



MEMORANDUM

TO: Mayor and City Councilors

FROM: Rich Olson, City Manager
June Brooks, Planning & Community Development

DATE: December 2, 2016

REF: Consideration - Call for a Public Hearing for TA 01-16 filed by the City of Elizabeth City to amend the Unified Development Ordinance; specifically Article II, *Interpretations and Definitions*; Article IX *Zoning*; and Article XI *Development Standards*, adding language to define and regulate microbreweries in the Central Business District

BACKGROUND:

This request is for the City Council to call for a Public Hearing to be held on Monday, January 9, 2017 at 7:30 p.m. to receive public comment regarding text amendment TA 01-16. The Elizabeth City Planning Department requests that language be added to the Unified Development Ordinance to define and regulate microbreweries in the Central Business District.

ANALYSIS:

Several individuals have expressed interest recently in opening microbreweries in the downtown central business district. Since our current Ordinance is silent on this type of operation, such requests, though economically desirable, would have to be denied. As such, staff has researched several municipalities throughout North Carolina, including Asheville, Greensboro, Kinston, and Boone as well as others across the United States to determine what definitions and regulations are common. Staff further referenced two publications from the American Planning Association when determining what definitions and use standards should apply.

Staff sought Council's initial feedback on amending the UDO during their work session on September 26, 2016. Concern was expressed with regards to food sales standards, which have since been removed. The application was reviewed by the Planning Commission during their meeting on November 1, 2016, at which time numerous

individuals expressed concern with the overall ban of live entertainment. All speakers were in agreement that live entertainment is not only favored by their target clientele; and was also a way to further promote and support the art culture of Elizabeth City. After much discussion, a motion was made and unanimously approved to table the amendment and allow Staff time to revise the text to include a cut-off time of 10:30 pm and no cover charge provision.

The case was re-heard by the Planning Commission during their meeting on December 6, 2016. Staff presented the revised amendment, which included a cut-off for live entertainment of 10:30 p.m., as was previously discussed, as well as a ban on charging patrons an entrance fee. The two individuals who are interested in opening the two microbreweries downtown opposed the cut off time of 10:30 p.m. and the no cover charge. After considering the revisions and public comment, a motion was made and passed unanimously to recommend approval of the proposed text amendment with the exclusion of the ceasing live entertainment at 10:30 p.m. and the cover charge.

STAFF RECOMMENDATION:

By motion, call for a Public Hearing to be held on Monday, January 9, 2017 at 7:30 p.m. in Council Chambers of the Municipal Administration Building, 306 E. Colonial Avenue to gather citizen input regarding TA 01-16 filed by the City of Elizabeth City.

RCO/vdw

Proposed Text Amendment by Planning Commission

2-4.21.1 Brewery. An industrial use that produces more than 15,000 barrels of beer per year and sells the majority of the beer produced for off-site resale and consumption.

2-4.111.1 Microbrewery. A brewery that produces less than 15,000 barrels of beer per year for sale either on- or off-premises. Microbreweries sell to the public by one or more of the following methods: the traditional three-tier system (brewer to wholesaler to retailer to consumer); the two-tier system (brewer acting as wholesaler to retailer to consumer); and, directly to the consumer through carry-outs and/or on-site tap-room or restaurant sales

Amend Table 9-3-1, Table of Permitted Uses of the Permitted Uses Section, Article IX Zoning, §9-3.1(A) as follows:

9-3-1 Elizabeth City UDO Table of Permitted Uses (September 13, 1999)

Use Type	Ref. SIC	Zoning Districts															
		R-6	R-8	R-10	R-15	AD	RMH	CB	GB	O&I	HB	NB	CMU	I-1	I-2	PDR	PDM
BUSINESS, PROFESSIONAL and PERSONAL SERVICES (cont.)																	
Office Uses Not Otherwise Classified	0000								Z	Z					Z		
Pest or Termite Control Services	7342								Z						Z		
Pet Cemetery/Crematorium	z6553				S				Z						Z		
Photocopying and Duplicating Services	7334							Z	Z	Z	Z	Z		Z			Z
Photofinishing Laboratory	7384								Z					Z	Z		
Photography, Commercial Studio	7335							Z	Z	Z	Z	Z		Z			Z
Real Estate Office	6500							Z	Z	Z	Z	Z		Z			Z
Refrigerator or Large Appliance Repair	7623								Z		Z			Z	Z		
Research, Development or Testing Services	8730								Z		Z			Z	Z		
Shoe Repair or Shoeshine Shop	7251							Z	Z	Z	Z	Z		Z			Z
Taxidermist	7699				Z				Z						Z		
Television, Radio or Electronics Repair	7620							Z	Z	Z	Z	Z		Z			
Theater (indoor), except Adult Theater	7832							Z	Z	Z	Z			Z			
Theater (outdoor)	7833								Z		Z						
Tire Recapping	7534								Z		Z				Z		
Truck and Utility Trailer Rental and Leasing	0000								Z		Z				Z		
Truck Driving School	8249													Z	Z		
Truck Washing	7542								Z						Z		
Veterinary Clinic	0742				D				Z	D	Z			Z	Z		
Vocational, Business or Secretarial School	8240								Z	Z	Z			Z			
RETAIL TRADE																	
ABC Store (liquor)	5921							Z	Z		Z	-	Z	Z			Z
Antique Store	5932							Z	Z	Z	Z	Z		Z			
Appliance Store	5722								Z		Z			Z			
Arts and Crafts	0000							Z	Z	Z	Z	Z	Z	Z			Z
Auto Supply Sales	5531								Z		Z	Z		Z	Z		
Bakery	5461							Z	Z	Z	Z	Z	Z	Z	Z		Z
Bar, Night Club, Tavern	5813							S	S		S	S	S	S			S

