Albemarle County Planning Commission
May 22, 2018

The Albemarle County Planning Commission held a public hearing on Tuesday, May 22, 2018, at 6:00 p.m., at the County Office Building, Lane Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Tim Keller, Chair; Julian Bivins, Pam Riley, Vice-Chair; Jennie More, Daphne Spain, Bruce Dotson and Bill Palmer, UVA representative. Absent was Karen Firehock.

Other officials present were Megan Nedostup, Principal Planner; Amelia McCulley, Director of Zoning/Zoning Administrator; Elaine Echols, Chief of Planning; Andrew Gast-Bray, Assistant Director of Community Development/Director of Planning; Sharon Taylor, Clerk to Planning Commission and John Blair, Deputy County Attorney.

Call to Order and Establish Quorum

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

The Planning Commission recessed at 7:22 p.m. and the meeting reconvened at 7:31 p.m.

ZTA-2018-00002 Commercial and Industrial Zoned Properties Not Served By Public Water
Public hearing on proposed ordinance for Commercial Office, Commercial 1, Highway Commercial and Light Industry zoning districts. The proposed ordinance removes language related to water consumption exceeding four hundred (400) gallons per site acre per day for uses not served by public water and states that all uses approved pursuant to those code sections before June 13, 2018 shall remain subject to existing special use permit conditions. The proposed ordinance establishes a list of uses by-right and by special use permit for a) uses not served by public water or an approved central water supply system and for b) uses served by public water or an approved central water supply system. (Rebecca Ragsdale)
CONTINUED FROM THE MAY 8, 2018 PLANNING COMMISSION MEETING

Ms. Ragsdale said staff would like to pick up where we left off on May 8. She said we provided an additional staff report to follow up on some of the items that we talked about. She said staff would like to spend this evening going into a little more detail on some of the items that have generated the most discussion and concerns since the May 8 meeting. In the presentation, we have asked a few of our subject matter experts to speak to a few topics and Ms. Ragsdale said she would be facilitating the discussion. She noted that John Blair our Deputy County Attorney would speak to legal questions and law property value questions that have come up along the way. She noted that Amelia McCulley will speak to the background and purpose and intent of this zoning text amendment and then Elaine Echols, our Chief of Planning for Long Range Planning can address some of the Comprehensive Plan questions. Then we will go into the particulars of what we have proposed that we talked about last time with regard to affected properties and potential zoning changes. Just as a quick reminder, Ms. Ragsdale said the Board initiated this in February with their resolution of intent that they adopted and since then staff has developed the recommendations before you this evening that were taken to an April 16 public informational meeting and then were discussed at your May 8 meeting. She said that brings us to tonight where we are asking you to take action on this to forward it on to the Board for their June 13 public hearing.

Ms. Ragsdale said that John Blair is going to give us the legal framework for this type of undertaking.

John Blair, Deputy County Attorney, said since there have been a lot of emails and discussion since the last hearing he wanted to go over four concepts that he has heard repeatedly and read in emails and would walk you through each one of the very basic steps.

A. Substantive Due Process - The first is what we call substantive due process. This is a legal action that one might bring for any governmental action such as a zoning text amendment. In order for someone to be successful for a substantive due process challenge, they have to first demonstrate that they have a property right. However, second they have to demonstrate that the government action, meaning in this case the zoning text amendment, is arbitrary or irrational and it is not justified by any circumstance or government interest. He thinks staff and we would assert that the proposed ordinance has many government interests that it is trying to address that are legitimate first being the efforts to bring the zoning ordinance into closer conformity with the County's Comprehensive Plan.

B. Takings – The second aspect is takings which a term for the Fifth Amendment U.S. Constitution's right that prohibits the government from taking your property without compensation. Mr. Blair said he wanted to go over that there are two types of takings the first is what he terms a pure take and that is when the government simply acquires your property for use for a public good such as road. That is not any concept we would really be dealing with this zoning text amendment. However, the second type of taking is what he refers to as a regulatory taking meaning if the government passes a regulation that affects your property to a certain extent therefore it would be a taking. Again, he has heard some comments and read some emails but wanted to walk you through how you get to a regulatory taking.

   The first way you can get to a regulatory taking is if the government in effect through an ordinance or zoning text amendment or other action deprive your property of all economically beneficial or productive uses. The second way that you would normally see a regulatory taking argued is a diminution in the property's value that resulted from the government regulation. Now the diminution test the Supreme Court of the United States has never set out a firm number, but if you look at the case law from the Circuit Courts, which is the level below the Supreme Court, typically courts have looked at a 90 percent diminution in value threshold. The Virginia Supreme Court have never really gotten too deeply into this issue about percentages. There is a case law where roughly a third of a property's value is diminished the court stated that was not a regulatory taking or an inverse condemnation.

C. Piecemeal Downzoning – The third legal issue he wanted to talk about is called a piecemeal downzoning. The Virginia Supreme Court has identified three elements for what is called a piecemeal downzoning. It has to be initiated by a governing body, which we do have the resolution of intent for this zoning text amendment, but it also must address a single parcel or very few parcels in the locality. It also must reduce the permissible residential density or intensity below that established in the locality's Comprehensive Plan. He said the second element about addressing a single parcel or very few parcels this zoning text amendment (ZTA) applies across numerous zoning districts and more than one, two or three parcels. It does address more than a single or very few parcels. Also, reducing the permissible residential density or intensity below that established in the Comprehensive Plan what this ZTA is trying to do is actually bring this closer to the Comprehensive Plan's designation.

D. Vested Rights - Finally, vested rights is another term he has heard mentioned in the past couple of weeks, which is the concept that a landowner has a right granted by the government and that once the landowner receives that right they assert that right and the Zoning Ordinance itself if there are changes would not apply to that particular use. He wanted to walk you through what is a vested right here and that means that first the owner needs to obtain or to be the beneficiary of an affirmative governmental action. They must rely in good faith on that action and they must incur extensive obligations or substantial expenses in the diligent pursuit of that action. Some significant governmental actions would be proffers that are accepted with a specific use, rezoning for a specific use, a special use permit or a site plan approval. Those are examples of affirmative governmental actions that can lead to a vested right.

Mr. Blair said he did want to make it clear that the Virginia Supreme Court ruled in 2009 in a case called "Hail versus Blacksburg Board of Zoning Appeals" where the court ruled, "There is no property right in anticipated uses of land." So you might say the vested rights legal determination if he said well I own this property and plan to build a Hardee's there but he has not received a rezoning, a special use permit or any affirmative governmental act towards that use of the property, then that is not a vested right. He said that is just your intention to use the property. He said the Commission have had many legal terms and concepts thrown out but these four he has heard quite a bit and wanted to give you a brief overview of each one.

Ms. McCulley said she was going to talk a little bit about the purpose and intent of the zoning text amendment and a little bit about the timing. In terms of the purpose and intent, she is going to take this in three components. She said there are at least these three components of reasons as to why we are undertaking this ordinance amendment.

1. To provide clarity and consistency by addressing current ordinance provision which is problematic
    a) The language is ambiguous.
    b) There is no industry standard for water consumption. It is difficult to truly accurately and definitively project water consumption for a particular use. It is not a finite exact science.

Ms. McCulley said secondly because it is difficult to determine water consumption with some level of certainty then it leave owners of these properties with an uncertainty as to their possible uses by right. She would add that it also leaves property owners who are adjacent to these properties with some uncertainty as to what may occur next to them.

2. To provide by-right uses (subject to required buffers, performance standards and supplementary regulations)

Ms. McCulley said the third category is that the current provision the 400 gallons per site acre per day is a focus on water consumption only and aspects related to that. Therefore, the proposed ordinance broadens the review to be more consistent with the Comprehensive Plan and to include additional criteria that relate to the impact of that use on adjacent properties, roads and the character of the district. Therefore, the proposed zoning text amendment broadens the scope of review for these uses.

