberg said that access is acceptable to police, fire and rescue. He stated that there should not be a need for public infrastructures or increased services, although increased attendance could increase the need for police, fire and rescue services.

Mr. Cilimberg said that the issue for traffic is that traffic generated would approach VDoT warrants for turn lanes at Route 231 and Turkey Sag Road. Traffic management at that intersection is the proposed solution with police and other trained personnel on the day of festivals. He stated that the western portion of Turkey Sag is “narrow and steep,” and traffic can arrive from that Route. So the proposed solution is to have all departing traffic to exit eastward to go to Route 231 except for the residents of Turkey Sag Road. Mr. Cilimberg said that the route of arriving cannot be controlled, such as traffic coming from the west over the mountain. He stated that the applicant would make an effort to instruct vendors and attendees not to use Turkey Sag.

Mr. Cilimberg stated that there are typically amplified sound systems at wineries, and this has been a complaint with this particular location. He said that there has been monitoring by zoning, and in one instance there were three readings above permitted levels on a nearby property. Mr. Cilimberg said that the solution proposed for these events would be preparation and implementation of a sound management plan, which would be prepared by a licensed acoustical engineer and would include self-monitoring to allow immediate control of sound levels.

He reported that favorable factors include the promotion of local agricultural products, the adequacy of existing roads with the exception of Turkey Sag Road to the west, the ability to manage the festival's traffic impact at Turkey Sag and Route 231, and the management of noise impacts to stay within nighttime noise levels at all times of the day. Mr. Cilimberg said that the traffic approaching on Turkey Sag Road heading west is an unfavorable factor because of the condition of that road. He stated that the Planning Commission recommended approval of the special use permit with a vote of 5-1. Only recommending the large annual event and not the 15 events of 200-500 persons, and recommended that the use be permitted for two years through 2014 to allow impacts to be assessed. Mr. Cilimberg said that the Planning Commission had recommended conditions.

Mr. Cilimberg stated that since this item was before the Planning Commission, the applicant has proposed several revisions to the original proposal and has met with residents and have tried to reflect those concerns in the updated proposal. Mr. Cilimberg said that the first of those revisions would be to lower the maximum attendance from 3,000 to 1,000 for the one annual event. He said that would not

necessitate traffic management personnel at the intersection of Route 231 and Turkey Sag Road, but the applicant has indicated they would still provide that management for any event over 500 persons. Mr. Cilimberg said that the applicant has asked for eight events per year in addition to the annual event that would be for 201-350 people, and offered to limit the events to weddings, business events or fundraisers for local nonprofits and/or schools. He explained that staff cannot support the applicants offering because they aren't specific enough categories to establish clear standards for effective zoning enforcement – but as the operator they can limit themselves to it. He stated that staff would propose that condition #6 would require traffic management at all events, rather than just the large annual event, which is a recommendation originally made to the Commission. Mr. Cilimberg said that staff would also recommend that the two-year approval be part of the action to approve what the applicant has provided as a revised proposal.

He stated that the applicant has also requested changes to the sound management requirements, the first of which is to apply the 11:00 p.m. outdoor amplified sound cutoff only to the large annual event. Mr. Cilimberg said that was a time included in conditions to meet the concerns of nearby residents, and staff could propose that the limit apply to all events. Unless B and C are conditioned to avoid late-night disturbances created by sound levels that are inconsistent with what might be typically expected in the rural areas. He stated that the two things staff felt needed to be in place to remove the necessity of the 11:00 p.m. time would be the requirement that any amplified sound systems be conducted in the event barn, except for small outdoor systems during daylight hours. Mr. Cilimberg noted that the “small system” needs to be defined, and staff research shows that it would be best to propose that such systems be limited to amplifiers of no more than 200 watts of RMS output. He said that the second requirement would be that the sound management plan includes the installation of glass panels to fully enclose the northeast side of the barn, which currently has large screen panels. Mr. Cilimberg stated that the applicant volunteered to close the event barn as long as they are allowed the additional eight smaller events, but if they are only having the large annual event they do not see it as cost effective.

Mr. Rooker said that he met with the applicant out at the site over the weekend, and he understood him to say there would be nothing going on outside by way of music except the types of musicians that would accompany a wedding – such as a violinist or a harpist. He stated that he did not understand the applicant to say that they intended to have amplified music outside. Mr. Rooker said that applicant clearly described the glassing as putting in thick glass that would contain music, and that there would also be baffling put up inside the event barn that would very significantly reduce sound escaping out onto the property and beyond. He stated that is not what he sees here, and that it makes a huge difference. Mr. Rooker also said that he had expected, based upon work the applicant was doing with his sound engineer, that there might be a proposal that would actually limit the decibel limit at the property lines to something like 50 or 52 decibels in exchange for having some events that were larger than the 200. He said that he does not see that here and maybe the applicant could speak to that when he comes forward. He said that if he interpreted what the applicant said accurately then he would certainly like to see those things embodied in a condition.

Mr. Cilimberg responded that staff did understand the full enclosure with the glass panels and the baffling, and the applicant would do that if they were to get the additional eight events.

Mr. Rooker said that it should also be specified that the doors remain closed.

Ms. Mallek said that the applicant would need to add air conditioning if they don't have it already.

Mr. Snow asked if the event center is air conditioned. Mr. Cilimberg said that the applicant could answer that question when he spoke.

Mr. Cilimberg stated that in terms of the outdoor music, staff had understood that the applicant would have small outdoor systems during the daylight hours, and staff had tried to define that for the purposes of zoning enforcement.

Ms. Mallek said that in the other locations around the County, it had been interpreted that acoustic music outside was fine, but amplified sounds had been moved indoors to try to solve these problems.

Mr. Cilimberg stated that there was also a request from the applicant to change the notification requirement of adjacent property owners. The applicant feels it would be more appropriate to have the original approach – which was notifying all parcel owners within 1,000 feet – changed to “require notification of property owners with dwellings within one-half mile of the event.” He said that the applicant feels this is a better approach to capture the people who would be most affected.

Mr. Clark said that he mapped the area to show which parcels would fall within either method. He said that the original approach recommended by the Planning Commission would require notification of about 20 separate landowners, whereas the half-mile measurement only captures about eight.

Mr. Cilimberg noted that that is based on owners with dwellings within one-half mile, and that is different than what the Planning Commission saw.

He summarized that in total the applicant would have nine events per year above what they can have by right – the eight that are between 201 and 350 people, and the annual event accommodating up to 1,000 guests. Mr. Cilimberg mentioned that this is a different request than what would have been allowed under the Planning Commission's recommendation, which was the one event up to 3,000 people, and less than their original request of one event up to 3,000 plus 15 other events.

Mr. Cilimberg stated that staff has recommended conditions should the Board choose to approve the applicant's revised proposal that would cover the measures discussed. He said that it includes a definition of what outdoor amplification could be according to how they presented that concept. He stated that it also has the December 31, 2014 validity expiring, and would have to be a reapplication.

Mr. Rooker asked if there was a printed copy of revised conditions, noting that there are three sets of conditions that are on pages 1, 2 and 3 of the staff report.

Mr. Cilimberg said that the discussion section of the Executive Summary reviews the four proposals he just mentioned – starting on page 1 of the summary and going to the middle of page two; the revised conditions are reflected on the screen before them, with one changing the validity to be a standard condition. The other taking out the first sentence of condition #5 as it would no longer be applicable due to the glass and baffling for sound attenuation. Mr. Cilimberg stated that what is before them on the screen reflects pages 2 and 3 of the revised conditions in the Executive Summary, and pages 3 and 4 are the conditions that came from the Commission.

Mr. Boyd asked if the revised conditions have been agreed to by the applicant. Mr. Cilimberg responded that staff received the conditions late, so they were pulling everything together to give the Board information and propose conditions that they felt could reflect what the applicant was asking and what staff has been recommending. Mr. Cilimberg said that conditions only came in about 10 days ago, and there was not sufficient time to have a back and forth dialogue with the applicant.

Mr. Boyd asked if the conditions that are on the screen before the Board are the same as what is in the Executive Summary. Mr. Cilimberg replied "yes" except for what was shown in red. He further clarified that the applicant brought forth four proposed changes, suggesting conditions. He said that staff reflected what the applicant provided as well as modifying the conditions as they felt the Board would need to approve the application and respond to things that have been identified as issues over time.

Mr. Boyd asked if staff is recommending approval with the conditions presented. Mr. Cilimberg explained that staff had recommended approval before the Planning Commission meeting for more than this number of events, but this falls within the recommendation that went to them. Mr. Cilimberg stated that it is not what the Commission recommended and noted that it did not see the lesser event recommendation.

Mr. Boyd asked if the revised conditions before the Board now is being recommended by staff for approval. Mr. Cilimberg responded that staff is recommending that the conditions be the approved conditions. He said that staff is also noting that in the original analysis they recommended approval for 15 events.

Mr. Thomas asked if the adjacent property did the noise readings. Mr. Clark explained that it was done with trained zoning staff, using calibrated equipment, and they have been out several times.

Ms. Mallek said that she understood there would be a sound plan in effect with the 55-decibel level all-day requirement. She then asked about the regular small events and said that she assumed there would be one sound plan to protect the neighbors – whether it's a 200-person event or a 1,000-person event.

Mr. Clark stated that a sound management plan would be required regardless.

Mr. Rooker noted that condition #4 would apply to all events.

Mr. Thomas asked if the 55 decibel level would then apply to all functions.

Ms. Mallek responded that that seems to have been a standard requirement for all the events on this property in an attempt to build a relationship back with their neighbors.

Mr. Cilimberg explained that the rural area standard is 60 during the day and 55 at night, and their condition is saying 55 all the time.

Mr. Rooker noted that with paragraph 3A, the 500 person limit seems to be missing.

Ms. Mallek said that it is still valid if the Board approves the one annual event.

Mr. Rooker stated that he thought the traffic control was going to be there for all events.

Mr. Clark said that traffic studies showed that events of more than 1,000 people would hit the warrants for turn lanes at Turkey Sag and Route 231. The applicant proposed and VDOT agreed that rather than having turn lanes, the traffic load for those larger events could be handled with personnel directing traffic. He said that in the applicant's most recent proposal – which reduces event attendance down to 1,000 people – they no longer hit the turn lane warrants, but are still offering to provide those personnel from 500 up in attendance.