Boat Sales	5551								Z		Z		Z		Z		
Bookstore, except Adult Bookstore	5942								Z	Z	Z	Z	Z	Z	Z		Z
Microbrewery	2082								S								
Building Supply Sales	5211								Z		Z				Z		
Computer Sales	5734								Z	Z	Z	Z			Z		
Convenience Store	5411	S							Z	Z	Z	D	Z	Z	Z		D
	Ref.	Zoning Districts															
Use Type	SIC	R-6	R-8	R-10	R-15	AD	RMH	CB	GB	O&I	HB	NB	CMU	I-1	I-2	PDR	PDM
RETAIL TRADE (cont.)																	
Department, Variety or General Merchandise	5300							Z	Z		Z						
Drugstore	5912							Z	Z	Z	Z	Z	Z	Z			
Fabric or Piece Goods Store	5949							Z	Z	Z	Z			Z			
Farm Supplies and Equipment	0000								Z		Z				Z		
Floor Covering, Drapery or Upholstery	5710								Z		Z			Z			
Florist	5992							Z	Z	Z	Z	Z					
Food Store	5400							Z	Z		Z	Z	Z	Z		Z	
Fuel Oil Sales	5980								Z					Z	Z		
Furniture Sales	5712								Z		Z			Z			
Garden Center or Retail Nursery	5261								Z		Z			Z			
Hardware Store	5251							Z	Z		Z	Z		Z			
Home Furnishings, Miscellaneous	5719								Z		Z	Z		Z			
Manufactured Home Sales	5271								Z		Z				Z		
Miscellaneous Retail Sales	5999							Z	Z		Z						
Motor Vehicle Sales (new and used)	5511							C*	Z		Z			Z			
Motorcycle Sales	5571								Z		Z			Z			
Musical Instrument Sales	5736							Z	Z	Z	Z	Z					
Newsstand	5994							Z	Z	Z	Z	Z	Z				Z
Office Machine Sales	5999							Z	Z	Z	Z			Z			
Optical Goods Sales	5995							Z	Z	Z	Z	Z					
Outdoor Café								D									
Paint and Wallpaper Sales	5231							Z	Z		Z			Z			
Pawnshop	5932							C	C		C	C		C			
Pet Store	5999							Z	Z		Z	Z					
Record and Tape Store	5735							Z	Z		Z	Z					Z

Amend Article XI Development Standards, §11-4 Development Standards for Individual Uses, to create §§11-4.50.1 Microbrewery as follows:

11-4.50.1 Microbrewery

(A) Where Required

CB (special use permit)

(B) Operation

- (1) Shall include one (1) or more accessory use such as a tasting room, tap room, restaurant, retail, demonstration area, education and training facility or other use incidental to the brewery and open and accessible to the public.

- (2) Where permitted by local ordinance, state and federal laws, retail carryout sale of beer produced on the premises shall be allowed in specialty containers holding no more than a U.S. gallon. These containers are commonly referred to as growlers.
- (3) Microbreweries are also permitted to sell food and unfortified wine; however, the sale of fortified wines, spirituous liquors, or mixed spirit/liquor beverages shall not be permitted.
- (4) Activities shall not generate traffic, noise, fumes, or odors beyond what normally occurs in the zoning district in which it is located.
- (5) Must adhere to all applicable Federal and State laws regarding the production, sale, and distribution of alcoholic beverages as well as the preparation and handling of food.
- (6) ~~No live entertainment is permitted past 10:30 pm.~~
- (7) ~~No cover charge or entrance fee of any form shall be levied.~~

(C) Outdoor Storage

No outdoor storage is permitted.



CITY OF ELIZABETH CITY
PLANNING & COMMUNITY DEVELOPMENT DEPARTMENT

STAFF ANALYSIS

MEETING DATE

December 6, 2016

CASE NO.

TA 01-16

REQUEST

TA 01-16 is a proposal to amend the Unified Development Ordinance, specifically *Article II Interpretations and Definitions*; *Article IX Zoning*; and *Article XI Development Standards*, adding language to define and regulate microbreweries in the Central Business District.

BACKGROUND

Several individuals have expressed interest recently in opening microbreweries in the downtown central business district. Since our current Ordinance is silent on this type of operation, such requests, though economically desirable, would have to be denied. As such, Staff has researched several municipalities throughout North Carolina including Asheville, Greensboro, Kinston, and Boone as well as a few across the United States to determine what definitions and regulations are common. Staff further referenced two publications from the American Planning Association when determining what definitions and use standards should apply.

TEXT AMENDMENT

UDO Development Standards Text Amendment

Red— Language to be added

Amend Article II Interpretations and Definitions, §2-4 to create §2-4.21.1 and §2-4.111.1 along with the corresponding definitions:

2-4.21.1 Brewery. An industrial use that produces more than 15,000 barrels of beer per year and sells the majority of the beer produced for off-site resale and consumption.