3. Allow broader review of special permit uses beyond water consumption

Ms. McCulley said in terms of timing there are a couple of things driving the timing of the ordinance with the first in terms of this uncertainty that property owners are uncertain as to what uses would be

allowed on their properties. Again, adjacent property owners are uncertain as to what will occur on these properties. Secondly, at least twice in the past year we have had applications that have gone as far as appeals related to this water consumption issue and that really just kind of circles back around to just how problematic the current very ambiguous language is to administer and understand.

Ms. Echols said she had the opportunity to speak to the Commission at this time because of the questions that you have raised about updates to the Comprehensive Plan. It seems a little odd to have it in here but she knows that has been relevant to your discussion question as to when are we updating the Comprehensive Plan and is there an opportunity to discuss this more with a Comprehensive Plan update. She said going back to what the State Code says localities are obligated by the State Code to review their Comprehensive Plans every five years and see whether it is advisable to amend the plan. That particular piece of the Code refers to many communities who do not keep up with their Comprehensive Plans. We are a unique community in the state of Virginia in that we truly put our efforts into upholding our Comprehensive Plan and it has a lot of strength because of its history of being upheld. Therefore, we do not look at our whole Comprehensive Plan comprehensively as often as some other localities are obligated to do that. She said that is because we amend our Comprehensive Plan frequently. Therefore, we actually have three Comprehensive Plan amendments under review right now.

- The Rio 29 Small Area Plan is an amendment to the Comprehensive Plan.
- The Pantops Master Plan.
- The Biodiversity Action Plan is something the Commission will be getting later on this summer.

Ms. Echols said these are all pieces of the Comprehensive Plan, which will be amended into the plan as others will also be amended over a time period. We had our comprehensive update of our plan in 2015 and then the other updates occurred in 2011 and 2010 during recent years. She said our comprehensive look at everything typically happens every 20 years. She said the most recent 2015 Comprehensive Plan update is shown on the slide; the last one before that was in 1996 and the one before that was in 1989. She said the reason we undergo these big reviews every 20 years is that as we are changing policy in the intervening years we want to make sure that the whole document still holds together and so about every 20 years we undertake this massive relook at the Comprehensive Plan. She said the Board would suggest that we need to relook at issues and the Commission can suggest to the Board that we relook at issues that would cause certain sections of the Comprehensive Plan to be updated. But, typically, the way that happens is in the intervening year to the 20 year time period. She said it happens infrequently but the Commission has that opportunity to tell the Board you would like to review a particular section of the plan and see if they will allot the resources for you to do that. She said that is information about how and when we actually do updates to the Comprehensive Plan.

Ms. Ragsdale said we are with this process working from language as we talked about last time that is currently in our Comprehensive Plan at the foundation of that of course is our rural areas that we want to protect and have for agricultural, scenic, cultural and historic resources. She said then our development areas are where we typically promote commercial and industrial type activities and higher density. She said that as part of our growth management policy in our Comprehensive Plan we have stated repeatedly that we expect clear boundaries with the rural areas. She said that has led to what we have referred to as the affected properties and the situation where we currently have a mismatch with our Comprehensive Plan and our Zoning Ordinance. Ms. Ragsdale said as we said last time the zoning for some of these properties does go back to that 1980 Comprehensive Plan amendment where the properties were left with the commercial and industrial zoning that is outside of the development

area. She said since 1980, as we talked about before in our development areas, that some such as Earlysville and North Garden use to be rural villages.

Ms. Ragsdale said so that results in where we have properties that are designated rural areas in the Comprehensive Plan and are zoned commercial and industrial but the Albemarle County Service Authority designation is for no water service or in some cases water to existing structures only. She said last time staff provided an actual list of the parcels and some additional maps so that you have gotten a better sense of the characteristics of those parcels. She said there a number of parcels in different locations, some in former development areas and then some along major corridors when there was a point time when Planning and Zoning were auto oriented or Highway Commercial oriented such as along 250 East and West.

Ms. Ragsdale said she gave the Commission some updated figures and went back through the tax records to make sure we tried to catch properties that were truly vacant and those that had development already. She said the updated figures is still around 300 acres and 80 different tax map/parcels that were assigned with about 57 different owners and we have given you the maps. She said there is actually only one parcel zoned Commercial Office that would be affected and it is the one that is in downtown Free Union that can only be a doctor's office because of proffers. Therefore, we did not give you a lot of data and maps about that because there is only that one affected parcel. She said a number of these parcels are already developed.

Ms. Ragsdale said staff wanted to spend a little bit of time reviewing that list, which we spent so much time talking about last meeting. She said we tried in the report to go through what our thinking was behind that criteria and how we had applied it during this process. She said this is not the typical process that we would have in the rural areas since typically, we would not have this zoning in the rural areas and so this zoning text amendment will give us an additional tool to mitigate that. However, we will still have the inconsistency and the mismatch with our Comprehensive Plan but we are trying to bring it a little closer with this process. She said we had focused primarily on in the recommended list of uses that you have had a chance to review more thoroughly than you did before the May 8 meeting. She said staff recommended uses that we felt were directly related to the rural area or were directly mentioned as a use that should be in the rural areas in our Comprehensive Plan or was a use that was already in the zoning district for the rural area either by special use permit or by right. She said this was the biggest factor in our consideration when we went through the list because we knew all of the other things on the list would be addressed during the special use permit process even though we said that this list should not be used as criteria for a matrix for evaluation for a special use permit. She said some of these are things that you see repeatedly in the Comprehensive Plan and would be considered during any special use permit process. She said that would be compatibility and impact to resources not in conflict with nearby agricultural and forestall district uses. She said we tried to give you some additional mapping that showed where these properties were in relation to conservation districts, agricultural and forestall districts, conservation easements and then our rural historic districts like the Southside Mountains and Greenwood. She said the size and the scale we talked about uses that were not directly supportive of the rural areas that were more commercial in nature that would be addressed in the special use permit process.

Ms. Ragsdale said that traffic and suitability of the roads for uses is a factor. She said we have more ability to evaluate that during the special use permit process just as if you had that discussion with Keswick earlier. She said some of the by right uses are similar to rural area uses that we have seen that are either directly supportive of agriculture where they are allowed by right or we have experience with

that have not caused any traffic problems. She said we also noted that most all of these parcels are on major routes. She said the demand for fire and rescue service we did not feel like would be a factor either way. She said many questions have come up regarding the ability to operate without public water or sewer. She said the perspective that water is no longer important whereas we have said before that water is one of these other many things that are important that we are trying to bring into the discussion when it comes to these uses being by right versus by special use permit.

Ms. Ragsdale said consistent with the rural area policies is the big sticking point with this whole discussion in how far we can balance the list of uses in this approach and bring it more closely in line with the rural area policies. She said by its very nature it is just not going to be completely consistent and then needing a rural area location we did not think was a factor to be considered because these are properties that are commercial and not rural in nature. She said the other criteria is that these uses would be reversible. As we said in the staff report they are zoned commercial and industrial and we are hoping that some of the uses that we have listed are by right would encourage more agricultural or be supportive to agricultural type of uses, but we would not expect them to be reversible to farming given the nature of the zoning that they have had.

Ms. Ragsdale said we have tried to take those goals into consideration as well as the economic side of things for property owners but also balancing that with impacts and concerns that we have heard from neighbors as far as the character that one might expect in the rural areas and the impacts these types of uses being commercial in nature could have to nearby properties. So we have provided you with the lists of the by right uses and the special use permit uses and asked you to let us know where we were in that balancing act. She said we talked a lot about the particular uses before and heard from some people about what they think should be taken off the list. She said we have had a lot of discussion about clubs and lodges, but the expectation is that you would go through the list and we would forward an updated one to the Board. She said we have not changed it since that April meeting.