Mr. Rooker said that there is only one event that would fall in that category.

Mr. Clark said that the requirement all along would only have applied to the largest event.

Ms. Mallek asked about the left-turning traffic onto Turkey Sag coming out. Mr. Clark responded that the conditions would apply for the events allowed by the special use permit, and the applicant can address whether they intend to do that for the by-right event.

The Chair opened the public hearing.

Mr. Dave Paulson, the applicant, stated that they are considering outside music to be a stringed instrument or vocalist that might be "very lightly amplified," and staff added a particular standard for that.

In terms of the enclosure, Mr. Paulson said that the idea is if they get the special use permit in order to do the events – eight events over 200 – they would absolutely enclose it. He said that that had not been a condition and they can achieve compliance with a different acoustical plan – and for the one large event they would not want that to be a condition. Mr. Paulson reiterated that if approved for events over 200 up to 350 they would enclose it. He clarified that there is one set of traffic requirements for the intersection of Turkey Sag and Route 231, and the traffic engineer, VDOT, the police have all said that "less than 1,000 attendees" you don't need any traffic mitigation or a traffic cop there – but he is offering that they do that anyway. Mr. Paulson said that the other traffic is at the end of Turkey Sag at their exit, and they are saying that for all of the events they will have someone there directing traffic right so that no one is going left onto Turkey Sag unless they live right in the area.

Mr. Rooker asked if that was in the conditions. Mr. Cilimberg noted that it was condition number six.

Mr. Paulson stated that Castle Hill Cidery believes farm wineries are good for Virginia and good for Albemarle County, both the agricultural production and the event component – as they preserve land, promote sustainability, create jobs, attract tourist dollars, support a myriad of other businesses and help bolster the tax base. He said that they do recognize there is concern over the balance between the agricultural side of it and the event side of it and enough Board members have been out to see that they are a very legitimate agricultural operation, having won numerous awards for their cider and having been commended for reintroducing vintage apple varieties. Mr. Paulson said that they planted the orchard in late 2009, 2010, and did not begin having events on any regular basis until spring of 2011 – and at that point they took out the center columns of the barn to create a dance floor and started an event business.

Mr. Paulson said that their two requests are for the eight events from 200-350 people and a larger event – the cider festival with up to 1,000 attendees. He stated that they were very involved with the Cider Week inaugural event this year, and envision themselves as becoming a hub for craft cider makers throughout Virginia and elsewhere. Mr. Paulson said that regarding Turkey Sag, his event contract requires that the hosts provide the directions the cidery provides – which currently show Turkey Sag coming off of Route 231 as not being a through road. He added that there is a clause in their terms and conditions that state specifically that access from State Route 20 will result in a long drive over a mountain on a steep and narrow gravel road, and they've also had their directions changed on Google Maps. Mr. Paulson stated that they have moved to a preferred vendor policy so there will be fewer caterers and rental companies.

He stated that the noise is the predominant concern of the Keswick residents they've met with, and he thinks they have a solution that is going to work for all events. Mr. Paulson explained that they've had an acoustical engineer – Michael Kerr – do extensive modeling of the barn and the property, and the model produces dBA bands in five-dBA increments moving from 90 to 40. He presented findings on sound readings, pointing out the 55 dBA levels and where they occur based on the current configuration and with the front barn doors open. Mr. Paulson showed readings with the northeast side of the barn open and the front barn doors open and increasing the source volume has a profound effect. He showed the readings with the glass panels installed, adding that part of their proffer would be to enclose the northeast side and require by contract that no musical act go above 100 dBA, which is very common in the music industry. Mr. Paulson said that the acoustical plan could be a specific condition but it also must be approved by the Zoning Administrator.

Mr. Boyd asked if it was on an event by event basis. Mr. Paulson responded that it was the overall acoustical plan to ensure compliance.

Mr. Rooker asked if the contract would be 95 dBA or 100. Mr. Paulson replied that it would be 100, and noted the profile for that level. He said that 100 would be a reasonably loud rock band, and the limiter would likely be people inside complaining about the volume. He said that in talking to musical acts and booking agents, that's a reasonable level for bands. Mr. Paulson said that the limit would mean that they meet the 55 level at the property lines, in keeping with the ordinance.

Mr. Dumler asked Mr. Paulson if he intended to have a contractual clause that requires them to keep the doors shut. Mr. Paulson said that they will have such a clause, and explained that the doors would be open when they're having dinner and milling around. He said that the doors would be closed when the band is playing and opened again during the band's break. Mr. Paulson said that they have AC misters in the barn to cool it down as needed.

Mr. Rooker said that those things should be part of the conditions – a contractual obligation to keep the decibel levels down at the source, and keeping the doors closed as an obligation of the owners – not the bands. He asked if it would be possible to stipulate that the decibel levels at the property line will not exceed a level smaller than 55, given that Mr. Paulson was talking about putting up some sound baffling within the building. Mr. Rooker said that if Castle Hill agrees to keep their footprint to a lower level,

it doesn't matter if the noise is created by a big or small event. He said that the neighbors would gain some benefit by having the noise for all events kept within a footprint that is being created today out there.

Mr. Paulson stated that they are already doing that up to 10:00 p.m. at 60 decibels.

Mr. Rooker emphasized that Castle Hill will hear from people who are currently hearing that noise, and by keeping the noise footprint less at the property line the public at large gains something from this application while they are gaining something as well. Mr. Paulson responded that he would like to talk with his acoustical engineer, and it probably is achievable.

Mr. Snow said he understood that there is no air conditioning inside the building. Mr. Paulson responded that there was no central air in the building.

Mr. Snow commented on the practicality of having it remain cool when the doors are shut on an 85-degree night with three or four-hundred people dancing.

Mr. Paulson said the barn would be ventilated throughout the day, and they have misters in place. He also noted that the band would take breaks and the doors could be opened.

Mr. John Rhett, Castle Hill's General Manager, stated that a temporary air conditioning system could be rented to blow underneath the tent, and Castle Hill could provide openings within the solid wall to have air conditioning when the doors are closed.

Mr. Snow asked if that would require generators. Mr. Rhett replied no and said that there is sufficient power in the building to power those and people already use those AC panels.

Mr. Christopher Munson addressed the Board, stating that he is owner of 20 South Productions and has 32 years of experience doing local music booking, audio engineering, concert promotion and production in the County. Mr. Munson said that he is here to support Castle Hill's application for a special use permit for several large events and possibly a cider festival. He said that the events will help support the local musical and performing arts community, sound companies and related businesses. He said they would bring outside revenue to the area, promote agri-tourism, and showcase the County's natural beauty. Mr. Munson stated that he has worked with Castle Hill Cider since their opening and has found them to be diligent and respectful to all of their clients and neighbors, and for this permit they have specifically addressed the parking issues to comply with police and traffic engineering requirements. He stated that Castle Hill is addressing the noise issues by enclosing and acoustically treating the barn. He said they could require the bands and sound companies to comply with the maximum permitted sound levels inside the venue to produce the proper levels outside, and in his experience this can be done easily and effectively. Mr. Munson cited the Ntelos Pavilion stating that it has strict and very strongly enforced sound limits inside.

Mr. Rooker asked what the Ntelos Pavilion sound limits are. Mr. Munson said the limits were 95 decibels at the mixing console inside the pavilion.

Ms. Mallek commented that is huge.

Mr. Rooker said that when he was onsite the previous Sunday, Mr. Paulson had said 95 – but now it's at 100. He stated that if they can live with 95 in the pavilion then they ought to be able to live with 95 in a barn building.

Mr. Munson stated that he was not speaking to specific numbers and contractually you can tell bands, audio engineers, and sound companies to stay within a limit. He said that the Pavilion does it very effectively noting that he has mixed and produced shows there and has done it with no problem at all. He stated that there is no reason why Castle Hill cannot monitor the volume with decibel meters and control it, to ensure compliance with County ordinances, and be good neighbors. Mr. Munson said that this is good quality business for Albemarle County, and he urged them to approve the permit.

Mr. Boyd asked if the technology was there to have some recorded decibel levels for an event over a period of time, such that you would get a printout of some kind. Mr. Munson responded that he would have to defer to Castle Hill's audio engineer on that topic.

Mr. Boyd commented that he heard the technology existed but he has not yet seen it.

Mr. Munson said that for Fridays After Five he is given a sound meter and a decibel limit, and it sits at the mixing board the whole time – and officials come over and check it. He stated that they could feasibly create a record of that information.

Mr. Tony Vanderwarker, Chair of the PEC Board and a resident of Keswick, addressed the Board. He stated that for many years the PEC has supported wineries, as they help make the agricultural and rural area prosper and give people livelihoods, and for the most part the 26 wineries in the County and 126 in the Piedmont area have done a responsible job about being good citizens – with a few glaring exceptions. Mr. Vanderwarker said they have monitored their noise levels for the good of the neighborhood and they've regulated their traffic, citing the King Family Vineyards as an example of a business that makes money and complies with their by-right limit and is a good neighbor. He stated that the PEC was happy when they were invited out by – Castle Hill – about a month ago to talk to them, and they indicated at that time that they had to turn down three weddings because they were above the size permitted. Mr. Vanderwarker said that PEC's response was "well, that's too bad – this is the rural area,

and in the rural area you have limitations.” He said that Castle Hill had wanted to optimize their business, but again PEC said that wasn’t what you did in the rural area. Mr. Vanderwarker said that the landowners who put thousands of acres under easement are not optimizing their property value they’re giving up development rights – millions of dollars in order to preserve the area’s character, in order to create green space – in order to create the space that Castle Hill Cidery is advertising in their brochures to lure people to their venue. He said that they are capitalizing on our sacrifices as landowners and the PEC thinks that is not fair. Mr. Vanderwarker said that he personally gave up eight development rights, and if the County agrees to allow these levels to go beyond the by-right limit they’re setting a precedent that the other wineries can take advantage of. Then the rural area all over Albemarle County – not just in Keswick – becomes up for grabs.