2-4.111.1 Microbrewery. A brewery that produces less than 15,000 barrels of beer per year for sale either on- or off-premises. Microbreweries sell to the public by one or more of the following methods: the traditional three-

tier system (brewer to wholesaler to retailer to consumer); the two-tier system (brewer acting as wholesaler to retailer to consumer); and, directly to the consumer through carry-outs and/or on-site tap-room or restaurant sales

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Pest or Termite Control Services	7342								Z						Z		
Pet Cemetery/Crematorium	z6553				S				Z						Z		
Photocopying and Duplicating Services	7334							Z	Z	Z	Z	Z		Z			Z
Photofinishing Laboratory	7384								Z					Z	Z		
Photography, Commercial Studio	7335							Z	Z	Z	Z	Z		Z			Z
Real Estate Office	6500							Z	Z	Z	Z	Z		Z			Z
Refrigerator or Large Appliance Repair	7623								Z		Z			Z	Z		
Research, Development or Testing Services	8730								Z		Z			Z	Z		
Shoe Repair or Shoeshine Shop	7251							Z	Z	Z	Z	Z		Z			Z
Taxidermist	7699				Z				Z						Z		
Television, Radio or Electronics Repair	7620							Z	Z	Z	Z	Z		Z			
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Truck Driving School	8249													Z	Z		
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Veterinary Clinic	0742				D				Z	D	Z			Z	Z		
Vocational, Business or Secretarial School	8240								Z	Z	Z			Z			
RETAIL TRADE																	
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Antique Store	5932							Z	Z	Z	Z	Z		Z			
Appliance Store	5722								Z		Z			Z			
Arts and Crafts	0000							Z	Z	Z	Z	Z	Z	Z			Z
Auto Supply Sales	5531								Z		Z	Z		Z	Z		
Bakery	5461							Z	Z	Z	Z	Z	Z	Z	Z		Z
Bar, Night Club, Tavern	5813							S	S		S	S	S	S			S

Boat Sales	5551								Z		Z		Z		Z		
Bookstore, except Adult Bookstore	5942								Z	Z	Z	Z	Z	Z	Z		Z
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Farm Supplies and Equipment	0000								Z		Z				Z		
Floor Covering, Drapery or Upholstery	5710								Z		Z			Z			
Florist	5992							Z	Z	Z	Z	Z					
Food Store	5400							Z	Z		Z	Z	Z	Z		Z	
Fuel Oil Sales	5980								Z					Z	Z		
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Newsstand	5994							Z	Z	Z	Z	Z	Z				Z
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Optical Goods Sales	5995							Z	Z	Z	Z	Z					
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Paint and Wallpaper Sales	5231							Z	Z		Z			Z			
Pawnshop	5932							C	C		C	C		C			
Pet Store	5999							Z	Z		Z	Z					
Record and Tape Store	5735							Z	Z		Z	Z					Z

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11-4.50.1 Microbrewery

(D) Where Required

CB (special use permit)

(E) Operation

(8) Shall include one (1) or more accessory use such as a tasting room, tap room, restaurant, retail, demonstration area, education and training facility or other use incidental to the brewery and open and accessible to the public.

- (9) Where permitted by local ordinance, state and federal laws, retail carryout sale of beer produced on the premises shall be allowed in specialty containers holding no more than a U.S. gallon. These containers are commonly referred to as growlers.
- (10) Microbreweries are also permitted to sell food and unfortified wine; however, the sale of fortified wines, spirituous liquors, or mixed spirit/liquor beverages shall not be permitted.
- (11) Activities shall not generate traffic, noise, fumes, or odors beyond what normally occurs in the zoning district in which it is located.
- (12) Must adhere to all applicable Federal and State laws regarding the production, sale, and distribution of alcoholic beverages as well as the preparation and handling of food.
- (13) No live entertainment is permitted past 10:30 pm.
- (14) No cover charge or entrance fee of any form shall be levied.

(F) Outdoor Storage

No outdoor storage is permitted.

PLANNING COMMISSION SUMMARY

This case was considered at the Planning Commission meeting November 1, 2016. During the public comment portion, numerous citizens voiced their concerns regarding the ban of all forms of live entertainment. The speakers were in agreeance on the following:

- Target clientele would enjoy listening to acoustic music, poetry, guest speakers, etc.
- No intentions of the brewpubs transitioning into a nightclub.
- Allowing live entertainment will help support the local artists and contribute to the overall downtown art culture.
- Combination of craft beers and live music/entertainment has the potential to attract more individuals downtown.

After considering all public comments, the Commission approved a motion to table the amendment until the December meeting and requested Staff to modify the live entertainment provision taking into consideration citizen concerns.

STAFF RECOMMENDATION

When drafting this ordinance, Staff reviewed the American Planning Association's, *A Planners Dictionary* as well as other jurisdiction's regulations of microbreweries. Staff also referenced two publications by the American Planning Association (APA) detailing zoning considerations for small-scale alcohol production. Both publications have been included as an addendum to this report.

While the definition of a microbrewery varied by jurisdiction, the majority included a cap on annual production (typically around 15,000 barrels per year) and the ability to sell to on or off-site customers and retailers. Staff ultimately decided upon the definition above due to the operational flexibility it would provide to business owners, while still limiting the overall scale to ensure compatibility with surrounding uses.

In considering the level of regulation for microbreweries, Staff again reviewed other jurisdictions standards and the APA documents, while also taking into consideration how the City's UDO regulates similar uses. With regards to the level of review required by other jurisdictions, there was a fairly even mix, with some allowing the use by right, some with ministerial approval, and others requiring a use permit. Since the current Ordinance requires a special use permit for bars, taverns, and nightclubs, it was decided the same should be required of microbreweries. However, the specific use standards deviate from those for bars, taverns, and nightclubs, specifically with regards to permitted zones, separation requirements, and parking standards. Due to the general nature of microbreweries and their potential to catalyze economic development, Staff felt it best to focus their location to the Central Business District (CBD). Due to the number of existing parks and churches within the CBD, property and/or use standards were not included in the amendment since doing so would significantly limit the number of permissible locations. Since parking is not required in the CBD, no parking standards have been included with this amendment. The consensus among the jurisdictions consulted was to prohibit outdoor storage entirely.