Ms. Ragsdale said there is one new recommendation in the report that she will go over; however, what we wanted to spend some time on this evening was highlighting and focusing on uses. However, she thinks we need to talk about some other components in the Zoning Ordinance that have been brought up and again these are uses we thought were directly tied to agricultural products. She said there is a definition of agricultural products, which does require that they be local, that came up. However, she thinks we all to this point familiarized ourselves with the list of uses and again they are those that we have either specifically listed in the Comprehensive Plan or for the rural area. She said that is the list of the commercial by right uses and then depending on what zoning districts it is more uses were moved over to the special use permit category because some of the commercial districts when you look at them just have more uses in general. She said we tend to list out things very specifically in our ordinance that is somewhat outdated. She said that specific retail goods are listed out, which is why it is such a long list. She said we have tried to highlight the ones that were the substantive changes. She said many of the uses that are listed are by right in all zoning districts like storm water facilities, Tier I and Tier II facilities. She said some of the temporary uses on the list were by right in all of the commercial and industrial zoning districts.

Ms. Ragsdale said with the industrial given the number of uses and trying to balance uses that we felt were supportive of our goals and also maintaining that economic opportunity for the property owners we have included some of the same uses that you saw for the commercial districts like farmer markets; manufacturing and processing of agricultural products or storage and warehousing of those; and organic fertilizer processing and sawmills as an example. She said we feel like we have thoroughly covered the

use discussion with you as far as what uses we have recommended by right and those recommended as special use permit. But, we thought we should talk about what standards are already in the ordinance for those by right uses and we have had some questions come up about still having measures in place that are considerate of the neighboring properties. She said we have commercial zoning and industrial zoning throughout our development area that directly abuts residential development and in those cases; those properties come in to develop by right with a site plan. Of course, we know that our development area is different in character from our rural area but we just want to let you know what is already in place.

Ms. Ragsdale said there has been some discussion and suggestion that perhaps we need a phase two to the zoning text amendment process so we can spend more time on what she calls the area and bulk regulations and then what we call supplemental regulations that are the additional standards. She said our ordinance calls them performance standards that address sound, lighting, vibration, glare and heat and every use of an industrial character has to either provide a narrative or something that is prepared by an engineer that addresses those standards. She said we have a few things already in place for some of the uses that are listed as by right. She said for veterinary uses in particular we said this last time we feel like we have some substantial supplemental regulations already in place. She said there is a 500' setback for buildings that are not soundproofed or up to 200' and a separate entrance requirement for buildings that are soundproofed and there are some additional regulations for animal confinement areas and screening requirements and such. In the development of any commercial property, there is the 20' buffer requirement against the residential properties. There is a catch all section of our ordinance that says any objectionable feature must be screened such as dumpsters and that sort of thing. For our commercial and industrial districts, we have the 20' buffer that is a requirement no matter what and in the light industrial districts; it is a 30' buffer. She said we have additional regulations for outdoor activity and outdoor storage and so there is 100' setback requirement for outdoor activity and then outdoor storage there is a 50' setback and it must be screened. She noted the screening standards are spelled out in the ordinance and the storage of materials, parts and equipment cannot go above the 7' screening requirement that is in place. There are also requirements that processing, manufacturing, assembly should be within an enclosed building. She said for sawmills in particular there are supplemental regulations that require 100' setback for storage and 600' setback for machinery.

Ms. Ragsdale said we have talked a little bit about how this zoning text amendment process would affect properties that have those prior approvals or a vested right. She said this would only affect those properties that do not have that Albemarle County Service Authority designation and the properties that already have water to existing structures they already water service so uses can continue in those existing structures. She said it is just when they would expand or redevelop that this proposed ordinance if adopted would affect them. She said the processes that we already have for requesting the jurisdictional area changes would remain in place. The current process for requesting central system approval would remain in place and we are not suggesting that any of those policies be changed, and it is usually in a health situation like a failing well that water is extended to properties outside the development area boundaries. She said because of the reasons John stated that the existing uses may continue; there have been affirmative government actions, the already approved special use permits those conditions will remain in place. In addition, we have a number of these properties that have proffers that limit uses already so those would remain effective and they would be able to continue those uses or have the opportunity to have those uses within the structures or on the property. She said what we have proposed since we last met is some additional flexibility for those existing or vested structures after we have had some discussion with property owners and realized they felt like they needed some additional flexibility so we have suggested the existing structures would have more

flexibility in the uses that they can have within those structures. She said we put it out for discussion tonight to get feedback from the Commission, but we did realize since we wrote the staff report that we did not intend for that to mean that properties could develop to uses that are more intensive. We have language in our site plan section of our ordinance that deals with changes in uses and more intensification of uses. She said we have heard the example of a small repair shop wanting to go to a McDonald's with a drive thru and that would kick in the need for changes to the parking and a site plan since it is something more along the lines of redevelopment instead of using an existing building. She said if you did want to recommend that provision in the ordinance she thinks we would need to craft some language that is careful either using existing ordinance language or something that we were to come up with that gets at those concerns. She said this provision would not apply to those properties that have the special use permits on the 400 gallons per acre per day; they would still have to abide by those special use permit conditions because those conditions limit the uses on the property in how they can be used. She said we have had a lot of discussion about what we already have the ability to mitigate and what we can do with our special use permit process. There is criteria in the ordinance and standard analysis that we do for all special use permits, again, these are unique cases. She said there would be unique cases coming before you before because they would be commercial uses that we would not typically expect in the rural area. She said through this process for those uses that we were concerned about being more commercial in nature or not directly supporting agriculture, we would have our typical process with community meetings and the ability for neighbors to comment on how it would affect them. She noted it would be as far as no substantial detriment to adjacent lots being one of the criteria and how it might change the character of the district. She and then of course how it is in harmony with all of our health, safety and welfare criteria that we typically review special use permit for as far as impacts on. This includes water and sewer capacity, traffic, noise and all of the typical things and we would also talk about consistency with our Comprehensive Plan during that process. With the special use permit process we would have the ability to go beyond those supplemental regulations as we discussed if you felt like in a rural area there needed to be even greater setbacks and buffering for example. Therefore, we have the ability based on the particulars of the case if the impacts are arising that we can require greater setbacks, limit hours of operation, additional screening and that type of thing. She said we wanted to make sure that we covered that information again this evening within the context of our approach of this zoning text amendment of coming up with a list of by right uses that we are comfortable with to recommend to the Board and then those that we feel like should be special use permit uses.

Ms. Ragsdale said we are asking for an action from the Commission this evening and she knows you will want to have some discussion and open up the public hearing again. But we have of course we put it in the staff report that you have options as far as what your recommendation might be you could recommend approval with the list of uses we have provided and drafted already with the additional grandfathering clause we are calling it. She said you might want to recommend approval with that plus the phase 2 suggestion. She said if we go back and visit some of those other components of the Zoning Ordinance and our regulations that we have not focused on during this process, the supplemental regulations and any additional area and bulk requirements that we would want to look at. She said you would have the option, of course, to recommend denial to the Board and we would want you to list your concerns when we forward this to the Board for the June 13 meeting.

Mr. Keller invited questions for staff before we open the public hearing. He asked for more clarification of the motion #2, which has been called the two-phase approach.

Ms. Ragsdale replied that we discussed that, and then Johan and Amelia may want to clarify, phase one would be updating the use categories to by right and or special use permit. She said phase 2 would start with a work session discussion with the Commission on whether we need to go a step further and update any of the setbacks, height, supplemental regulations, and performance standards regulations.