Ms. Ann Vanderwarker addressed the Board, stating that she has lived in Keswick for a long time and moved there from Ivy because Ivy was getting “too built up.” She said that they knew Keswick would stay the way it is forever because of all the conservation easements, and have fought to keep it rural – objecting to the huge canopy over the Cismont gas station, the power line over the mountains, the oversized bridge on Black Cat Road, and other projects that threaten our beautiful countryside. Ms. Vanderwarker said that over the past 40 years, Keswick landowners have protected over 16,000 acres along Route 231 in an almost unbroken stretch from Keswick Hall to Gordonsville. She said that for a commercial venue like the cidery to come in and take advantage of the scenic landscape to attract weddings and large events under the guise of an agricultural operation is unfair. Ms. Vanderwarker said that a recent poll across Virginia showed that only 10-12% winery revenues come from sales of wine, and the rest comes from commercial activities – and that’s OK when the winery respects the 200-person per event standard set. She said that when they don’t respect the limit, that’s when the community has to stand up and say no. She stated that with the increased limits requested, Castle Hill would be making money on the backs of Keswick residents and disturbing the quality of life that people have worked so hard to establish. She also noted the precedent set for other wineries, threatening the quality of life across the County.

Ms. Christine Colley addressed the Board, stating that she is a neighbor of Castle Hill about 200 yards away, and is here to object to their proposal. Ms. Colley said that all of the lines on the applicant’s diagrams and the idea of glass barriers and closed doors is music to her ears, but it conflicts with her experience. She stated that she heard amplified music just last weekend from the cidery, and 55 decibels is equivalent to a normal conversation – but she cannot hear her neighbors when they walk by her driveway and are talking. Ms. Colley said that the Castle Hill level of “55 decibels” is very audible to her, adding that the effect on the ground is very different than a normal conversation. She stated that the problem with decibel limits is there’s no way to enforce them under current provisions, and Keswick residents have been told that the police don’t respond to complaints about noise at wineries. She asked the question “what do we do? Do we call the Zoning Office?” She said you can no longer measure those decibels by the time that staff comes onsite. Ms. Colley stated that she and her husband paid about double what a house would have cost in another area to live in Keswick, because it is beautiful and it seemed to be well protected by good zoning laws. She also emphasized that no matter what route you tell people to use, they will still come on Turkey Sag Road, and sometimes they get lost – with limited phone service available there.

Ms. Susan Forschler said that she lives within a mile of Castle Hill and like her neighbors has been negatively impacted by the noise from events there. Since Castle Hill have been holding events in their barn, she said, the weekends have been anything but peaceful, and almost every Saturday night they can hear the boom of the bass and even make out lyrics of songs that are being sung. She said that they incurred considerable expense to live in Keswick because of its rural beauty, and have protected their property in easement to protect the tranquility for themselves and for future generations. She said that the cidery is exploiting the beautiful countryside for their own gain at the expense of others and it is just unfair. Ms. Forschler said that Castle Hill has not shown that they would police themselves with noise, even at the current level of 200, and she doesn’t see why the Board should trust they would do it if the exponentially increase the size and amount of events. She said that Castle Hill should have to show they will do this before being given carte blanche to do whatever they want, adding that there are also concerns about traffic on Turkey Sag because it’s a small, rural road. She stated that the cidery has just disturbed the whole peaceful, serene atmosphere that residents have paid dearly to enjoy, and love.

Ms. Stewart Humiston said that she and her husband live at Castle Hill Farm, which is contiguous to Castle Hill Cidery, and they are co-authors of the easement that they put in place to protect the beauty and peacefulness of this historic land. Ms. Humiston said there has been much discussion by the business planners and lawyers at the cidery as to how they promise to improve the noise violations, traffic problems, and in general their very negative relationship with the community. She stated that there isn’t any reason to believe that once given even greater latitude with the number of guests that they will be willing to comply with what they’ve promised. She said that Castle Hill have already repeatedly demonstrated a flagrant disregard for the occupancy limits that were set by the Board. Ms. Humiston referenced a number of blog posts, advertisements and articles all showing that Castle Hill Cidery has regularly exceeded 200. She quoted from cvilleweddings.com, “In the meantime, we are probably the only venue in the state of Virginia that can offer a 500-seated dinner and wedding reception along with outdoor ceremony on the same property.” Ms. Humiston mentioned the first two posts she had given the Board – one regarding a wedding held last June. She said she called the wedding planner and confirmed that there were 320 guests; and on October 27, just a few weeks after the Planning Commission had voted to not recommend their request for eight events up to 350, they had a wedding for 275 – as posted on the site “weddingbuzz.” She said that she also confirmed the number with Castle Hill, who catered the party. Ms. Humiston stated that if Mr. Paulson can stand before the Commission and assure them that they have “maybe one or two events over 200,” then there is no reason they would be compliant in the future. She said that Castle Hill Cidery has shown a blatant disrespect for the surrounding property owners and are

using their beautiful farms and homes as their aesthetic capital to market and promote their own commercial venture. Ms. Humiston said that having recently had a bride in her family, she would not want to be misted.

Ms. Judith Sommer addressed the Board, stating that she has lived in Keswick for 12 years. She stated that it is premature to discuss this special use permit because things have been “up in the air so much” on Castle Hill Cider’s side, on staff’s side, and on the public side. She said that Castle Hill’s application is dated January 2011, two months after they got their ABC license and before they even had any events. Ms. Sommer stated that Google Maps has indeed changed the routing – from Turkey Sag Road to Stony Point Pass – which is going from bad to worse. She said that zoning enforcement has come to her property four times, the first time was an announced visit and three times were unannounced, and Castle Hill was found in violation once. Ms. Sommer provided maps showing from zoning enforcement that show the decibel levels from the cidery on September 8, and from a spot on her property they measured 55.77 decibels; the nearest point to Castle Hill would have been even higher had they gone closer but it was dense woods so they didn’t do it. She said that their second map is Castle Hill’s map of decibel levels, and the point at which zoning measured the reading was way outside their red line. Ms. Sommer said that the third map is from Dominion Engineering, which she superimposed with the decibel map, and it shows the houses affected. She said that she lives outside the one-half mile line from the cidery, and she hears the music every weekend. Ms. Sommer said that Castle Hill could cut the decibel level with a governor, remodel the barn and enclose the band. She said that it has been presented to neighbors as “if you support us, we’ll do the enclosure – if you don’t support us, we’re not going to do anything.” She said it sounds to her like quid pro quo, and stated that they are building a million-dollar rental residence. She posed the question “Couldn’t they take a little bit of that million dollars and enclose the barn, and give us some peace in the neighborhood? They can restore peace and tranquility in our neighborhood if they choose to do it.” Ms. Sommer also noted on the map how the sound travels in plumes from the cidery, and in spikes in other places – which is how it envelopes the houses beyond the plume.

Ms. Mallek asked what it means when it says 95 decibel is too low to measure. Ms. Sommer responded that regarding the 95 decibels that Castle Hill measured inside, given the extension of the 55-decibel carry at 1,000 feet beyond what their model shows, the band had to be playing at 105 or 110 decibels. She said that her son who is a DJ says that is more realistic.

Mr. Ray Humiston addressed the Board, thanking them for all the work they do and all the behind the scenes work they have to do before the meetings. Mr. Humiston said that he does not want to confuse how much the residents love wineries and cideries with how crazy the traffic and noise problems get. He added that he loves the cidery and supports them, stating that there is a great balance in the community – but his issue is why Castle Hill is upsetting that balance. Mr. Humiston said that in 2005 he owned the entire property and went to great lengths with the easement to try to preserve the land and keep it a special place to live, including language that stipulates no commercial use on the property, but agriculture is allowed. He stated that when the Nature Conservancy is asked about this, they say they permit agriculture – but that is defined by the Board. Mr. Humiston said that there are probably wineries lined up to see what will happen with this application, so it’s a pretty big deal as far as its impact on the County. He stated that the cidery isn’t a “mom and pop” situation where they are trying to supplement their income; the cidery started three years ago, and the business plan went from having plants in the ground and immediately it’s an event center. Mr. Humiston said it has gone in the blink of an eye to things that nobody had ever asked for before, adding that this is a whole new form of agriculture. He also stated that the lack of air conditioning and attempt redirect traffic off of Turkey Sag are “ridiculous.” Mr. Humiston said that the property situation and prices are very delicate, and if this thing starts to go there is going to be uncertainty in the market as the genie is coming out of the bottle.

Mr. Peter Taylor addressed the Board, stating that he has lived in the County for 31 years, Keswick for 25 years. Mr. Taylor said that he has a son who is a senior at UVA and has a leadership position at his fraternity, and he has said that the police have come to parties because they exceeded the noise ordinance. Mr. Taylor said this has been going on for several years, and the neighborhoods have been trying to control noise. He said that it is not feasible to think that noise will be controlled at a wedding where people have been having fun for hours, and the idea of keeping the doors closed because that’s the rule “is far-fetched.” Mr. Taylor stated that it is very hard to control the things that need to be controlled, and history would suggest that it’s impossible. He added that his property is in conservation easement, as are a lot of properties in the area, and it is one of the most densely eased areas in Virginia. Mr. Taylor said that when you put your property in easement, you give up certain rights in exchange for tax credits, and all the talk about amplifiers and air conditioners “flies in the face” of the spirit and letter of the easements he is familiar with. He stated that it’s not the Board’s job to enforce conservation easements, but it’s not a great idea for them to endorse a special use permit that flies in the face of the easement and he encouraged them to look at the specifics of it.