A draft amendment was presented to the City Council at their work session on September 26th. The primary concern raised by Council, as well as two potential microbrewery owners, was regarding food sales requirements. While food sales standards were utilized by some jurisdictions, Staff ultimately chose to exclude such standards after directive from Council as well as consultation with the Alcohol Law Enforcement Branch of the North Carolina State Bureau of Investigations. According to the Alcoholic Beverage Control Commission, microbreweries would require a Brew on Premises Permit for which there is no food sales requirement.

In response to the concerns raised at the November Planning Commission meeting, Staff felt it appropriate to revise the live entertainment provision to allow for greater operational flexibility while still maintaining compatibility with the mix of land uses in the Central Business District. Citizens, Commission members, and Staff were in agreeance that a cut-off time of 10:30 pm for live entertainment was suitable for the proposed use. Furthermore, to ensure live entertainment remained an accessory use to the microbrewery operation, Staff included the cover charge restriction.

Ultimately, Staff recommends **APPROVAL** of TA 01-16 as presented.

Downtown Churches with 200' Buffer



Legend
200' Buffer_Downtown_Churches
parks

**CITY OF ELIZABETH CITY
PLANNING COMMISSION
REGULAR MEETING**

Tuesday, November 1, 2016
4:00 PM

MEMBERS PRESENT

Ernest Sutton, Chairman
Carlton O’Neal
Suzanne Stallings
Gary White

Also present were June Brooks, Planning Director; Kaitlen Alcock, Planner; Dawn Harris, Secretary to the Board; and applicant.

Chairman Sutton called the meeting to order and stated that there was a quorum. Chairman Sutton asked for a motion to approve the agenda as presented for tonight’s meeting. Mr. White made a motion to **APPROVE** the agenda as written for the November 1, 2016 meeting. Mr. O’Neal seconded the motion. ***ALL IN FAVOR: SUTTON, O’NEAL, STALLINGS, and WHITE. NONE OPPOSED. MOTION PASSED.***

Chairman Sutton asked for a motion to approve the minutes from the October 4, 2016 meeting. Mr. White made a motion to **APPROVE** the minutes as read from the October, 2016 Planning Commission meeting. Mr. O’Neal seconded the motion. ***ALL IN FAVOR: SUTTON, O’NEAL, STALLING and WHITE. NONE OPPOSED. MOTION PASSED.***

Chairman Sutton asked for Ms. Harris to read the Statement of Disclosure as follows. Elizabeth City Code of Ethics provides that public officials and employees be independent, impartial and responsible to the public; that governmental decisions and policy be made in proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. In recognition of these goals and in keeping with the ethical standards of conduct for city public officials and its employees, disclosure of interest in legislative action must be stated for the public record, as per City of Elizabeth City Code of Ordinances Section 2-113. Any member of the Planning Commission who has an interest, as defined in Section 2-111 of the City of Elizabeth City Code of Ordinances, in any official act or action before the Commission shall publicly disclose on the record of the Commission the nature and extent of such interest, and shall withdraw from any consideration of the matter if excused by the Commission pursuant to G.S. 160A-75.

Tonight’s New Business is **CASE NO.: TA 01-16**—presented by the City of Elizabeth City. A request to amend the Unified Development Ordinance, specifically Article II Interpretations and Definitions; Article IX Zoning; and Article XI Development Standards, adding language to define and regulate brewpubs and microbreweries in the Central Business District. Ms. Alcock gave the following report.

STAFF REPORT

TA 01-16 is a proposal to amend the Unified Development Ordinance, specifically Articles 2, 9, and 11 to allow for the operation of microbreweries within the City Limits. The text amendment comes to before the Commission after City Staff has received several requests to operate such facilities, particularly within the downtown area. Since the current Ordinance is silent on this type of operation, such requests, although economically desirable, would have to be denied. City Council was presented a draft amendment at their work session in September. After taking into consideration Council's comments, Staff now presents to you a more concise version that allows greater flexibility to potential business owners while still ensuring compatibility with surrounding land uses. A staff report detailing the amendment as well as supplemental documentation has been provided to the Commission. As such I will only touch on one aspect of the amendment, the live entertainment provision proposed to be included in Article 11. It is the City's experience that businesses that provide live music as an accessory use have the tendency to morph into a nightclub type situation which in the past has resulted in disturbance calls, noise complaints and the like. In an effort to curtail such negative externalities staff is proposing the regulation to ensure compatibility between the mixes of land uses downtown, notably commercial and residential uses. When drafting the amendment, Staff consulted with numerous planning departments throughout North Carolina, Southeastern Virginia, and a few throughout the country. While only a few have similar provisions regarding live music, a large portion do have separation requirements between microbreweries and residential uses or zones, which in effect eliminates any incompatibility issue. As was explained in the staff report, use separations were not included in the current amendment since doing so would significantly limit the number of permissible locations for hopeful microbrewery owners. To quickly summarize localities that place restrictions on live entertainment include:

- Cornelius, North Carolina: no outdoor amplified sound after 11pm;
- Virginia Beach, Virginia: live music only permitted inside; doors and windows must remain closed during performances except to allow for ingress and egress for patrons and employees;
- Chesapeake, Virginia: currently working through a similar issue, currently considering ceasing all outdoor music at 8pm and limiting indoor music that proceeds past 8pm to require all doors remain closed except to allow for ingress and egress;
- Goodyear, Arizona: live music only permitted if a minimum of 300 feet from a residential zone or use; music/entertainment area should be no more than 25% of the gross floor area of the establishment.

Staff will note that if the Commission deems live music appropriate for such establishments, it is a requirement of the Fire Code that the building be sprinkled. As a reminder, the decision tonight is simply a recommendation to the City Council who must still call for and hold a public meeting prior to making a final determination.