Mr. Keller asked could we do a moratorium on anything in that timeframe so that we make the change but we do not deal with the uses until after the Board of Supervisors either make a decision or elect to expand this process.

Mr. Blair replied that he did not believe there is such a mechanism in Virginia for a moratorium. He said probably what you would be looking at is that you can sometimes pass an ordinance with an effective date that is not the date of adoption. He said saying that the issue with that particular approach if the Board of Supervisors decided to employ it is that we do have certain aspects of the proposed ZTA that are subject to June 13, 2018 as a date. He said for instance any use that is already subject to a special use permit pursuant to 400-gallon water provision that in effect is stated that any of those special use permits that are in existence on June 13, 2018. He said if you had a different effective date that provision would be ineffective and he thinks it candidly would have to be amended.

Ms. McCulley added with regards to phase two that could take many different forms. She said it could be performance standards or other standards that would address scale and intensity of uses whether you decide that you would keep them by right or whether they would be by special use permit or whether they would be proposed to be removed and not allowed until that phase 2 work is done. She noted they would only be allowed at a certain scale and intensity. She pointed out there are a lot of options for how to handle a phase two to address uses by right or by special permit.

Ms. Riley said just a follow-up question so if we did this phased approach in phase two when we are really looking at supplemental regulations, is there another opportunity to evaluate whether some items that we thought previously should be by right maybe into the special use permit category or can we recommend any changes at that point.

Ms. McCulley replied that she thinks you would probably want to be able to make changes at that point based on further discussion and analysis and one of the problems that we have with these use categories as Rebecca has already said is that there really a very outdated of doing zoning. She said they are very specific and very archaic and we really prefer broader categories. She pointed out that alone may take some time that is something we want to do in the future but we could do a phase two that did not have to incorporate all of that.

Mr. Blair said to augment on that answer he thinks what we would do procedurally is if the Board of Supervisors elected to adopt the zoning text amendment (ZTA) we would also probably have them as part of the adoption of that ZTA in effect have a mini resolution of intent to authorize the Planning Commission to look at supplementary regulations, area and bulk regulations as well as uses so that you all could take then a more comprehensive look at your subsequent work sessions and recommendations to the Board. He said we would want to give you maximum flexibility through that mini resolution of intent.

Ms. More asked just to be clear if we went with that option with phase two if we recommended approval tonight and we would have the ability in phase two to go back and relook at something that was previously presented by right and potentially discuss changing that.

Mr. Blair replied that was correct or special use or not listed. He said what we would want to do if the Board of Supervisors agrees is to try to give you maximum flexibility in that phase two.

Mr. Keller asked for a clarification on the 400-gallon component would still be one of multiple criteria if we made the changes as proposed.

Ms. Ragsdale replied there would not be a specific one water would still be one of the criteria that you would consider during your special use permit process and would be one of the criteria along with the many others we would like to bring into the discussion. She said that regulation as it is written in the ordinance now would be removed.

Mr. Blair noted just to clarify there right now it is in 33.8 that water is one of the aspects that are looked at for conditions. He said it is for adequate provision of water.

Mr. Keller said since staff is the applicant he would open the public hearing and Ms. Riley would take on this portion.

Ms. Riley invited public comment. She explained the lighting system and that when it turns red that means your three minutes are up. She called the first person to come forward to the podium and state your name.

Pat Young, a 30-year resident of Mechunk Acres, said she lived directly across Black Cat Road from the Tiger Fuel proposed development and was very concerned about the water issue. She explained that water was an issue in that area. She said another issue that needs to be brought to your attention is the safety factor since her property backs up to the eastbound on-ramp on I-64. She said there are no parking signs but that tractor-trailers are still parking on the ramp for hours and hours during night. She said she has been in touch with the State Police and they only have one officer that patrols between Avon Mountain and Zion Crossroads and they can't patrol the on and off ramps as to who is parking there and who is not. She said that is something that many people do not know about and she would like to bring that to your attention as a concern that she has. In addition, if we had a lot of neighbors in Mechunk Acres that are out of town for this week and could not be here at the meeting, but she said some were here and she would ask that they stand or raise their hand in support of the water issue so you can take notice of them. *(There were several persons in the audience that raised their hands.)*

Thomas Albro, an attorney with the Law Firm of Tremblay and Smith, said he represents Frazier White in South Creek Investments, LLC who own a parcel of land that would be substantially affected by the proposed ordinance. He said we urge the Planning Commission to vote against the ordinance for two reasons; first, the ordinance effectively downzones as many as 80 commercial properties by eliminating what were by right uses and replacing them with uses allowed only by special use permit which unfairly devalues the land, punishes tax payers who have paid commercial rates for years and discourages land development and investment. Second, the negative effects of downzoning can be avoided if the county follows the existing ordinance to enforce compliance with the 400 gallons per site acre per day consumption limit. With regard to downzoning, the ordinance reduces the number of by right uses for these 80 odd commercial properties which limits their usefulness to the owners and potential buyers. This diminution in value directly harms the property owners, business owners and investors like my client and pay taxes on property with commercial zoning for years sometimes decades. They paid them with the expectation they could develop the land according to its by right uses. The land was also

assessed in consideration of its by right uses. In effect, the property owners chose to hold commercial land and incur those property costs in exchange for the right to develop it in the future according to its by right uses. If the Planning Commissioner were to adopt the proposed ordinance, it would do a great disservice to those taxpayers. When the county downzones commercial property and discourages investment those property owners and developers cannot anticipate or predict future uses. He said we believe the county should enforce the existing ordinance, to enforce the 400 gallon per site acre per acre limit the county has a number of options including fines, suspension of occupancy permits, and installing flow restrictor valves that halt water consumption after the 400 gallon per site acre per day limit is reached. He said it is our position that the proposed ordinance is an overly broad solution to a simple problem. He said downzoning and diminishing property values should only occur if there is a compelling public need for it. He said there is a no less onerous remedy in existence and we think a far less onerous remedy exists for the Commission.

Ruth Dalsky said that she owned three rural areas zoned properties in a non-designated growth area in Albemarle County. She has lived in this area for 30 years and supports the redefining the current zoning text amendment as proposed. She said in my situation the parcel across the street in this rural area the company wants to put a claimed by right six-dual fuel pump 24/7 restaurant and convenience store similar to the Design Crossroads Sheet Station. She said it is the same size. She inquired in to the water usage of the current Sheets Station and the Louisa County Water Authority said they use about 90,000 gallons of water per month. In a previous hearing, the current company applicant argued that they would use far less because the current zoning verbiage refers to water consumption and not usage, which they claim that their consumption is only about 40 gallons per day based on beverages and soup. She said of course this is ridiculous, they actually realize that usage is being addressed but it shows that the zoning verbiage has to be redefined. This business will devastate the numerous families that currently live in the area which are totally reliant on wells. The County is its citizen's only safety line to prevent large commercial enterprises from destroying long established rural communities who are vulnerable and are not eligible for county water. We must rely exclusively on water from already taxed wells. These large commercial enterprises must be under special use permits to allow the county to consider the impacts of the current residents.

