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September 12, 2001

The Albemarle County
Board of Supervisors
401 McIntire Road
Charlottesville, Virginia 22902-4596

Re: *September 10, 2001 letter to Sally Thomas from Edith Manns, Thomas Hutchinson, Christopher Hyland, and Brian Wheeler*

Dear Board Members:

I am compelled to respond to the grossly inaccurate letter referenced above which misstates the facts and the law regarding the issues it attempts to address. The accusations that staff members unlawfully changed the zoning map is, in fact, libelous and indicates the authors do not understand the zoning history and the applicable law. It is necessary that I set the record straight so that the numerous persons copied on the letter are not left believing that any impropriety has occurred.

First, the letter writers misunderstand the 1970 zoning action on the property at issue. CUP - 140 was a conditional use permit approval. It is the equivalent of what is now called a special use permit in the current County Zoning Ordinance. A conditional use permit was required for warehouse and office facilities in the old B-1 zoning district. Condition #1 of the conditional use permit required the "screen of existing growth {to} be maintained on the west property line for a depth of 200 feet". Condition #2 required "a 100 foot screen of existing growth on the east property line". At the same meeting, but in a separate action prior to the CUP approval, the Board approved the rezoning of the property (20 acres) from A-1 to B-1. This was not a conditional rezoning (proffer) case. Conditional zoning was not enabled for Albemarle County until 1989. Virginia Code Section 15.2-2297, relied upon by the letter writers, is only applicable to conditions (proffers) proffered in conditional zoning cases. Mr. Pickford and the letter writers fail to understand the significant difference between a conditional use permit condition and a conditional rezoning proffered condition. Section 15.2-2297 does not apply to conditional use permit conditions and is not relevant to any analysis of the issues because no rezoning at issue was a conditional (proffered) rezoning case.

The 1975 zoning (ZMP-332) rezoned the 20 acres of B-1 property and some adjacent A-1 and RS-1 property to M-1. This also was not a conditional rezoning. (as referenced above, conditional rezonings were not enabled in 1975) The Board did not rezone and, therefore, left the then existing zoning in place for a strip of RS-1 property 400 feet in depth from Route 738 and a strip of A-1 property 200 feet in depth parallel to the "Kelly" property. The Board minutes also noted the existence of the CUP-140 condition (condition #2) which required "a 100 foot screen of existing growth on the east property line". Warehouse uses were not by-right uses in the old M-1 district so the CUP-140 conditions still applied to the existing warehouse use on the then rezoned M-1 property and the remaining A-1 property.

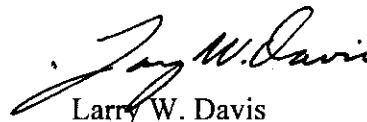
In 1980, there was a comprehensive rezoning of the County. The property at issue was rezoned to the new LI zoning district. The M-1 property and the A-1 strip were designated for LI zoning on the 1980 proposed zoning map. The first paragraph of the Jan Sprinkle memo to Bob Tucker explains how this occurred in 1980 and the interaction between Jan Sprinkle and Ron Keeler in 1980. The Board's 1980 comprehensive rezoning of the County adopted this proposed zoning map. The comprehensive rezoning in 1980 rezoned the M-1 zoned property to LI and the strip of previously zoned A-1 property to LI. No buffer was ever designated or shown on the new 1980 zoning map. The "buffer" existed only as a condition of the CUP-140 approval after the strip of A-1 property was rezoned to LI. In 1980, the warehouse use still was not a by-right permitted use in the LI district. Therefore, the CUP-140 conditions requiring the "buffer" continued to apply to the existing office and warehouse use.

An important fact that was not revealed in the letter is that on December 2, 1987 the LI district permitted uses were amended by the Board in a zoning text amendment to make some "warehouse facilities and wholesale businesses" a by-right use in the LI district. This was significant. The November 10, 1983 opinion rendered by R.E. Vaughn determined correctly that the CUP-140 conditions remained in "full force" in 1983 prior to the 1987 zoning text amendment. However, after the zoning text amendment in 1987 made the warehouse use a by-right permitted use (previously only allowed to continue as a conditional use) the CUP-140 conditions were no longer enforceable for office and warehouse uses now permitted to exist by-right without any conditional or special use permit. As referenced in Jan Sprinkle's memo to Bob Tucker, I was consulted on this issue in September of 1994 and advised Ms. Sprinkle of this consequence of the zoning text amendment. In 1994 there was no change made to any zoning map. The only change to the zoning map had occurred in 1980 when the property was rezoned to LI including the strip previously zoned A-1. In consultation with Ron Keeler, Ms. Sprinkle colored the A-1 "buffer" strip to the LI color on the proposed comprehensive zoning map in 1980 which was then adopted by the Board.

The assertion in the referenced letter that Ron Keeler and Larry Davis directed Jan Sprinkle to change the zoning map to remove the buffer in 1994, as explained above, is absolutely untrue. The assertion that the zoning map has been unlawfully changed is also absolutely untrue. What is true is that the letter writers do not understand the zoning history of this property and have made serious, irresponsible, and reckless accusations of illegal activities.

If any Board member wishes to discuss this matter or has any questions, please contact me.

Sincerely,



Larry W. Davis
County Attorney

cc: Randolph A. Beales, Attorney General, Commonwealth of Virginia
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