This concluded the report.

Chairman Sutton asked for Ms. Blair Jackson to come forward. She stated that she is here tonight of concern over the stipulation that Ms. Alcock just talked about. She stated that she believes that there is a misconception about the nature of a microbrewery or Nano brewery. Although they do not plan to have live music on a regular occasion, they do not

want to be limited not to have an acoustic guitar player or something of the sorts. It is their hope that they will be working with all businesses in other areas of downtown. Ms. Jackson stated that it is their vision to have members of the arts community, the other brewery, the other restaurants--it would be a source of entertainment in many ways not to be limited to having live music on occasion and perhaps other entertainment. She stated that she doesn't know of another business that has these restrictions imposed upon them. There are many businesses downtown that have had live music and entertainment including the bookstore. It doesn't even have to be a bar. The microbrewery concept is not a nightclub concept. It never has been and certainly that is not what they envision it to be downtown. They want an upbeat and friendly walking environment where people can leave the arts council on a Friday night and walk down to the alleyway and have an opening to their business down the alleyway. She stated that she is the owner of Shingle Landing which is the property owner where the microbrewery/Nano brewery that hopes to be operating in there. They are under lease with a young couple. This is all part of growth and excitement and the atmosphere that they would like to encourage young people to come back downtown, they want to encourage the boaters to think that this is the Harbor of Hospitality. There is a lot you can do with live entertainment that is not blow out---a lot of amps. She stated that they are not looking for that type of entertainment and their space doesn't even allow for that.

Mr. White asked Ms. Jackson what her opposition was in the proposed text amendment. Ms. Jackson stated that they would like to be able to have live entertainment on occasion. Mr. White asked after 8:00 PM. Ms. Jackson stated after 8 o'clock. Ms. Alcock stated that it is just a provision to prohibit live entertainment. Ms. Jackson stated at any time. She stated that it is her observation that people who tend to gravitate to live in a downtown setting like the atmosphere of a downtown setting. It is a vibrant where it's happening kind of community. You don't choose to live downtown and think you are going to have a bucolic life all the time. It is exciting to live downtown, particularly on a Friday night. She stated that she didn't know if the Commission had been to Art walk and she hoped they have. She stated that there are things happening down there and to limit the brewpubs from having any type live entertainment is just, too restrictive. Ms. Jackson stated that is her opposition.

Chairman Sutton called Mr. Mike Hindenach forward. Mr. Hindenach is the President of the Elizabeth City Area Chamber of Commerce. He stated that his Executive Board looked the amendment over this morning and they wanted to at least state their position. He stated that their concerns are from the complete ban of live entertainment as outlined in number six of the amendment. They do believe that live entertainment for these types of venues to be appropriate; however, they are concerned that if you just strike out item number six that it becomes wide open and becomes a way to circumvent nightclub type zoning. Mr. Hindenach stated that it is their request to make the live entertainment stipulation for a special event use type permit so these items can be looked at on a case by case manner--going through due process and opening the door if someone wants to provide live entertainment in a microbrewery.

Chairman Sutton asked Mr. Hindenach to elaborate on the "due process." Mr. Hindenach stated that he believes for nightclubs it is already in place what is expected and how they are expected to perform. He stated that if a brewpub is acting as a nightclub, that he would think that the special use and zoning ordinance is already in place so it would be

consistent. They don't want it to be an ordinance that allows you to circumvent another ordinance.

Chairman Sutton called Mr. Dean Schaan forward. Mr. Schaan is the managing partner of ECBC, LLC known as Elizabeth City Brewing Company. He stated that they are owners of 113 Water Street. The property is known as the new Fowler building. It is their vision to turn the Fowler building into a state-of-the-art microbrewery. They are as excited to restore one of Elizabeth City's historical buildings as they are in providing a local brewery to the downtown central business district in the hopes of providing stimulus to the growth and economic revitalization of downtown. Mr. Schaan stated that they understand that this revitalization of downtown will rely on local businesses and the City working together. He stated that he is thankful to provide input on the brewery text for the UDO; however, he has been disappointed in some of the inserts of regulations that the City has added. Fortunately, the food sales language was reevaluated and removed; however, they are disappointed to see further restrictions now stating no live entertainment. This type of language is severely limiting to an industry that revolves around providing a highly customized craft to its customers. The language of no live entertainment to them is unresearched, unexplored and is a large, broad stroke of a brush designed to ban problematic behavior of children that has been allowed to misbehave in the past. To ban all entertainment for this newly proposed classification of businesses--microbreweries--is based only on past experiences of bars and nightclubs and has no merit and shows how little is actually known about the proposed microbrewery classification industry and clientele. The zoning practice of no live entertainment is not listed as written in other city ordinances for microbreweries that they have been able to find and is not recommended from the APA [American Planning Association] on microbrewery practices. Mr. Schaan stated that over the years his in-depth involvement with local arts has allowed him to build relationships and support for their brewery. He stated that this requirement will stop dead in its tracks any collaboration or interaction with local artist. This form of censorship "no live entertainment" sweeps broad and deep into the craft of the performing artist by not allowing them a venue to perform their trade in a downtown that relies heavily on the arts. Limiting a craft brewery the option to involve and invite local musicians, artist and performers to perform on first Friday or any other day is counterproductive and not inclusively working together in this Harbor of Hospitality. Mr. Schaan stated that he cannot control future establishments or businesses, but the future of Elizabeth City Brewing Company will rely heavily on the connections with the arts and live entertainment. He stated that their business, reputation and success will rely on this magical and creative entertainment component much like the beer that they will brew. He asked for the Commission to please not limit their creativity, productivity and downtown arts connections and collaborations by broad stroking an unmerited regulation.