David Sutton said he had been a resident of Albemarle County and the City of Charlottesville since 1948. He said previously he was in this room in 1962 as a ninth grader at Lane High School and then again in the late 1970's as a member of the School Board. He said he would like to recommend denial of the proposed zoning text amendment and would like to clarify some of the comments he has seen in the staff reports. One of the staff reports said that there are in effect no by right uses under the existing ordinance because the 400 gallons an acre limit is impossible to determine. He said it is not impossible to determine; it is very easy to determine. In fact, it could be totally regulated by putting a restrictor valve on the water that limits the use of the water to the 400 gallons per acre per day. In addition, it is not a novel concept that water is metered into a place of business; in fact, everybody that is on the water authority has a meter on his or her house for water to be metered into the house. It is the same with a business and it is easy to determine what the consumption of water is. He said it is merely an administrative decision by your staff that refuses to make that decision; they do not want to make that decision because they do not want to approve the use. However, the actual objective rational decision is readily available to them. With regard to the comments that it would not be a serious diminution in value that is also incorrect. He had been involved with lots of property transactions and he would submit to you that the diminution in value would be somewhere in the order of magnitude of 70 to 90 percent. In fact, he believed they had Pastor Knight come to speak to you before who said he is going to lose the entire contract on his property because the change in the zoning ordinance. He said a change

from by right to a special use permit is a very onerous change since it lengthens the period of time that it takes to get approval; it increases the cost significantly and is a serious impediment to anybody that is looking to buy the property. He said that he could assure you that the diminution of value can easily approach 90 percent. Mr. Sutton urged the Commission to do what is fair to the landowners in Albemarle County who have this property and have counted on the existing zoning so please deny this zoning text amendment.

Scott Knight, Pastor of Rivanna Community Church at 601 Earlysville Green, said he appreciates the responses he has gotten and the time staff has taken with me. He said we are planning on moving to a new location and we are under contract for that property and we have overcome seemingly insurmountable obstacles in order to come this far. However, we have not been able to close on that property to move to the new location unless we can sell our current property for a fair market value. He said he appreciates staff's effort to increase economic versatility of the properties but especially given the exceptions that were given tonight, he did not think that the versatility will help us much but it sounds like the grandfathering really is not much of a grandfathering the way it sounds like. He said he wrote to the Commission about the update on the status of our church's sale that a previously seemingly motivated buyer got back to us and offered $400,000 less on our property than we were expecting and he specifically cited this zoning ordinance as a reason for this. He said we need immediate relief as a specter of this proposed ordinance and the uncertainty it creates. He said it represents an unusual hardship for our church in this critical period of the sale of our property. On May 8, meeting when asked how this would affect property values it was clear that no one knew and, consequently, the Commission asked staff to provide some understanding of how values would be affected. He noted that has not happened and so he believed that a Commission recommendation that this goes through would represent not taking into account at all the value of the property that would be lost. He said he thinks that the phase 1 and phase 2 approach would not give the public time to understand what is being recommended to the supervisors. He said it would put an extraordinary disadvantage and he thinks it flows from the uncharacteristic haste that is being used to go through with this ordinance. He said he was not sure that he quite understands the haste and would love in your comments to address that to determine whether the items that are requiring the haste really necessitate what this is doing to our property values.

Morgan Butler, with the Southern Environmental Law Center, said as we have noted previously we are glad to see the county is finally trying to tackle the inconsistency between the zoning on these parcels on the one hand and on the other hand the rural area designation and the lack of public water service. The existing zoning provisions that limit by right water consumption on these parcels have been an important safeguard against inappropriate development. He said as staff has repeatedly noted the practical effect of those provisions is to significantly limit the uses that can be done by right on these parcels today. However, as the staff report notes those provisions have proven difficult to administrator and we certainly understand the desire to replace them with a different and clearer safeguard. However, it is essential that any new approach to these parcels be consistent with the rural area designation and continue to protect against water intensive uses being allowed by right. As noted in the comments he sent the Commission over the weekend, we believe a number of the uses proposed need to be re-thought. We have offered recommendations along these lines along with references to the Comprehensive Plan sections and the existing Zoning Ordinance provisions that support them; but don't have time to go through those recommendations with you tonight but we hope you will consider them as you are working through the proposal.

Mr. Butler said the item from our letter that we do want to be sure to bring up tonight is our concern with the grandfathering idea presented in the new staff report. The staff has suggested tonight a seemingly more limited applicability of that provision versus what was presented in the staff report. He said if we understand that correctly a property owner would be allowed to convert existing structures to any current by right use as long as the new use does not require what boils down to additional parking spaces or a different entrance. He said he may be misunderstanding them but that was what they were able to gleam from tonight's summary. It is not hard to envision an example where switching to a more water intensive use, such as a car wash, that would not require additional parking or changing the entrances. Therefore, this grandfathering idea could very easily undermine the key purposes of this effort and we urge you to reject it. He said to be sure we appreciate and sympathize with some of the other interests at issue here but he keeps returning to an old saying that my father drilled into my head as he was growing up, if it is worth doing something it is worth doing it right. Now that the county has finally focused on the problem that the stale zoning on these parcels presents let us be sure we actually fix those problems. He said let's make sure the uses allowed on these parcels would be consistent with the rural area designation and their lack of public water service, which are two major foundations of the county's growth management strategy as set forth in the Comprehensive Plan.

Mr. Randolph Kohl said that he sent an email to the Commission and basically are dealing with 27 year old zoning on Highway Commercial, Industrial and Commercial properties that have been there for a long time. He said what is being proposed will cut the property values in half and many of us have made substantial investments in these properties over the years and some of them are not developed as well. He said that he does not understand the logic when the county grows two to three the size it was back in 1989/1990 and we are going to restrict the use and basically say we have no claim to the water below our land. He pointed out the property he owns is right around the corner from Peter Jefferson Place and it was not rural, but it has been deemed rural now. He said he just does not understand the logic and hopes they take that into consideration even though he knows there is another stage past you. Mr. Kohl asked the Commission to protect our values.

Justin Shimp said that he had some information to hand out to everyone. (Attachment - Upcoming Proposed Ordinance Changes Public Information Meeting Schedule emailed on April 9, 2018 and 2018 Submission and Review Schedule) Mr. Shimp said he did not own any of the affected properties and my interest here actually is about the process more than the particular topic at hand. He said that Mr. Butler said it well if you are going to do it, do it well. He said what did strike me about this process is it is extraordinarily quick and the discussion he had heard tonight is already a discussion of we will pass this ordinance and then immediately enact a proposal to change it again. He said he has not heard exactly what the rush is but it seems like if there are doubts about what could be in it and there has been relatively little engagement of the public on this let it continue on so that process can go through. The information he passed out is the email that he received announcing the ordinance change, which was on April 9th at 1:28 p.m. which consequently it is the same day by which at 3 p.m. you would need to submit a site plan to sort of be under the current ordinance. He said so property owners affected were given 90 minutes notice to turn in a plan to change this. He said that is probably just a coincidence but it is a quick turn around and he has not heard of any roundtable meetings with these stakeholders and as far as he knows the landowners were sent a postcard. He pointed out when we do our neighborhood meeting we send certified mail and that is to people whose not their land is being affected but their neighbor's land. He said we sent out 90 certified letters to residents of the Hollymead Town Center for a proffer amendment there. He said that he did not know if that has happened for all these affected owners, maybe it has but he has not heard that. He said he feels like for landowners to trust that this process is being fair and transparent encumbering their interest we should really follow a process more

like the developer does. He said we submit an application and nine months later, it gets to the Board of Supervisors if we are very successful. He pointed out by the time the April 16th information meeting came out it was less than two months the day where this is targeted for an approval. He said that is very quick in these things and he thinks there could be discussions with the stakeholders in this about things like limiting the water use. He said if the defining issue would be are you on public water or not, then the issue ought to be water and perhaps it could be retitled to commercial land in the rural area and it would pick up more of these issues. However, if the issue is water then there is a solution since you can put a mechanical valve there and there are engineering solutions for protecting groundwater resources. He said it would clarify the issue for staff and the owners and that would be a much simpler solution than what is proposed. He said it would not have such an adverse impact on people.