Mr. Stuart Madany addressed the Board, stating that he is the cider maker and orchard manager at Castle Hill Cider. He explained that the cidery is trying to make the best cider possible, and are committed to doing it sustainably. Mr. Madany said that Castle Hill is the first winery or cidery to import creverie (terracotta amphora) from the country of Georgia into the U.S., and the pots are buried in the ground and have a much smaller carbon footprint than making a tank out of stainless steel. He stated that they are also trying to grow all their apples organically, and there are no certified organic apple orchards in the state currently. Mr. Madany said they are working closely with Virginia Tech and extension agents on this process, and they have put in a 4.5-acre semi-dwarf orchard with 660 trees. He stated that they have carefully researched the varieties and cross-referenced them for cider quality, historic connection to Virginia cider and to Castle Hill itself, and came up with 20 varieties planted. Mr. Madany stated that Castle Hill is currently using 83% Virginia apples, with 17% not yet available in the state, and the orchard

would slowly ramp up production. He said that one reason to have events at wineries is to help get some cash flow while you're establishing the winery and to introduce your product to a large number of people. Mr. Madany stated that it takes longer for apple trees to come into full bearing than grapes, so they need a little support. He said that Castle Hill has put about \$435,000 into the orchard and the winery equipment thus far, so it is not some window dressing for an event business.

Mr. Colin Dougherty addressed the Board, stating that he moved to the County 10 years ago from Philadelphia and lives off of Route 22/231 on a farm where the nights are quiet and the roads are small – and many remain unimproved. He said that it is beautiful in Keswick, and with the beauty comes those who seek to profit from the hard work and sacrifice of others – many of whom are his neighbors. Mr. Dougherty stated that they choose to put their land in easement, or operate farms, or do agricultural activities more in a farm winery way, versus a farm winery with a giant commerce-producing kind of venue. He said that the continued beauty and tranquility in Keswick is due to sacrifice that many of the neighbors made by putting their land into easement to preserve and protect the area and keep it quiet and safe. Mr. Dougherty stated that the road usage is what the design intended to carry and what he expected to see in moving to a rural part of Albemarle. He said that the cidery proposal entrusts its operators with managing the increased noise and traffic – when it is known that they are exceeding at times the limit for guests at events. He said that he would like to see if the cidery can respect the community's right to quiet, peace and safe evenings in the rural part of the County with no boomy bass and by not flooding our unimproved roads with excessive traffic. He asked, "What's the enforcement plan?" Mr. Dougherty said that until there is some enforcement plan or Castle Hill demonstrates the ability that they can do it, there should be no consideration to allow larger events. He stated that he is a busy, hard-working single parent who entrusts the Board to do the right thing, use common sense, and fulfill its obligations to citizens by keeping the local farm wineries from becoming major event sites without the infrastructure to keep the operations safe for the community.

Mr. John Rhett addressed the Board, stating that the vision for Castle Hill Cider is to revive the ancient way of making cider, and it also includes the idea that people who visit the cidery will leave not only with a bottle of cider but with a fond memory of what the landscape of Albemarle County can be. He said that Castle Hill is about making "a sustainable, healing place," and that includes the events that happen there. Mr. Rhett said that in Jefferson's time, cider consumption was 40 gallons per year per person, and there is a lot of room for growth now to reach those levels again – and Virginia is starting to get that idea. He stated that the sales of cider in Virginia have increased 100% from 8,000 cases in 2011 to 16,750 cases in 2012, and the Department of Agriculture and Forestry expects Virginia to sell 33,000 annually in the next five years. Mr. Rhett said that as the third commercial hard cider maker in Virginia, Castle Hill is excited to be part of the revival of a once ubiquitous farm product. He stated that while the Virginia cider revival is still young, the wine industry has contributed \$747 million to the state's economy last year, selling 485,000 cases with 3,000 sold overseas. Mr. Rhett said that there were 4,750 jobs at wineries and vineyards in 2011, which generated \$156 million in payroll, and one farm winery with an events based has reported over \$1 million in direct economic activity. He stated that in Castle Hill Cider's case, 40% of cider is sold through events – so that is exactly what agri-tourism and farm winery is about – you have the events to sell your cider. Mr. Rhett said that Governor McDonnell designated Virginia Cider Week, and the final event was held at Castle Hill – with 186 tickets sold ahead of time and 57 of those attendees coming from an hour or more away. He recommended that the Board approve the special use permit as recommended by staff.

Mr. Rooker asked if Mr. Rhett was retained by Castle Hill. Mr. Rhett responded that he was.

Mr. Rooker asked Mr. Rhett if he had any statistics because Board members were handed pages off of the internet. He explained that they appear to be things that Castle Hill put up and one says "in the meantime we're probably the only venue in the State of Virginia that can offer a 500 seated dinner and wedding reception along with the outdoor ceremony all on the same property." He also asked Mr. Rhett if he was aware of the advertisements. Mr. Rhett responded that he was not aware of that one. He added that a special use permit takes a very long time to achieve.

Mr. Rooker said that another page from Castle Hill's website listed the capacity at 400, at a time when the limit is 200. Mr. Rhett responded that they are allowed to have private events.

Mr. Rooker said that they are allowed to have events of 200.

Mr. Rhett posed the question if they don't charge is the owner not allowed to have a private event.

Mr. Rooker responded that they are being advertised as commercial events – as shown on Castle Hill's website. He said that they are not birthday parties – it is an ad on the website that is specifying what is offered at Castle Hill for third parties who want to have events. He stated that the capacity is advertised at 400, when the limit is 200, and seems as if the current limit has been regularly violated. Mr. Rhett responded that he was correct.

Mr. Peter Hallock addressed the Board, stating that "these things snowball, so be careful." Mr. Hallock said that Castle Hill should "prove that they can do it," and they should be "happy to cut the noise down" instead of blackmailing the neighborhood into it. He stated that he would like to see them live within the rules, adding that a former Sheriff called 231/22 the second most dangerous road in Albemarle County, and they haven't done anything to it. Mr. Hallock said that if you put someone out on 231 at the end of Turkey Sag, all you're doing is stopping traffic on 231, and that will also cause accidents. He told Board members to be careful and stated that the rural area is pretty special.

Mr. Jim Ballheim addressed the Board, stating that he has lived in the Southwest Mountains Historic District for over 30 years, and he and his wife were the second family in the area to put their farm under easement – in the mid 1980s. He said they have worked hard in the community to maintain the rural area, and as a result now have 16,000 acres under easement. Mr. Ballheim said that he has no objection to the cidery, but he does object to turning it into a large, non-ag commercial venture under the guise of calling it a winery or a cidery. He stated that the applicant made a good case for all the “technical things” that he “can do, will do, wants to do,” but that’s not the issue. He said that he thinks pure and simple that it is a commercial venture trying to profit from what the neighbors have done over the last 30 years. Mr. Ballheim said Castle Hill is not trying to do this in an industrial park or urban area they are taking advantage of what residents have done their best to create. He stated that Albemarle County places a high priority on the rural nature of the County and maintaining the rural areas, and the Board should be defending what’s been accomplished in his area and fighting with them to maintain it – not trying to find a way to let someone get the camel’s nose in the tent. Mr. Ballheim said that at the very least, the Board’s decision would be to turn their back on what has been accomplished in the area over the past 30 years, and his understanding is that the cidery does not much care about rules. He stated that they’ve exceeded event limits and have done a pond and stream crossing without permits and ignored the limits on sound levels. Mr. Ballheim said that if the Board approves this, he suggests that the cidery be given a year or so to show they have changed their ways and they will play by the rules. He suggested that the sound decibel limit of 55 should be for a minute instead of five minutes. Mr. Ballheim thanked the Board for their service.

Dr. Wayne Derkac addressed the Board, stating that he recently retired as a heart surgeon to their vacation property on St. John Road, the eastern extension of Turkey Sag Road. Dr. Derkac said that he and his wife oppose the special use permit for the reasons previously stated. He said that residents are there in part because of stewardship – as reflected in the seal of Albemarle County. He stated that they should be good stewards to respect the past and pass it on to future generations, and he does not see the balance of justice tipped to one side after there has been compromise related to 200 extra people coming into events. Dr. Derkac said that the County has survived because of those in the Board’s seats, and the people who have drawn others to the County who support the principles reflected in the seal.

Ms. Jenny Brown addressed the Board, stating that she and her husband moved to the County eight years ago from the Atlanta, Georgia area. Ms. Brown said that in the 20 years her family lived in Atlanta, they slowly witnessed the sprawl and growth, and began looking at Charlottesville as her father went to UVA. She stated that what attracted them to relocate here was the way people valued the rural community, and they made the decision to move here. Ms. Brown said that they found the idea of the cidery “kind of nice,” but realized soon after it opened that it was having an impact. She stated that she knows the value of why the owners are doing the events, as you can make far more money from the event planning than you can from a cidery. Ms. Brown said she appreciates Castle Hill’s effort to put in the orchard, but it is the events they were really planning on.

Mr. Art Beltrone said that he lives across from the historic Castle Hill home. Mr. Beltrone said that the key word here is “enforcement,” whether it’s for 200 or 350 people, and right now it’s a phone call to a hotline – and within 10 business days the recording says that “somebody will respond.” He stated that Castle Hill has conducted events well beyond the limit of 200, and he encouraged the Board to keep these words in mind: “track record, trust, health, safety and welfare, credibility, property values, impact on the rural and historic character of the County.” Mr. Beltrone said that the Board’s decision with run with the land, and recommended that Castle Hill continue to operate 200-person events for the remainder of 2013 with the mitigation measures in place “and let’s see if it works.”

Ms. Paula Beazley said that rural areas are designated so for a reason – they need to remain rural, for the benefit of residents who use their land for agricultural and farming purposes, or to simply enjoy the land. She said that residents understand the need for agricultural activities to make a profit and sustain itself but this isn’t accomplished by encouraging profits due to non-agricultural activities other than on a subsidiary basis – especially when those activities represent the antithesis of the essence of the rural areas. Ms. Beazley said the vineyard by-right can have as many activities as it wants with 200 people, which is already a generous concession, and the impact of additional commerce does not belong in the rural areas. She stated that the agricultural business here is cidery, so any marketing or event activity should be secondary and appropriate. Ms. Beazley said that just like the Keene firing range proposal, the noise generated from the commercial and impactful activities does not belong there, and people should not have to deal with those activities spilling over onto their land. She asked Board members to “enclose this thing, air condition it, and keep it to save the neighbors from this impact. Please hold the line and maintain agricultural balance, or else tomorrow we may wake up to Disney.”