Chairman Sutton asked for questions from the Commission. Mr. White stated that there seems to be a common denominator here. There were no questions. Mr. Sutton called Thomas Reese forward. Mr. Reese stated that he is the president of Ghost Harbor Brewing Company. Mr. Reese is looking to open in the building that George and Blair Jackson own. He stated that much of what he feels Mr. Schaan has already brought up and so has Ms. Jackson. He stated that he wanted to make a couple of points regarding microbreweries and the market that they cater to and the industry as a whole. He stated that depending on the style of beer that they would be making can take anywhere from two weeks to two years to produce. It takes passion to be able to do that. Micro and Nano

breweries open up based on that passion. It's a lot of work; they start small and grow with the community. He stated that they really rely on the arts of the community. Brewing is an art if done right just as much as cooking or making fine wine. It is an art. Local artist like to perform in a place that is known to bring new and exciting products to the market. He stated that in September when they were here there were several pictures shown of nice microbreweries. They had nice equipment. The places were beautiful and he stated that is what he aspires to be. He stated that those places started out as a very small organic probably homebrewer who had a passion for it and wanted to bring to the community share it. High quality craft beer was initially going to be Mr. Reese's draw but the more he looked into it and going to the Rhythm and Brews festival here he saw how much people enjoyed the combination of craft beer and live entertainment. It felt like it would be doing his customers a disservice to not offer live entertainment to them. He stated that live entertainment was important to them before but is even more important now. He feels for the City, customers and themselves that it would be a nice thing to be able to allow. A guy playing an acoustic guitar in the corner as you are enjoying a fine craft beer. He stated that it just fits.

Mr. White asked what Mr. Reese's previous history was. Mr. Reese stated that he currently works for Sunbelt Rentals. They are a heavy equipment company and he manages the branch in Chesapeake and he is an avid homebrewer. He stated that he has been home brewing beer for several years. Mr. White asked if this was his first effort at establishing a commercial brewery. Mr. Reese stated yes. He stated that it is that this is not something he would tread into without a significant amount of research. He also has friends in the business. He stated that it is a large community. They have online communities and they share and help each other.

Mr. O'Neal asked Mr. Reese if he would say that live entertainment is the number one thing that he must have along with the brewery. Mr. Reese stated that he would not say it is the number one thing he must have. He stated that for breweries the draw is fine craft beer. That's why people are coming in. The entertainment for him would be just that--entertainment for the customer. He stated that he is not talking about pyrotechnics, dance floor, etc. The community around craft brewing is not about that. He wants to be able to offer his customers more as well as the artist and community.

Chairman Sutton asked Mr. Reese would he recommend a noise ordinance requirement. Mr. Reese stated that if he is not mistaken there is already a statement that reads along the lines of no noises, odors...Mr. White read the ordinance. Chairman Sutton stated that he knows the ordinance but is asking the question of Mr. Reese. Mr. Reese stated that it is really tough to say. He stated that he thinks there has to be something in place. You wouldn't want to have speakers outdoors at 11:00 at night. He stated that most of them are planning to shutdown at 10:00. He stated that nothing goes on good after 10 o'clock. He feels that something of control should be in place but a blanket statement of no live entertainment is what they had an issue with. He stated that the reason he brought up the noise ordinance is that anything they would do that exceeds normal noise in the downtown area would be covered by that ordinance.

Mr. White asked if the current City Ordinance regarding noise was available at this moment. Ms. Alcock stated yes. He asked if she could read it for him. Ms. Alcock stated that it is 10 pages long. Mr. White said for her to tell him what applies here. Ms. Alcock

read a portion in regards to instruments and sound amplifiers as follows: "The playing any musical instrument or electric sound amplification equipment in such a manner or with such volume particularly during the hours between 11:00 PM and 7:00 AM that would unreasonably disturb persons of ordinary and reasonable sensibility in the vicinity is unlawful." Mr. White stated that we already have a City Ordinance that speaks to that. Ms. Alcock stated yes, that is right. That is part of the City Code. There is also a breakdown in terms of the permitted decibels. Mr. White asked if the proposal for 11.4.50.1 was a proposal by Staff. Ms. Alcock stated yes, the entire amendment was developed by Staff. Mr. White asked if the City Manager had seen the amendment. Ms. Alcock stated yes and he has signed up to speak tonight.

Ms. Stallings stated that they have different categories right now. There is microbrewery, brewpub, and Nano brewery. She stated she would like to know the difference. Ms. Alcock stated that Staff had originally presented at work session brewpub and microbreweries. In the research there was a different focus on food sale. Following City Council work session it was decided to use microbrewery. There are slight differences depending on what you look at. The City will just have microbreweries.

Chairman Sutton called Mr. Wayne Harris forward. Mr. Harris is the Director of the Elizabeth City/Pasquotank County Economic Development Commission. He stated that he was here tonight just to share his understanding of the economics of downtown revitalization. As it relates to brewpubs; this is not something that his commission has had a chance to take a position on. Mr. Harris stated that one thing the Commission should be aware of is that brewpubs/microbreweries have become a quality of life marker for dynamic companies when they are looking to move somewhere. Particularly, if they are going to be trying to attract younger employees. He stated that they may recall the disappointment in Edenton when the microbrewery for the old ice house was not approved. Microbreweries are a little bit of a manufacturing operation in addition to a retail operation. So, the average pay is much better than you get in a downtown establishment. One of the difficulties in downtown revitalization is that many economic development grants are tied to wage levels that downtown cannot afford to pay. The DIG grant does not do that and some of the building reuse grants in theory does not do that. But in more recent months they have had a tendency to favor higher wage industry. In the Asheville area brewpubs have become a huge driver for the downtown economy. They pay much better than bars and nightclubs. In Asheville the average pay of the lowest pay for establishment that offer health insurance is \$11.50 an hour. If they don't offer insurance the pay is \$12.50 hour according to a recent survey. State level average pay is \$45,000 per year. Mr. Harris stated that this is a very unique industry that allows an establishment in the downtown area pay a higher wage than most. In looking at Asheville's survey of the brewpub market, at least 10 of the brewpubs offer entertainment in addition to craft beer. He stated that he did not have time to verify how many of them do more than 30% of food. Clearly as identified having a low decibel entertainment is a huge enhancement to the overall experience. Mr. Harris asked the Commission to consider a way to distinguish between potential nuisances and potential economic development enhancements like this.