John Shabe said that he owned two properties that are affected by this and he found out about it today at 3 p.m. There were several business owners on Route 250 that found out about it but he received nothing in the mail. He said he was present today representing four of the businesses on 250. He said that he thinks this is being rushed as has been talked about today. He said that there needs to be more discussion about this since this is going to decimate people's property value and it is not fair. He said we brought these properties as commercial properties and we should be allowed to continue down the road when we purchased these properties. He said he did not k now what the rush is on all of this. He said there was a bit of a panic of the business owners on Route 250 in Crozet today and he thinks you need to reconsider, deny this and let's take a step back and work through some of the issues but to rush through this and approve it tonight is not acceptable.

Ms. Riley invited further public comment. Hearing none, Mr. Keller closed the public hearing to bring the matter back for discussion and action.

Mr. Keller invited further questions for staff.

Ms. More asked regarding grandfathering paragraph that says all existing and vested structures should be permitted to avail themselves all current by right commercial and industrial uses. She said then there is a suggestion made by staff that any impacts or change in rural character has already happened with the developed parcels and flexibility in future uses allowed and existing structures would not create additional or substantial detrimental impacts in the rural areas or surrounding properties. She disagreed with the later part of that statement and noted this was not what was proposed to us initially. She said tonight staff went a little further with that and said the existing or vested structures may be permitted all by right uses even if served by well provided that they do not develop to a more intensive use that triggers the need for a site plan. She said so there is another bit of language added and asked what does more intensive mean and who decides or defines what that is. At the suggestion of Mr. Butler it was a change in entrance or more parking spots and asked staff to explain a little bit about why that was added.

Ms. Ragsdale replied that staff said we wanted to get through this process with the Commission before we made any changes to the ordinance itself, we have raised this as a point of discussion, and we have recommended that it be added. After some concerns, staff have brought up the idea of using language that we already have in our site plan section of the ordinance. She said we have heard the concerns about it developing to a more intensive use and that would be potentially detrimental to adjoining property and change the character beyond what it may be now. She said if it is the existing building and parking as it is now the line of thinking was that the existing parking and building could accommodate that use then that would have less impact on the neighbors. She said it was when you get into the

things that trigger the need for a new entrance or VDOT requirements those are the things that typically trigger the need for a site plan and would trigger the need for improvements that would be something more along the lines of redevelopment and more uses that are intensive. She said if someone was going from a little repair building and they wanted to do a car wash then a car wash is a totally new use.

Ms. McCulley explained when we met two weeks ago the three things the Commission asked us to come back with was information related to the impact on property values. She said we thought about that and we have heard from people about the impacts on their property values and what we realized that one place to draw that line in terms of giving people additional rights would be those cases where people have actually built buildings and substantially invested in improvements on the property. That was sort of a distinguishing feature for us in terms of property that may be should be entitled to more rights. She asked what your options are. She said your options are: no grandfathering; you can grandfather basically the use as it currently exists on the date of adoption; you can allow all uses as was listed in the staff report; you can grandfather for particular uses like the existing use or perhaps a change out to something like offices or you can grandfather with some type of trigger about a change in use related to intensity. She noted that is what Rebecca was getting at with this site plan trigger about the intensity of the use. She said staff is trying to give you some options and be responsive to your request that we consider property values.

Ms. More said to clarify if there was a change in use for one that would not require more parking but might be something with a larger setback than what was already there and asked if that would be required or if by right they get to do that without having the setback.

Ms. Ragsdale replied if the use changes they would need to come into compliance with the regulations and whatever supplemental regulations are applicable. She pointed out that the building would have to come into compliance.

Ms. More said when we speak of the properties that have an existing structure we are talking about that existing structure so if they wanted to build a new structure on that property then what we are potentially proposing. She asked if there would be no grandfathering for any new structure on a property that has an existing structure.

Ms. Ragsdale replied that is correct; it would only apply to the structure and not the property.

Ms. More asked if the building were torn down would that grandfathering go away or would we get into a situation where we are talking about rebuilding back into that footprint.

Ms. Ragsdale replied that we have some language in our nonconforming section of the ordinance if a building gets damaged by factors beyond their control, if it burns down the nonconforming section allows you to rebuild it, but she did not know if we would be able to go any further with this process.

Ms. McCulley replied typically no that it would be for the building, as it existed.

Mr. Blair agreed it was existing.

Ms. Spain said that several members of the public have commented that it is indeed possible to monitor water consumption and usage. She asked staff to comment on that and address the public's concern.

Ms. McCulley said she would talk about it in two aspects; first, just on its face the use of a mechanical means to render a use by right as opposed to by special use permit is not a good practice. She that is consistent with decisions that we have made on two convenience stores with fuel sales that you cannot use a flow restrictor and a monitor to make that a by right use just by the use of the mechanical device. Secondly, thinking about it from a practical aspect and let us say someone says that it is and we can do it and should do it. She asked does it make sense that business hits the maximum water usage and we have to tell them they have to close their doors for the rest of the month. She said that really is not a practical solution.

Ms. More disagreed with temporary sawmills being by right in rural areas as well as several other uses being switched from special use permit to by right. She suggested looking at adjacent properties that could have a negative impact.

Ms. Riley said she was glad staff took the property value issue to heart and felt that a grandfathering approach made sense especially now since you have specified sort of the limitations to that on what nonconforming use limitations allow. She suggested discussing specific uses and whether we think some have been appropriately or inappropriately put in by right or special use permit categories. However, she asked if the Commission wants to discuss broader concepts first.
Mr. Keller suggested the Commission go line by line through the list of uses.

Mr. Dotson said staff has done a good job flushing out this proposal by looking at the kinds of uses that are allowed in the rural area and then incorporating those by right. When he looks at the special permit uses, he would describe those as being urban uses like department stores and clothing, apparel, shoe shops and so forth. He said he could understand the rationale between the two different categories, thinks what we should do tonight is to wordsmith and get into the details, and move this onto the Board. He said he was not convinced that this is the best approach. He said it seems there are other approaches and he knows the staff have looked at many different approaches but he did not know that the Commission has. He said that whenever you look at alternatives the place you start is let us improve what we are doing now. He asked how could we make the 400-gallon threshold work better, which would be his first alternative in thought. The second would be go the other extreme to drop the water criterion altogether and say these are commercial or industrial properties let them develop that way just like any others. He questioned what would be the consequences of that, which would be an alternative. He said a third would be what he would call a place-by-place analysis. He said not all of these are similarly situated and there might be one set of things we would want to say about properties like Earlysville Green, which are in a village center setting, and those are different from a highway setting. He said those might be different from those that are existing neighbors nearby and so another alternative would be a place-by-place analysis, which could be part of what was mentioned earlier as phase 2 or it could be the main approach. He said he was not convinced that this was the best way to go but it is where we are and a lot of work has been done on it. He suggested that the Commission get into the weeds and move it on to the Board.

Mr. Keller pointed out that a number of us at the last meeting suggested the place by place given the unique nature of many of them that would most likely be the best way to go and with staff constraints and what had been authorized that was ruled impossible at that point. He suggested that might be part of where this phase 2 is coming from. He said you also have been thinking about just doing everything by right and no special use and asked is that a fit.

Mr. Dotson replied that any approach is worth examining and a decision was made in 1980 to let the existing zoning stand and he thinks we have tried to hobble it in some ways but is not sure that the hobble works. He said one of the questions he would ask is what have we gained as a county by having the 400-gallon threshold and can we cite instances where we have been able to review it because of that as a special permit and we have been able to mitigate many of the impacts it would have had. He said that he would like to hear about that.

Ms. More asked Mr. Blair about if they were to look more specifically property to property were they looking into that sort of like dangerous area where we are taking one, two or a handful of properties.