Ms. Charlotte Shelton said that she does not live near Keswick but is one of the owners of Albemarle Ciderworks, the County’s first cidery. Ms. Shelton said that what seems to be lost here is “the importance of agriculture,” which is ultimately what preserves the land. She stated that “it’s all well and good” to be able to come in and afford to make an estate out of agricultural or rural land but as a practical endeavor, in order to be sustainable, agriculture must be profitable. Ms. Shelton said that is why the County permits the 200-person events, and if they are going to maintain orchards then they do need to permit things that may not be considered “strictly agriculture.” She stated that farming is grueling, hard work, and occasionally there may be a need to accommodate something that transcends the standard. Ms. Shelton said that an event that does promote agriculture, such as some of the festivals held around the County now, seems to be “entirely appropriate.” She stated that when considering balance, agriculture is a working endeavor – it is not something to preserve scenery that we drive through or picture on a symbolic seal. Ms. Shelton said that agriculture is something that does need some diversity.

Mr. Robert Leffers addressed the Board, stating that he lives at 6305 Turkey Sag Road and is one of the seven houses that have driveways adjoining the road – between the cidery and Route 231. Mr. Leffers stated that his main consideration is the traffic situation, especially where the cidery is concerned. He said that 231 and 22, which is a stretch around 12 or 13 miles, has only two places to pass – one in front of the Keswick Winery and the entrance to Castle Hill, and the other one along the railroad tracks before the entrance to Keswick Hall. Mr. Leffers stated that the road has been designated a scenic byway, and the traffic is now to the point he can rarely come onto 231 or Turkey Sag without having to wait for traffic. He said that it is a heavily-traveled road already, and someone approved 18-wheelers on that road to be using that, so it's a major traffic artery. Mr. Leffers said that his concern is what's going to happen at the intersection of Turkey Sag and Route 231 when more traffic is added into the mix.

Mr. Jeff Werner, of the Piedmont Environmental Council, addressed the Board stating that the PEC urges them to accept the October 9 recommendations from the Planning Commission. Mr. Werner said that no one in this room is opposed to orchards, vineyards, making cider, or making wine. He stated that his mother's side of the family farmed in western Pennsylvania in the late 17th Century, and his mother was born in her grandfather's farmhouse. Mr. Werner said that in all those generations, he can't imagine once that they got complaints from their neighbors because of regular amplified music coming out of their barn being called "agricultural activity." He stated that people have given a simple message: until Castle Hill shows that it can host the events that it is allowed to host without creating disturbance with the community, then they can come back and ask for the permit. Mr. Werner said that there have been arguments about how this is necessary for business, but farm wineries in Albemarle are allowed to hold an unlimited number of events with relatively few restrictions. He said that farm wineries can even hold multiple weddings on a single day. He stated that it is "odd" that there are claims that this is somehow about not letting them be in business. He said that this isn't about agricultural noise – this is about the noise of weddings and parties and events. Mr. Werner noted that VDOT's calculations show that in the rural area the ambient sound is about 43 decibels, and he suggested that the cidery sound be at that level when it hits the property line. He stated that there isn't much point to a sound ordinance if it can't be regulated, and the County needs to figure out how they're going to have staff available to enforce it. He suggested getting rid of the decibel standard and going back to what they had before – "If I hear it, it's noise."

Mr. Bert Page addressed the Board, stating that he lives across the road from the cidery, separated only by Route 231, which is clearly already overburdened with more traffic than it should have, and it does not need any more. Mr. Page said that there was a time when people in the agricultural business made their living by the value of products they produced, not by hosting events. He stated that special use permits should not be favorably considered by the Board if there is a demonstrated adverse impact on adjacent properties, and if there were not an adverse impact in this case there would not be a lot of people here. Mr. Page stated that in talking about events, it should be confined to single-day events, not multiple-day events, and the mention of a "Cider Week" caused him concern.

Ms. Mallek clarified that Cider Week is a recognition by the Governor to raise awareness about cider, and the festival would be a single-day event as she understands it.

Ms. Ida Heimgarder addressed the Board, stating that she lives on Plank Road in North Garden near a winery there. She said that she realized that wineries and cideries bring in revenue to the County, and that's "really big in today's world." She said that it also devalues the property around it, so taxes are therefore decreased. Ms. Heimgarder stated that with too many wineries and cideries, they no longer have the beautiful countryside they came here to enjoy. She added that she and her husband purchased property in the County about five years ago – and the winery near them was built shortly after that. She said that they never would have purchased that property had they known there was going to be an event center across the pasture, emphasizing that property owners have rights also. Ms. Heimgarder said that Albemarle County cannot legally make the decision to say "no" to wineries and cideries, but they can make the decision to control the size of them – and she encouraged the Board to keep these events to 200 people. She cautioned the Board that once they "let the cat out of the bag," they would have a number of other wineries and cideries requesting oversized events. She said that it is important to keep the rural integrity of Albemarle County and keep it a desirable place to live.

Mr. Paulson readdressed the Board, stating that he would like to know what Mr. Humiston had distributed earlier because it is "certainly nothing that is current." He said that the cidery had an event director that was booking events back in early 2011, and he suspected that what was distributed was from an earlier time period – and that person has since been terminated. Mr. Paulson stated that he went to his event director, Evelyn Keys, and asked how many events they held in 2012 that were over 200 people. He said that there were two – one on June 2 and one on October 27 – both of which were booked in 2011 with the former person before there was anything on the event contract that said over 200, and before they were paying attention to it. He stated that their current contract very specifically and explicitly says no more than 200, and they are living within the letter of the law now, unequivocally. Mr. Paulson said that he's heard a lot of people saying they love living in the rural area, and farm wineries are in the rural areas – so they are entitled to have unlimited events, because this is what makes it financially feasible. He stated that they have three quarters of a million dollars invested in the orchard, cider equipment, production equipment and the tasting room, and you don't put that kind of money in and sustain losses as you're trying to build a business unless you have some sort of offsetting revenue – that's why events are allowed. Mr. Paulson claimed that they wouldn't make that much more money with additional people allowed at events – their point is why turn them away. He said that it is good for the County to have that kind of business and they don't think it will have an incremental impact to the neighbors.

Mr. Paulson stated that Castle Hill is willing to live with a 52 dBA limit at the property line, which can be accomplish with thicker glass on the panels. He said that if anybody's concerned about precedent,

they are “setting the bar very high” because they would fully enclose the facility and not have outdoor amplified music, only indoor music. Mr. Paulson stated that at the property line it will be no more than 52 decibels and the acoustical plan to allow and ensure that it happens would be approved by the Zoning Administrator. He said that he fails to see why that is not better for everybody in the room – for Castle Hill to live by that higher standard.

Mr. Rooker asked about 95 decibels at the site, which is what the Pavilion downtown operates on. Mr. Paulson responded that he is torn because he is hearing conflicting numbers about what is needed, and his preference would be 100 decibels and live to the 42-decibels and not limit the band beyond what they need to limit them – to achieve the result they want.

Mr. Thomas agreed with Mr. Paulson and said that a decibel of 52 at the property line would be good enough.

Ms. Mallek asked Mr. Paulson to clarify if he meant 52 or 42 decibels. Mr. Paulson replied 52 decibels. He said that his acoustical engineer has assured him that they can live with 52 decibels depending on the acoustical treatment that they apply internally and the thickness of the glass.

Ms. Mallek asked if that standard would be for all events. Mr. Paulson responded yes for all events.

Ms. Mallek commented that that would help the by-right events and give more protection to the neighbors.

Mr. Boyd said that some have suggested that Castle Hill goes to the additional expense of putting in additional features and does a trial run, and he was assuming that the business side of this wouldn't allow him to do that without the larger venues to generate the revenue to pay for those.

Mr. Paulson said that he is concerned about the two-year statute, but on the large event he is comfortable because he thinks the County fully supports – and it will be good for the County – and they would be able to get it approved again. He stated that it does trouble him to have a two year limitation and spend the kind of money they are going to spend to mitigate the sound and would ask for a longer time period if possible.

Ms. Mallek said that the investment the Board is talking about is really what's going to allow Castle Hill to comply with the current regulations on what they're doing by right. She said that this is the maturation of the business as they learn what their responsibilities are regarding their neighbors. She stated that each topography situation is different, and Mr. Paulson has had to learn and understand what he needs to do to carry on successfully and have a good relationship with neighbors.

Mr. Paulson said that they will learn as they go.

Mr. Snow said that he was looking at the Castle Hill website and the information was printed off on January 15, 2013, and it says their capacity is 400. Mr. Paulson responded that he is befuddled by that. He said that it is inexcusable for them to still have that on their website, and it's extremely frustrating to him personally.

Mr. Snow also stated that there is also a statement on the website that says there is an “elevated loft that can accommodate 200 to 300 guests,” and that was also published January 15, 2013.

Mr. Paulson asked if the information is from blogs and said that he would like to see it.

Mr. Rooker reiterated the statement mentioned earlier from a website claiming that they were the only venue in Virginia that can accommodate a 500-seated dinner and wedding reception with outdoor ceremony on the same property.

Mr. Paulson asked the name of the website he is referring to. Mr. Rooker responded charlottesvilleweddings.com, tag Castle Hill and there is a link in which he assumes the link is to the Castle Hill website, because it talks about “we” and shows pictures of Castle Hill. He stated that there is a proliferation of that type of information out there.

Mr. Dumler said that the acoustical treatment would be a one-time capital improvement and the Board has discussed requiring a condition to mandate contractual provisions to keep doors shut at all times, and asked if the County has the legal authority to enforce that for events not otherwise covered by the special use permit. Mr. Cilimberg responded that the County would not be enforcing for the by-right events, just for the special use permit events.

Mr. Dumler said that Castle Hill could have 150-person events and open the barn doors without anything the County could do.

Ms. Mallek emphasized that Castle Hill has already had repeated events where the sound has exceeded its limits, so this is to prevent this kind of activity. She said that it is Castle Hill's responsibility even in their by-right ones is to keep the sound under control, and the other businesses who have gone through this maturation have found ways to accomplish it – and the Board needs to make sure that they do to.