There was some discussion of having Mr. Harris' Board weigh in on this amendment; however, Mr. Olson pointed out that it would be a conflict of interest as some of the Board members are City Councilman and the Council will be making the final decision on this amendment.

Chairman Sutton stated that the Commission wants to make sure that they have a fair and broad view because they are concerned with developing the downtown. But, at the same time they want to make sure they protect the integrity of the downtown.

Mr. Olson came forward to speak. He stated that Staff is facing a dilemma here in how do we differentiate between a microbrewery, Nano brewery and a nightclub. It is very, very hard to do. There are businesses in town that say they are going to operate one way when in actuality when the purses start going dry they start doing things that they are not permitted for and that is the concern we have. He stated that he is not saying anyone here involved would do that but it is the reality of the situation. The other reality is when you have liquor and live entertainment the police department is called for services is increased dramatically. With that being said, usually that increase for service happens about 1:00 to 2:00 in the morning. Staff is trying to do a balancing act. Mr. Olson stated that personally he doesn't think that the Planning Director has a problem with certain live entertainment to be held at these locations. He stated that they have all been to microbreweries where an acoustic guitar is playing or a piano playing. That is a very nice atmosphere, but how do you stop that from morphing into having a three or four piece band playing until 2:00 in the morning? He stated that is the dilemma Staff is facing here when deciding to restrict live entertainment. For the balancing act, the Planning Commission could request that hours of operation be limited of microbreweries to 10:00 or 10:30 at night. As someone testified earlier, nothing good ever happens after 10:00 at night. Mr. Olson stated that he would agree. The City's calls for service go up greatly after 10:00 PM. He stated that he doesn't think that most microbreweries want to stay open until 1:00 or 2:00 in the morning. That's usually not the kind of clientele they want in their place. They want people to come in and enjoy the night and leave at a reasonable hour. Most of these individuals have other jobs that they do and it is a passion for them. It could also be required that they cannot charge a cover charge. If you are going to have a band they usually cost \$500 to \$1,000. By limiting them to not charging a cover charge it limit them being able to bring a band in. Having a person sitting there playing a guitar or piano or maybe even karaoke night there is not a major issue with that as long as it is done in good taste. Mr. Olson stated that they have gotten rid of the restaurant requirement. He stated that he is a firm believer if you serve alcohol you should have food; but that was taken out during the preliminary discussion with City Council. Now they keep adding things in--they are stopping the differentiating of the nightclub from the microbrewery. He stated that he did not believe anyone here wants to run a nightclub. That's not their intent. Also, the fire code is very specific. When you run a nightclub you have to have it sprinkled. With live entertainment, after the tragedy in Rhode Island about 10 years ago where 151 people died in a nightclub fire all these places have to be sprinkled. With that being said, it is a lot easier to sprinkle them while being constructed or renovating than to have to do it after the fact. The ordinance that City Staff has drafted is a good ordinance. They did take it to City Council and they did get the City Council's blessing for most of the ordinance. City Council also wanted to hear what the Planning Commission thought before acting on it formerly.

Mr. White asked Mr. Olson if he felt like the ordinance needs to be tweaked little more. Mr. Olson stated that he thinks the only issue he has heard so far is the live entertainment. He stated that he has heard nothing else in the body of the text amendment. Mr. White stated that it is a common denominator. Mr. Olson stated that he thinks this body

[Planning Commission] has the ability add to or subtract from it before it goes to City Council. He stated that his concern is if it is taken out and then put back in at Council it would be a substantial change. Then the ordinance would have to come back to Planning Commission then back to City Council and the process is delayed by another 60 to 90 days.

Mr. White stated that he acknowledges all of Mr. Olson's concerns; however, he wants to make sure everyone is "feed out of the same spoon." Mr. Olson stated that one of the major controversies that the City has is the noise ordinance. There has been a church appear before the City Council for eight months in a row because they were not happy with the noise restrictions. There were major noise issues with Trios when it was open where the City Meeting Place used to be. That was in a closed building and the decibel readings were way above what was acceptable. Mr. Olson stated that they are more concerned with noise. There are things on the books now that addresses noise but noise is something that everyone perceives differently. A heavy base may not give you the decibel reading but the constant beating of it that upsets people. From Staff's opinion, there is not a problem with having live entertainment as long as there are restrictions that can be placed on the live entertainment that are reasonable for the people that work and reside around that and also helps the individuals to grow their businesses. Mr. White stated that he wants to be sure that the City treats these people the same as they treat Groupers or whoever. Mr. Olson stated that he agrees; however, he has had at least a half a dozen phone calls at 2 o'clock in the morning that Groupers has a band on the deck playing. He stated that as far as reasonable restrictions on music he didn't think any here has a problem with that, but what do you define as reasonable restrictions. This Board could possibly pass something along to City Council. Mr. White stated that he thinks that it would be Mr. Olson's job to put that recommendation before Council on the Planning Commission's behalf. Mr. Olson stated that he thinks Ms. Brooks has issue with that. Ms. Brooks stated that she has an issue with that because this is a recommendation from Staff. The recommendation that Planning Commission is forwarding to Council is what they will be acting on not Staff's recommendation. She stated that probably the best interest would be to table the amendment and direct Staff to bring something back to Planning Commission that has been researched and found to be reasonable. Mr. White agrees with Ms. Brooks.