Mr. Blair replied that he thinks she is referring to the piecemeal downzoning. He said if that were an alternative to be explored, there are three factors initiated by the governing body check. Does it address a single parcel or very few parcels? He said probably if you get down to the micro level, that element might be fulfilled. The third is does it reduce permissible residential density or intensity below that established in the Comprehensive Plan; and again he thinks that would be more of an analysis to take a look at that micro level about the Comprehensive Plan. He said that it certainly could trigger that second of three elements. He said that is a very good question, but again a piece meal downzoning has to fulfill all three requirements.

Ms. More said when talked about the two part component as an option is the expectation if the Commission was interested would we go line by line through this or essentially be saying that we would move forward with something more general and then at a work session at a later date go through line by line what you have recommended here.

Ms. McCulley replied that the Commission has the option of doing it either way.

Ms. More said if we moved forward with something general we would still have the option to go at a work session back through this.

Ms. McCulley replied absolutely.

Ms. Ragsdale noted if that is what the Board directs us to do.

Mr. Blair agreed that was correct by the Board of Supervisors.

Ms. More said we can go through line by line to see if we agree but most of us are able to forward on our notes to our supervisor for their consideration as they move forward with their process and made their decision. She said that could be an option as well.

Ms. McCulley noted that you could also just focus on the exception for example uses that you would want to remove or uses that you would want to move from by right to special permit.

Mr. Keller asked what the Commission's pleasure was and who was game to go line by line at this point.

Ms. Spain said that she would but she also liked Commissioner More's idea that we talk with our Supervisors and go over with them perhaps line by line. She asked if that was what was being suggested.

Ms. More replied yes.

Ms. Spain said that would be much more efficient. She said some of us have also sent this information back to staff as well after the individual meetings with them. Therefore, she would propose getting together with the supervisors.

Ms. More suggested a hybrid approach where we pick out maybe three is someone sees one or two that really are bothering them but not go line by line.

Ms. Spain said she thinks the clubs and lodges being by right bother us all and that seems to be the flag.

Mr. Keller asked staff to put the three alternatives up on the screen for us and asked if there were any ones particularly problematic up to five. He said that remove would be one option or move from by right to special permit or special permit to by right.

Ms. More said we are working from three lists that all have some similarities and some differences.

Ms. Spain said she counted 31 uses that went from by right to special permit among these three lists. She said the clubs and lodges would be the main thing she was worried about, but she also indicated some others to the staff. She suggested the use be moved from by right to special permit.

Mr. Keller suggested that it be removed, and Ms. Spain agreed.

Ms. McCulley said on that one use category one suggestion we heard is to make a distinction between clubs such as the civil, fraternal, patriotic clubs as opposed to the broader clubs it can become all kinds of things.

Mr. Keller said he was making an assumption for the other types and agreed we do need that distinction.

Ms. Riley asked to add to the list of by right to special use permit schools of special instruction.

Ms. Spain said she had a note about nurseries and daycare centers from special permit to by right.

Ms. Ragsdale said that one should be by right in all the commercial districts.

Ms. Spain said she was looking at highway commercial, and Ms. Ragsdale replied that was a typo or mistake in the reference chart and should be by right in the HC.

Mr. Bivins said he was much more concerned about scale and the impact of certain activities on neighbors because some of the activities will be subject to economic conditions. He said if that does work what are the impacts on the communities that surround it. Mr. Bivins said he was concerned about LI fill areas and what that means given some of the vagaries in recycling and does that mean a private individual or corporation can come in and say we are going to use these things. He said he could not figure that out and did not know what waste area means in industry terms. He said it was broad enough to be concerning about how that would impact properties around it. He questioned if you do this then what the scale and impact would be on the communities and neighbors that surround you. He asked if we did have a monitoring mechanism who would pay for it and can the Board of Supervisors

say they are going to put something in place to monitor this in a way that is effective and it can't be circumvented as sometimes we know things like that do get circumvented.

Ms. McCulley said to respond to your question of what a waste area is that typically waste material is soil. However, it could also be stone. She said by definition fill and waste must be soil or inert materials and waste areas are often a stockpiled area where they will take soil as they are trying to determine where they can use it to minimize the transportation costs and keep it nearby where they may need to use it for fill.

Mr. Bivins said that he was still concerned about that.

Mr. Dotson said one of the uses referred to in the uses referring to agriculture products that the word local agricultural products be inserted and he was wondering what your thoughts are on that.

Ms. Ragsdale replied staff had included the definition of agricultural products. She said we have a definition of local agricultural products already in our ordinance that we could add that to clarify. She said typically the farmer's market, farm sales and the farm stand regulations reference that local agricultural products and value added products definition and that is a clarification that we can add to the provision for the distribution and processing of agricultural products. She said that is certainly something that we can add to that.

Ms. More said she noted for farmer's markets in the rural area they require a special use permit but here you have them listed by right.

Ms. Ragsdale replied that they are special use permit in the rural areas but we thought were appropriate to encourage for these parcels that were zoned commercial and the Board has initiated text amendments to look at making the farmer's market provisions a little flexible.

Ms. More asked in this instance was she imaging something more like some tent setups as a temporary thing or a new structure.

Ms. Ragsdale replied that it could be either one.

Ms. More said for home and business services such as grounds care, exterminators, landscapers and other repair and maintenance services she would suggest that over 4,000 square feet would require a special use permit and light warehousing the same. She suggested striking industrialized building sales but she did not know exactly what that means.

Ms. McCulley said that industrial buildings are modular buildings, and Ms. More suggested striking that.

Mr. Keller said we are giving them a list of the ones that really stood out with us and then we will work with the supervisors later. He thinks another point that was made by the Southern Environmental Law Center of proposed by right uses related to agricultural products should require that the products be local. He said that was in the spirit with what we have done with the wineries, breweries and distilleries and he guessed legal would decide whether it was legal or not.

Mr. Blair replied that it is an interesting question and a couple of things come to mind. He recalled that the requirement for the farm wineries, breweries and distilleries was a certain amount of acreage

produced on site. He thinks that is how we looked at the local component to that for the wineries, breweries and distilleries. He said he would look that up but it was the production of a certain amount of acreage on the parcel itself.

Ms. Ragsdale pointed out we would not typically expect to have production on these parcels but something like was done on Avon Street they are using industrial property now for warehousing of their agricultural products and that sort of thing. She said the Comprehensive Plan in all the references to these allowances for distribution and processing facilities have said that it should be for locally produced agricultural products. She said we already have a pattern in our ordinance with our farm sales, farm stands and farmer's markets activities so unless John thinks that we cannot continue with that change she thinks we can just reference that because we already have the definition in the ordinance.

Ms. McCulley said the definition was local agricultural products or agricultural products grown or produced in Albemarle County or its abutting localities.

Mr. Keller said back to our last agenda item and asked about eating establishments, hotels, motels and inns.

Mr. Bivins said he would offer that he was much more focused on that and would have a counter point on the farmer's markets. He said actually we should let the market determine what products get brought to people in a non-farm based environment and he thinks the same that it has to be a local from one of the contiguous counties so it narrows it down into this precious activity that may in fact not provide food options for people that are based on a locality as opposed to preciousness. He said he would ask to perhaps let the market decide some of those things. However, again on the hotels piece that is a market piece but he thinks there is an impact and a size piece of that which he thinks is appropriate for this group to sort of say how does that work with a piece of land as opposed to managing what food items are on a temporary shelf. He said we are talking about temporary things here.

Mr. Dotson asked Tim to clarify what he was saying about eating establishments.

Mr. Keller said that currently our Comprehensive Plan is discouraging restaurants in the rural area.