Mr. Davis said that the Virginia Farm Wineries Act has stated that “usual and customary activities and events at farm wineries shall be permitted without local regulation unless there is a substantial impact on the health, safety or welfare of the public.” He said that the statute goes on to say, “. . .except for outdoor amplified music, which can be regulated as long as it’s not regulated more strictly than it otherwise is by regulation.” Mr. Davis said the County has imposed the decibel level restrictions on outdoor amplified music, and if the by-right events have outdoor amplified music that is in violation of the limits it could be enforced as a zoning violation.

Mr. Cilimberg said the question was related to the lower-attendance by-right events and the closing of the doors as conditions, and those are applied to the special use permit events only – not to the by-right.

Mr. Rooker stated that if the applicant offered those restrictions, he thought those limitations would be valid.

Mr. Dumler said that he just wants to make sure they are enforceable.

Mr. Davis said that this would be enforceable if it was imposed and was not challenged within the 30-day limitation to challenge the condition. He explained that the state Farm Wineries Act does impose limits on local regulations except for outdoor amplified music, which can have stricter limitations.

Mr. Rooker said that if the condition is not challenged within 30 days then it would be applicable to all events.

Ms. Mallek commented as Castle Hill has stipulated that they would do. Mr. Davis responded, “yes.”

Mr. Cilimberg said that if all events are going to be covered, then any conditions applied to all events need to specifically state that because otherwise the application is only for the special events above and beyond the by-right events.

Mr. Paulson said that Castle Hill is proffering for all events in order to get the one that are beyond.

Mr. Snow stated that the King Family Vineyard is brought up as “the gold standard,” and asked staff if they were living within the 200 limit like everyone else. Mr. Cilimberg replied “yes”, as far as staff knows.

Mr. Snow asked if there had been complaints about the decibel levels at the edge of their property.

Ms. Mallek noted that at one point they had some issues with outdoor music, and that’s why they built a building onsite.

Mr. Rooker said that building is a much smaller indoor venue than Castle Hill would be.

Mr. Thomas agreed.

Mr. Rooker said that with the Castle Hill application, there are a lot of people saying that they would like to maintain the status quo – but they don’t really like the status quo, which is allowing unlimited events of 200 people with a noise standard that doesn’t seem to be working. He stated that the biggest concern from the public has been noise, and it doesn’t really depend upon numbers of people – because a band will sound the same impact regardless of the size of the group to which it is playing. Mr. Rooker said that he might be interested in supporting the permit with a lower decibel standard and with the noise controls they have said they would put in place, because it creates a better situation than the status quo.

Mr. Snow said that he agreed to an extent, and if Castle Hill could demonstrate that they could comply with it for a year under the present circumstances he’d be more inclined to approve it. He said that on an 85-degree night with 200 people dancing, there is no way they’re going to keep the door shut. Mr. Snow said that with the size of this particular venue, you would need a very large air conditioner to cool it off.

Mr. Rooker said that denying the application doesn’t really solve the problem that the neighbors currently have, which is the fact they are bothered regularly by the noise there. He said that staff has measured those limits and found them to be at or fairly close to the decibel limits. He posed the question “If we vote to deny it, how have we really improved the circumstances?”

Ms. Mallek said that in order to comply – even for their regular events – Castle Hill is going to have to enclose the building, as other wineries have done.

Mr. Rooker said that he wasn’t following Ms. Mallek because Castle Hill has been complying.

Ms. Mallek stated that they are not complying with the sound issue when they have repeated events where it is too loud.

Mr. Rooker said that they were based on decibels and the decibel measurements have not shown it.

Ms. Mallek said that they had several events that were not compliant.

Mr. Rooker said that it was by one decibel.

Ms. Mallek stated that every one decibel is a factor of 10.

Mr. Boyd said that that is two percent.

Mr. Rooker said that is why he suggested dropping it to 52 decibels, because then you have bettered the current situation substantially.

Ms. Mallek commented in that one factor. She said that they will have made it worse in terms of the traffic and the fact that all the other wineries are going to come in and say "I want that too."

Mr. Thomas responded, "not necessarily."

Mr. Mallek asked why wouldn't they?

Mr. Boyd asked Mr. Cilimberg how many special use permit applications had been received by staff to extend the number of people.

Mr. Cilimberg replied there was one that was withdrawn, and Panorama Farms sought an event that was for more than 150.

Mr. Boyd stated that all of the wineries have not lined up to get these special use permits.

Ms. Mallek said that's because this hasn't been approved yet, and they are not going to waste their time unless they think it is going to be approved.

Mr. Thomas asked if it was possible to attain a 52 decibel level at the property line, and maintain it.

Mr. Paulson said that they can by closing the barn.

Mr. Thomas commented that that is pretty low.

Mr. Michael Kerr, with Bay Acoustics, stated that there is a five-minute average, and it would be very difficult for you to speak at 52 decibels because it's over the five-minute period. He stated that 52 is actually pretty high because it's the five minutes. He said that if they just went out and measured "maximum levels" with meters, you might find readings of 70 or more from airplanes, dogs barking, etc.

Mr. Thomas said that an airplane does around 90 decibels.

Ms. Mallek commented that it's not non-stop.

Mr. Thomas asked Mr. Kerr if he can attain the 52. Mr. Kerr responded that you can with acoustical glazing, and the modeling they did was standard glazing. He emphasized that it would take five minutes of 95 decibels inside to yield 52 at the property line.

Ms. Mallek stated that what she understood is they want to keep the band generally playing at 95 decibels and apparently later in the evening it gets louder unless they really clamp down and keep control of the soundboard.

Mr. Kerr said that at the Nissan Pavilion, the lowest limit at the mixing position is usually 105 – and at the stage it would be much, much louder, but that's a full touring band. So if stepped back 100 is very doable – 95 is already being attained. He said that whoever is monitoring the decibel level they are not doing it for 5 minutes and is looking at it in real time – one second.

Mr. Boyd asked if there is a Black Box Sound Meter that could be used by the County to monitor the sound.

Mr. Kerr responded that they do that all the time, especially around airports, and he has done it a few times in amphitheaters. He said that the trouble is, where do you pick that point along the property line? He stated that sound travels in very strange ways sometimes, and the question is how many you put out there and who would incur the cost.

Mr. Boyd asked if it is expensive to do. Mr. Kerr replied "yes". He explained that you have to purchase the equipment, it has to be weatherproof and then data has to be downloaded by a person or through cellular communication.

Mr. Boyd said that his thought was having a locked box that stores that data then it could be checked by zoning staff to see if it were violated.

Mr. Rooker said they would need several of them to put around.

Mr. Boyd said he didn't know what the cost would be.

Mr. Kerr estimated the cost at \$10,000 for that system, and personnel would also be needed to retrieve the data. He said that one good thing about the County's noise ordinance is that it is very defined, as far as the five-minute timeframe and the dBA standard.

Mr. Rooker asked if the ordinance was enforced based upon the five-minute interval. Mr. Davis responded, that it is.

Mr. Rooker said that the sound could spike up to 80 and then go down to 40, and the measurement would be based on the average over the five-minute period. Mr. Kerr explained that it favors more of the louder noises because it's an energy average. He agreed that the rural area ambient sound is much lower than the current ordinance.

Mr. Rooker asked the difference in magnitude between 55 and 52 decibels. Mr. Kerr said it is adjusted noticeable in the field and explained that if a car goes by at 55 and another at 52 decibels and someone asked if you hear a difference you may be able to say that you did at 2 to 3 decibels. He noted that a decibel was developed in the laboratory and it's a ratio – and those numbers were chosen because one dB is the discernible difference in a laboratory, and it's not a quantity. He said that it was developed for that reason.

Ms. Mallek commented that the Board is expecting the decibel reading to do something that it is not designed to do. Mr. Kerr said that it does exactly what it is designed to do. He explained that it's not like 10 or 12 apples – it's not a quantity – it is a ratio designed to be within a scale that's understandable. He said that they need that logarithmic use of the energy to get it into some numbers that we can utilize, and that's exactly what the decibel does."

Ms. Mallek stated that what is missing is some relationship between those numbers and the affect in reality of that level of sound on people seemingly a great distance away.

Mr. Kerr noted that there is a good chance that a person is hearing the sound, but also a good chance that they're 12 dB away from the County's ordinance.

Mr. Thomas pointed out that they are not doing it on audibility they are doing it on decibels.

Mr. Boyd suggested that Mr. Foley look into the Black Box technology so it could be used by staff to measure sounds in the direction of the complainant.

Mr. Thomas said that with Rockydale Quarry they were trying to get them the monitor their own noise levels, but their response was "it is too expensive." He stated that the estimate he had heard was \$8,000.

Mr. Boyd said that the idea here was to have the Zoning Department look into purchasing the equipment to deal with noise complaints, and he wouldn't want to turn it over to the event planner.

Mr. Rooker said the Board has heard a lot of arguments over the years about how they have to "commercialize the rural areas in order to save them," which to him is kind of an oxymoron. He said that they are where they are in part because of state regulations that have preempted the localities' ability to regulate certain kinds of activities in the rural area, especially associated with wineries. Mr. Rooker stated that they are seeing legislation proposed now that would take that to a new level with respect to farm activities, and the fact is the rural areas look the way they do because there weren't "event factories" out in them. He said that his general feeling is that he would not be willing to support the SP unless he felt the approval actually improved the conditions for the people who live in the area.

Mr. Boyd agreed, stating that if the applicant is willing to go through noise and traffic mitigation measures then it may be a better situation for the area than what they have now. He added that the County has been trying to get truck traffic off of Route 231 for years without success.

Mr. Rooker commented that he heard many people speak in opposition to this special use permit, and they also said they didn't like the way it is now – so leaving it as it is means it will remain the same situation. He said that the question for neighbors is whether they would rather have a situation where there are a few more events with more people, but had better controls on the sound circumstances.

Mr. Snow asked what assurances the Board does the have that ensures them that there will be better sound control, because once you approve it and you don't get it, what are you going to do.

Mr. Dumler responded that the plug gets pulled in two years.

Mr. Boyd said that it would be authorized for two years, and this requires them to put forward a sound mitigation plan that would be submitted to the County.

Ms. Mallek noted that someone from outside staff would have to come in and evaluate the sound plan, because it is highly technical.

Mr. Thomas said that the reason he asked about the 52 dB is concern for the applicant's investment and the possibility that the County might cut them off after two years.

Ms. Mallek responded that if they don't comply with what they promised to do, "that's their responsibility – nobody dragged them in here to apply for this application, so if they don't intend to make it

work then it should not continue.” She added that the neighbors have already had a couple of years of things that don’t seem to be following according to plan. She said that she is very concerned about rewarding that behavior by giving any increase in repeated events – whether it’s eight or 15 – there will be multiple ones more, larger ones in the good weather months. Ms. Mallek said that she is less anxious about the one-day festival as it will have broad-based community involvement and support. She stated that she can see one or two years of that event and challenge the applicant to meet the performance bar that the County expects in order to protect the rural neighbors and the rest of the wineries. She said that there are people who are concerned about the “black eye” that they are getting as a spin off from misbehavior at another winery. She stated that all wineries and cideries are at risk to losing their credibility as well. Ms. Mallek emphasized that it must be a high bar or the County will lose all the value in the rural value – emotional value as well as quality of life.

Mr. Boyd said that without the other eight events, the applicant has said it is not financially feasible to do the other panels and the rest of the mitigation.

Ms. Mallek recalled the comment that if there’s enough money to build a million-dollar rental house, then there is enough for tens of thousands for soundproofing. She said that if Castle Hill doesn’t want to do the bigger event, then somebody else will pick it up in some other part of the state. She added that if they don’t want to meet the high performance bar, they don’t have to have the extra event. She said that somebody has got to be the grown-up here to say “we’re done with this misbehavior that keeps going on and on and on.”

Mr. Rooker said that he would like to bring this back for completion at another meeting, because when the Board gets into the circumstances where it is trying to make a decision because it’s “pushing onto midnight, they often make a mistake.” He added that when they are trying to bring together the threads of a very difficult application, and are trying to do it quickly, as with ReStore N Station. He stated that he has seen it before over the years. Mr. Rooker said that the quality of the decision often suffers because it is late at night. He said that they should take another 30 minutes or an hour to discuss the application because he is not comfortable voting on it right now.

Ms. Mallek said that if it is postponed then it would be advertised and people would be able to either come or listen online or at home.

Mr. Rooker said that it could be deferred to a specific date.

Mr. Davis noted that the public hearing has been closed, so there is no requirement for an additional public hearing on the matter.

Ms. Mallek said they should probably do the public hearing on the pond and the stream crossing.

Mr. Cilimberg responded that the two other special permits are somewhat independent, so the Board could decide on those tonight.

Mr. Davis pointed out that there were some extra conditions to be added onto #4, and he wasn’t sure those additional items had a majority.

Mr. Rooker suggested that the Board discuss the particulars when it comes back.

Mr. Boyd agreed.

Mr. Boyd then **moved** to defer SP-2011-0002 until February 6, 2013. Mr. Rooker **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Boyd, Mr. Dumler, Ms. Mallek, Mr. Rooker, Mr. Snow and Mr. Thomas.

NAYS: None.

Mr. Glenn Brooks, County Engineer, said that he would present SP-2012-00018 and SP-2012-00019 together. He then presented a map showing the stream crossing for the driveway located between the two Castle Hill parcels. Mr. Brooks explained that the driveway crosses the wider part of the floodplain. This particular application had two components – the special permit for the floodplain and the water protection ordinance exception. He referenced an image of the crossing, which the applicant claims is a replacement crossing for some smaller culverts that were in place previously. Mr. Brooks said that it has already been constructed with larger pipes, raising the crossing slightly and thus affecting the floodplain slightly. He stated that it is not a significant change, but the County’s ordinance is fairly strict in its provision that an individual is not allowed to increase the floodplain at all. Staff interprets that to mean that it must not have an effect on adjacent properties or the welfare of the public. He added that this meets all those criteria.

Mr. Brooks explained that in 2008-09 when the County extended all stream buffers in the rural area, another provision for a by-right stream crossing was created. This would qualify for that, but it has conditions stipulating that you must install a box culvert or bridge, not pipes. The applicants installed pipes, so that is the reason for the exception; it is already in place. A technical approval has to be made.

In terms of the pond, Mr. Brooks said it is a little more complicated. Mr. Brooks presented aerial photographs showing the property before and after the pond was built, noting that it was not present in 2009. In 2002, he said, there were more woods on the Turkey Sag side of the property and the pond was

not there. Mr. Brooks presented the photos in chronological order, showing the clearing that was done and the pond that was built in the back of the residence. He explained that the stream actually goes between the residence and the pond. He noted that the photo of the culvert was taken down near the tree, which is on the left side of the panorama view. The stream is directly in front of the pond going all the way across the picture. Mr. Brooks said that this is unusual because usually you have a pond that is built across a creek and you dam the creek and back it up, but this one is built right next to the creek and thus has a significant effect on a large part of the floodplain and is technically in the floodway. He said that the floodplain gets raised about a foot and then spreads out into the pond, then spills back over.

Mr. Brooks noted his depiction of the direction of anticipated floodwaters in a flood event. The one concern he has is there is not good control of where the floodwaters cross the dam, and that can be a potential erosion catastrophe if the dam gives way. He said that in his recommended conditions for approval, he addresses that issue by creating a defined way for the floodwater to go and prepare it for erosion resistance. In the proposed conditions, Mr. Brooks stated that the Commission asked for removal of the sentence "before the start of construction," because a lot of it has already been constructed. The same applies to wording in condition #7 which referenced start of construction for the pond. With those exceptions the Commission recommended approval with the conditions proposed by staff.

Mr. Thomas asked how long it takes to get permission from FEMA. Mr. Brooks responded that it can take many months and as far as he knows the applicants have not made official application yet.

Ms. Mallek pointed out that the applicants should have done the contacts with the Army Corps and FEMA before they started bulldozing. Mr. Brooks agreed, adding that when they built the pond it was a farm pond, and a County inspector was called out on a complaint for a land disturbance. He said that there is an option for an agricultural exemption for farm use, and the applicant did that – but the inspector did not realize it was floodplain, which is a different section of Code, so the applicants ended up building it without zoning approval. Mr. Brooks stated that he has since instructed inspectors not to do that, but this particular inspector was not talking about zoning enforcement – just land disturbance.

Mr. Rooker emphasized that the applicants still must obtain Army Corps and FEMA approval.

Ms. Mallek said it has already been built.

Mr. Rooker said they could be required to reverse it.

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

Mr. David Paulson addressed the Board, stating that Mr. John Rhett designed the pond and worked closely with the Nature Conservancy to ensure the stream was not impacted. Mr. Paulson said that during that time, the applicants got a letter stating that "farm pond is an exempt activity and therefore relieves them from the requirements of submitting an erosion control plan, obtaining a grading permit, and posting a performance bond". He stated that the applicants thought this was a legitimate thing to be doing, and it turns out for the new use they need a permit.

Ms. Mallek said the applicants would have needed a permit whether it was a residence or not.

Mr. Rooker commented that it was the County's fault in this case, as it apparently misled the applicant, so this is not really a case of the applicant doing something and then asking permission after the fact.

Mr. Davis said that they were told what the Water Protection Ordinance requirements were, but not the Zoning Ordinance requirements. He stated that the applicants were exempt from WPO requirements but were subject to a special permit under zoning.

Mr. Boyd said that the point here as Board members is that it is important to hear all the facts before jumping to conclusions.

Ms. Judith Sommer said that her property shares a 2,000-foot boundary with Castle Hill Cider. She said that the pond "just appeared," and Mr. David Fox of the Nature Conservancy said "he went there and the pond was there" but said "they do not have any big objection to it." Ms. Sommer stated that she is hearing there was lots of discussion with the Nature Conservancy, so she is confused about what she heard from them. She also said she is not fond about experienced landscape architects not going through the proper channels. She said that she is concerned about the pond because she has seen some changes in the runoff pattern on her property – and it would have been nice to have more inspection and care taken before that feature was added to enhance their events.

Mr. Brooks asked about the change in runoff, and whether it was an increase or decrease. Ms. Sommer responded that there has been an increase, and the pond level on her property fills up much more quickly – but she cannot be certain that it is because of Castle Hill's pond.

Mr. Brooks commented that he gets both complaints now and then – sometimes ponds lessen the flow in a regular time to downstream properties and sometimes they increase the flow.

Mr. Ray Humiston addressed the Board, stating that these people are his friends so it is hard for him to speak, but this stuff is just getting misrepresented like crazy. The pond is much closer to just showing up, and no permits, and surprising the Nature Conservancy. He stated that there is a pattern here, and he does not see how the Board can reward that with any benefit that goes beyond this. Mr.

Humiston said he would like to find out what really happened here, but every single thing they have dealt with has been like this, and it is not good. It needs to get normalized before the Board should be talking about extra stuff. He added that he does not understand why the Board would reward people that don't comply, but that is up to the Board to figure out. He added that there is no air conditioning in the barn and it is going to be a sweat house. The doors will not be closed and the noise will be significant. He does not believe they will seal up a barn in 92 degrees at night in the summer with no air conditioning.

Mr. Paulson said that Mr. Humiston is just flat wrong; they designed a pond and presented it to Mr. John LaBaer at the Nature Conservancy, who had a special water resource person come out and redesign the pond so that it did not impact the stream. The notion that this just showed up is nonsense, plain and simple.

There being no further public comment, the Chair closed the public hearings and placed the matter of both special use permits before the Board.

Mr. Boyd **moved** to approve SP-2012-00018 subject to the six conditions as presented. Mr. Rooker **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Boyd, Mr. Dumler, Ms. Mallek, Mr. Rooker, Mr. Snow and Mr. Thomas.

NAYS: None.

(The conditions of approval are set out in full below:)

1. The applicant shall make improvements to the dam and culvert in order to provide a stable, non-erosion path for floodwaters, while keeping flood level increases below one foot.
2. The applicant shall obtain County Engineer approval of plans for changes to the dam and culvert prior to construction.
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 prior to the start of construction for any changes, regardless of whether the project exceeds the minimum disturbance limits.
4. The applicant shall obtain all necessary federal and state agency approvals (Army Corps of Engineers, Department of Environmental Quality, etc.).
5. The applicant shall obtain Program Authority approval of a mitigation plan, and provide mitigation according to the Water Protection Ordinance.
6. The applicant shall obtain approval from FEMA for changes to the floodplain, and update the FEMA maps.