Mr. Dotson said the current proposal looking at C-1, Commercial would have eating establishments by special permit and asked does that address your concern. He asked are you proposing to strike it.

Mr. Keller said he gets back to my colleague on scale and he was not sure that we have the protections for the scale in the rural area from what we have seen thus far that has been brought to us.

Ms. More noted that hotels and inns that one to me speaks to scale. She said it is by special use permit but she can imagine a scenario that would not make any sense and then she can image possibly a scenario where it would but it is all about scale.

Mr. Keller noted that we get back to the parcel by parcel.

Ms. More said essentially, what we are saying if it is by special use permit then staff would analysis that as far as the character of the surrounding neighborhood that would inform you as to size and scale in theory.

Ms. McCulley added and to other capacity land use impacts. She said you have the ability to retain that and either some of these others as a special permit use or remove them in your recommendation.

Mr. Keller said he would remove them but we are not doing a decision on each of these, we are throwing out concerns to staff at this point. He asked if there was any other comment and then we would go back to the motion. He said if we are going to go with the two-phase piece then there is an opportunity for follow-up on this. Mr. Keller suggested we do as Ms. Spain suggested and everyone communicates individually with his or her supervisor for their meeting.

Ms. More said another one that jumps out is the chemical plastics manufacturing and processing and she would throw that out. She said that dry cleaning plants is listed by special use permit and she would strike that. She said when we get into the weeds with this it was an opportunity for us to engage with our respective supervisors.

Mr. Blair said to Ms. Spain's point that he did look at the text of the proposed ordinance and right now in HC, it does not seem that day care centers while currently are addressed either as by right or as special use permits in HC in our current ordinance since he does not see them.

Ms. Ragsdale pointed out some times it is listed as nurseries, daycares, etc.

Ms. McCulley asked does it come in with C-1, and Mr. Blair replied yes but when you look at Section 24 currently, he is not seeing daycare centers or nurseries listed. He said it sounded like Ms. Spain thought that perhaps that should be a by right use in HC for the properties not served by public water.

Ms. Spain said that was correct.

Ms. Riley noted that is listed under HC under Fire and Rescue Squad Stations; it is listed in SP in properties not served by public/central water proposed and therefore she thinks Ms. Spain was suggesting that it become by right.

Ms. McCulley said she thinks you might get it where you pick up the uses from C-1.

Ms. Ragsdale noted that is where it is because in HC you are allowed to do all of the C-1 uses so that is why we said HC would allow it.

Ms. McCulley agreed and it is 24.2.1.41.

Ms. Spain said this raises the issue should we be making our comments on the text or on the table that you provided us.

Ms. Ragsdale said except for that one in the table the tables should reflect the text in easier to read format.

Ms. Spain noted she had been using the tables.

Mr. Keller said this is getting into the weeds and not giving specific direction because you don't know whether one or two or all of us are in agreement on these since you have heard some conflicting

comments on this just as we hear from the citizenry and he thinks we will hear from the Supervisors. He said we need to think about a process to move this forward because we actually have two other items for discussion this evening. He asked if someone is prepared to make a motion on one of these proposed ways of going forward that are on our screen now. If we get a second we can come back for discussion and can talk about how we might want to limit it just that way we put conditions on when we are doing a SUP. He asked what are the global conditions that we would like to put on the motion that goes forward that is giving direction to staff to take to the Supervisors.

Mr. Bivins said that they are actually different and do different things since one talks about grandfathering and the other one talks about having an opportunity to come back and review to discuss the amendments to Section 5 where 2 does not talk about the grandfather provision.

Ms. Ragsdale suggested that they could combine them.

Mr. Bivins said he was wondering if really what staff was asking for is a blended amendment from a couple of motions.

Mr. Keller asked if there was anyone that was for an outright denial.

Ms. More said she was not ready for a denial but she has many concerns about the grandfathering provision. However, she feels a little bit more comfortable with the language that staff added in the presentation tonight so she is willing to move forward with that but has some concerns about what would constitute a more intense use and how that would be determined. She said if she was to deny it would not be because she was not trying to move this forward but it would be because that makes me pretty nervous because she finds it to be a little bit vague.

Mr. Keller said it appears that we do not have an out and out denial so you could make a motion that drops the grandfathering and see if there is a second and then we could move forward.

Ms. More said she would combine 1 and 2 and moved for the Planning Commission to recommend approval of the proposed ordinance as provided in Attachment D without the additional grandfathering provision for existing or vested structures. Ms. More said she further moves for the Planning Commission to recommend approval of the zoning text amendment with a further recommendation that if the Board of Supervisors adopts the zoning text amendment the Planning Commission conduct a work session to discuss possible amendments to section of the Zoning Ordinance to address specific uses not served by public water or a central water supply system.

Mr. Dotson seconded the motion.

Mr. Keller invited further discussion.

Mr. Bivins said he could not support the motion as it is today because he believed that part of what we are providing with the grandfather clause is a moment in time for people and it is some uncertainly. He said that is one of the things that he kept hearing that people are very concerned that they perceive a loss in value in their property and so by having the grandfather clause he feels that he is basically saying to someone it is not in your court. He said if you use it the way you use it and sell it in that way he thinks the he would support you and if you don't then you have to come back and it has to fit into the

new use mechanism. He said the other way he does not know what kind of options we provide people. Therefore, he would not be able to support that.

Ms. Spain concurred with Commissioner Bivins.

Mr. Dotson said procedurally if we voted on the motion that is before us, could we come back with a second motion about the grandfathering or does the first one preclude doing that.

Mr. Blair replied that procedurally he would recommend voting on the motion as is, and if it passes then it passes, but if not then we could have another motion that includes the grandfathering provision. He said another option is there is Ms. More's motion on the floor; someone could make an amendment to add in the grandfathering provision right now.

Mr. Keller said the Commission could vote on the friendly amendment.

Mr. Bivins said that it could be any amendment that receives a second to add back the grandfathering provision to her motion.

Mr. Keller called the vote on this motion.

Mr. Bivins moved to return to the motion the additional grandfathering provision for existing or vested structures provided they do not develop to a more intensive use that triggers the need for a site plan.

Mr. Blair asked if that was a motion for an amendment to Ms. More's motion.

Mr. Bivins replied yes it was a motion for an amendment to Ms. More's motion.

Ms. Spain seconded the motion.

Mr. Keller asked for a roll call.

The motion carried by a vote of 4:2 (More, Keller no) (Firehock absent).

Mr. Keller said that carries.

Mr. Blair said the motion as amended is now on the floor.

Mr. Keller asked if there was any discussion about the motion as amended.

Ms. More added that she was not opposed to the grandfathering clause but feels that needs more clarification since it was vague. Ms. More said she definitely respects the intent that is behind it and thinks it needs more clarification and is something she could support; however, with all the changes that maybe a little more work would make me comfortable with that. However, as it is now that is my position.

Mr. Keller concurred since he can think of where you are going to draw the line on the amount of renovation that allows a place to be the same and is it going to be based on footprint, height or materials. He said we really get in to a number of design variables that then with function changes

could dramatically allow something that was not necessarily intended. He said that puts a tremendous pressure on staff. Like the administrative changes that have been proposed for rural churches and farmer's markets the whole idea has been to try to have the standards in place that would allow you to make those administrative changes. He also believes that you can develop that for this but there is going to be work involved in making this be true to the spirit that he thinks everybody is after. He suggested they revisit that in the truly rural areas. Mr. Keller said the motion was made by Ms. More as amended by Mr. Bivins, and asked for a roll call.

The motion passed by a vote of 6:0. (Firehock absent)

The Planning Commission recessed at 9:36 p.m. and the meeting reconvened at 9:46 p.m.

The meeting moved to the next item on the agenda.