Mr. Boyd then **moved** to approve SP-2012-00019 subject to the three conditions as presented. Mr. Snow **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Boyd, Mr. Dumler, Ms. Mallek, Mr. Rooker, Mr. Snow and Mr. Thomas.

NAYS: None.

(The conditions of approval are set out in full below:)

1. The applicant shall obtain approval from FEMA for changes to the floodplain, and update the FEMA maps.
2. The applicant shall obtain all necessary federal and state agency approvals (Army Corps of Engineers, Department of Environmental Quality, etc.).
3. The applicant shall obtain Program Authority approval of a mitigation plan, and provide mitigation according to the Water Protection Ordinance.

Mr. Boyd **moved** to approve WPO-2012-00075 with the one condition as provided. Mr. Snow **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Boyd, Mr. Dumler, Ms. Mallek, Mr. Rooker, Mr. Snow and Mr. Thomas.

NAYS: None.

(The condition of approval is set out below:)

1. The mitigation plan shall be revised to include inlet and outlet protection measures, and channel modifications for those measures, to the satisfaction of the County Engineer.

Agenda Item No. 11. From the Board: Committee Reports and Matters Not Listed on the Agenda.

Ms. Mallek asked if the Board had had time to review her emails regarding opposition to House Bill 1430 and to send a letter to legislators regarding biosolids.

Mr. Rooker said he supports sending the proposed letter. Board members concurred.

(Note: The following letter was sent to the Governor Robert McDonnell☺

“For the last three years, members of the Albemarle County Board of Supervisors and their colleagues around the State have worked with a wide range of stakeholders composed of representatives from the biosolids industry, the Virginia Association of Counties (“VACO”), and the Virginia Department of Environmental Quality, headed by Neil Zahradka, to improve the State regulations for managing and using Class B biosolids.

The result of the work of these stakeholders and the work of a Regulatory Advisory Group was the State Water Control Board’s adoption of new biosolids program regulations (including 9 VAC 25-32) on September 22, 2011. These regulations significantly improve Virginia’s biosolids permitting program by providing the needed balance between community residents and industry on this important health, safety, economic, and environmental issue. On September 20, 2012, almost one year after the State Water Control Board adopted the regulations, the VACO Agriculture and Environment Steering Committee sent a letter urging you to sign the adopted regulations.

Many counties use local biosolids generated from their own waste treatment plants. In contrast, all biosolids applied to the land in Albemarle County come from industrial and urban sources treated by the Blue Plains Advanced Wastewater Treatment Plant operated by the District of Columbia Water and Sewer Authority. The Treatment Plant receives waste not only from Washington, D.C., but also from localities in Northern Virginia and Maryland.

There currently are permits to allow biosolids to be spread on 8,136.5 acres of land in Albemarle County. There is a new application to allow biosolids to be spread on an additional 270.5 acres in the Lynch River and Beaver Dam Creek watersheds.

Applications to expand the acreage, often in close proximity to Albemarle County’s high density development areas, are being regularly received, increasing the urgency for the new regulations to be in place.

Please approve these regulations as soon as possible. Thank you.”

Ms. Mallek added that the County Attorney drafted a resolution in opposition to House Bill 1430 based on information she provided him. She asked if Board members had any concern with sending the resolution to the County’s legislative representatives.

Mr. Rooker **moved** to adopt the proposed resolution in opposition to House Bill 1430. Mr. Dumler **seconded** the motion.

Mr. Boyd asked if Mr. Rooker was in agreement with recommending other localities to approve similar resolutions. Mr. Rooker responded that he had no problem with that.

Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Boyd, Mr. Dumler, Ms. Mallek, Mr. Rooker, Mr. Snow and Mr. Thomas.

NAYS: None.

(The resolution is set out below:)

RESOLUTION

A RESOLUTION TO RESPECTFULLY STATE THE OPPOSITION OF THE BOARD OF SUPERVISORS OF ALBEMARLE COUNTY TO HOUSE BILL 1430 (“THE BONETA BILL”)

WHEREAS, House Bill 1430 expands and commercializes the definition of “farm operations” to include the sale of items not associated with the bona fide production of crops, animals, or fowl by permitting the sale of any number of items not produced on that or any other farm nor normally associated with agricultural production; and

WHEREAS, the historical purpose of the Right to Farm Act was to protect farming operations from claims by encroaching residential development that farming activities constituted a nuisance, not to authorize retail sales and manufacturing operations in agricultural zones; and

WHEREAS, the provisions of House Bill 1430 do not protect farming but instead seek to expand the definition of farming to include activities which are wholly unrelated to farming such as the manufacture and sale of “art, literature, artifacts, furniture, food [and] beverages” which are more appropriate in commercial and industrial zones; and

WHEREAS, House Bill 1430 encroaches significantly on the powers of local government to protect citizens without affording true protection to actual agricultural activity which is adequately protected by the existing provisions of the Right to Farm Act; and

WHEREAS, House Bill 1430 will impact the rights of property owners to the quiet enjoyment of their properties by increasing the potential for land use conflicts with neighboring properties; and

WHEREAS, the provision of House Bill 1430 making County officials or employees personally liable for actions taken by them in the course of their duties in interpreting or enforcing an ordinance adopted by the official or employee's Board of Supervisors will stifle the appropriate enforcement of ordinances intended to protect the health, safety and welfare of all of the citizens and property owners of the counties; and

WHEREAS, no factual evidence has been presented showing any actions taken by any county impinging on the rights of any farm to sell agricultural products produced on that farm which would necessitate action on the part of the General Assembly to create an entirely new category of "agriculture" which includes manufacturing and retail sale of non-agricultural products.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of the County of Albemarle does hereby state its opposition to House Bill 1430;

AND, BE IT RESOLVED FURTHER, that the Board of Supervisors respectfully requests that its legislative delegation oppose House Bill 1430 which unnecessarily expands and commercializes the definition of "farm operations," abrogates the doctrine of sovereign immunity and impedes the enforcement of laws intended to protect the property values, health, safety and welfare of the citizens of the counties of Virginia;

AND, BE IT RESOLVED FINALLY, that the Board of Supervisors respectfully requests that other counties, cities and towns in Virginia join with it in opposition to this assault on local control of land use which also abrogates the doctrine of sovereign immunity and imposes personal liability on County officials and employees for carrying out their official duties while acting in the best interest of the County and its citizens.

Ms. Mallek said she also sent Board members information regarding House Bill 2142 which had to do with farm wineries.

Mr. Davis explained that the provision would prohibit a locality from limiting the number or frequency of "usual and customary activities and events at farm wineries," so even for those with substantial impacts the locality could regulate them but could not limit the number or frequency. He said that he could put together a letter in opposition for the Chairman's signature to go to the County's legislators.

Board members agreed.

(Note: The following letter was sent to the legislators:

"RE: Opposition to HB 2142

Albemarle County is proud of its farm wineries and fully supports grape production and the manufacturing, marketing and sale of wine as a viable and sustainable agricultural enterprise. In fact, the County's farm winery regulations have been touted by the farm winery industry as a model for other localities to follow. The County's farm winery regulations have generally worked well and the County's farm wineries for the most part comfortably co-exist with rural property owners in the County's extensive agricultural areas.

One of the reasons for the success of the County's farm winery regulations is that they strike a balance between the interests of the farm wineries and their neighbors. That balance exists, in part, because Virginia Code § 15.2-2288.3(A) allows a locality to regulate the usual and customary activities and events at farm wineries if it determines that the activities and events cause a substantial impact on the public health, safety or welfare.

HB 2142 disrupts that balance. The proposed amendment to Virginia Code § 15.2-2288.3(A) would prohibit localities from regulating the number or frequency of activities and events, and the hours of operation, even if the locality determines that they are having a substantial impact on public health, safety or welfare. Localities should be allowed to retain this authority to protect the community in those cases. Such unregulated activities and events can not only adversely impact people, but also conflict with other agricultural and equestrian operations.

The Board is concerned that HB 2142 would further allow enterprises that are in reality commercial event centers to operate under the guise of a farm winery license. As you know, under the Virginia Alcoholic Beverage Control Act, farm winery licensees are not required to grow any fruit on the site and are not required to manufacture any minimum amount of wine. For such enterprises, agricultural production and wine manufacturing, marketing and sales can be secondary to the commercial events. HB 2142 further takes away the authority of localities to properly address the adverse impacts of such primarily commercial enterprises. Such adverse impacts create conflicts with the property rights of rural property owners that will cause them to oppose wineries. As such, HB 2142 may actually be counterproductive to one of the key purposes of Virginia Code § 15.2-2288.3 – "to preserve the economic vitality of the Virginia wine industry."

For these reasons, the Albemarle County Board of Supervisors respectfully requests that you oppose HB 2142."

Mr. Rooker said that he would like to put the long-range transportation plan discussion on the agenda for February 6, 2013.

Mr. Boyd said he would also like to defer his request for a discussion on the current noise standards until February 6, 2013.

Ms. Mallek stated that she hopes that the Board can come to an agreement on growing hemp locally and would like for the Board to consider adopting a resolution.

Mr. Dumler said that Senator Hanger has introduced a bill that would direct adjustments to the local composite index for school funding purposes to reflect use assessment as opposed to fair market value. Senator Hanger also introduced a budget amendment that would cost about \$1.2 million that is working its way through the Finance Committee. He asked if the Board wanted to take a position on that bill.

Mr. Davis stated that it is already in the Board's legislative priorities to support an amendment of the composite index formula that would take land use taxation into account, rather than fair market value which is what this bill does. This is the first time the bill has been introduced.

Ms. Mallek suggested that Board members send emails to the Committee in support of the bill.

Agenda Item No. 12. From the County Executive: Report on Matters Not Listed on the Agenda.

There were none.

Agenda Item No. 13. Adjourn.

There being no further business, the meeting adjourned at 12:25 a.m. on January 17, 2013.

Chairman

Approved by Board
Date: 04/03/2013
Initials: EWJ