Chairman Sutton stated that he agrees with Ms. Brooks and that the Commission's consideration should center around that issue. He stated the Commission wants to promote development downtown. The Commission doesn't want to promote development downtown at the expense of the residents. He stated if they can get a motion to table this temporarily moving quickly as they can.

Mr. White made a motion to **TABLE Case TA-01-16** pending Staff's modifications of the concerns expressed by the Commission, City Manager and public.

Ms. Stallings asked for clarification that this amendment was presented to City Council and they took food completely off the table. Ms. Stallings stated that she was just curious. She had never been in a microbrewery that did not serve something. She stated that she is dumbfounded by that. She agrees that the whole amendment needs work. She asked Mr. Shaan if he didn't want to do food at all. He stated that they are going to have food. How it was written they were going to have to meet 30% of total revenue. He stated what that meant was if he started distributing here and distributed \$100,000 worth of beer he would

have to come up with \$30,000 in food sales. That is what they did not agree with. Mr. Olson stated that is an ALE law. Ms. Alcock stated that this would not apply in this case. They would have to get a Brew on Premise which does not have a food sales component to it. Mr. Olson stated that Staff has consulted ALE concerning the issue. There are a lot of variables here. A lot of microbreweries also serve spirits. Mr. White asked why it has been excluded in the amendment. Mr. Olson stated that there is a different ALE category for them. He stated that he hopes that all of the microbreweries would sell food. It is there option to serve but it is not a requirement.

Mr. White stated that his motion is still on the table. Mr. O'Neal seconded the motion to TABLE Case TA-01-16. ***ALL IN FAVOR: SUTTON, O'NEAL, STALLINGS, and WHITE. NONE OPPOSED. MOTION PASSED.***

There was discussion regarding what should be included in the revision of the amendment. The Commission would like to see hours of operation as well as a time limit on the entertainment. It was agreed upon that music should cease at 10:30 PM. Ms. Brooks stated that Staff had complaints on Thumpers and Logan Rays with their music at 1:00 and 2:00 in the morning. It was also decided to not specify types of music but to include the decibels of the music.

With no further business, Mr. White made a motion to adjourn. Mr. O'Neal seconded the motion. All were in favor. Motion passed and meeting was adjourned.

Respectfully submitted by,

Dawn Harris, Secretary to the Board

**CITY OF ELIZABETH CITY
PLANNING COMMISSION
REGULAR MEETING
Tuesday, December 6, 2016
4:00 PM**

MEMBERS PRESENT

Don Witosky, Vice-Chairman
Sonny DiGirolamo
Carlton O’Neal
Gary White

Also present were June Brooks, Planning Director; Kaitlen Alcock, Planner; Dawn Harris, Secretary to the Board; members of the audience.

Vice-Chair Witosky called the meeting to order and stated that there was a quorum. He asked for a motion to approve the agenda as presented for tonight’s meeting. Mr. White made a motion to **APPROVE** the agenda as written for the December 6, 2016 meeting. Mr. O’Neal seconded the motion. ***ALL IN FAVOR: WITOSKY, DIGIROLAMO, O’NEAL, and WHITE. NONE OPPOSED. MOTION PASSED.***

Vice-Chair Witosky asked for a motion to approve the minutes from the November 1, 2016 meeting. Mr. White made a motion to **APPROVE** the minutes as read from the November, 2016 Planning Commission meeting. Mr. DiGirolamo seconded the motion. ***ALL IN FAVOR: WITOSKY, DIGIROLAMO, O’NEAL, and WHITE. NONE OPPOSED. MOTION PASSED.***

Vice-Chair Witosky asked for Ms. Harris to read the Statement of Disclosure as follows. Elizabeth City Code of Ethics provides that public officials and employees be independent, impartial and responsible to the public; that governmental decisions and policy be made in proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. In recognition of these goals and in keeping with the ethical standards of conduct for city public officials and its employees, disclosure of interest in legislative action must be stated for the public record, as per City of Elizabeth City Code of Ordinances Section 2-113. Any member of the Planning Commission who has an interest, as defined in Section 2-111 of the City of Elizabeth City Code of Ordinances, in any official act or action before the Commission shall publicly disclose on the record of the Commission the nature and extent of such interest, and shall withdraw from any consideration of the matter if excused by the Commission pursuant to G.S. 160A-75.

Vice-Chair Witosky mentioned that Chairman Sutton is in the hospital. He inquired as to Mr. Sutton's status. Ms. Harris stated that the hospital is running test and no determination has been made.

Tonight’s Old Business is **CASE NO.: TA 01-16**—presented by the City of Elizabeth City. A request to amend the Unified Development Ordinance, specifically Article II Interpretations and Definitions; Article IX Zoning; and Article XI Development Standards,

adding language to define and regulate brewpubs and microbreweries in the Central Business District. Ms. Alcock gave the following report. Vice-Chair Witosky asked for Staff's report. Ms. Alcock presented the following:

STAFF REPORT

The request before you this afternoon is TA 01-16, a proposal to amend the Unified Development Ordinance, specifically Articles 2, 9, and 11, adding language to define and regulate microbreweries in the Central Business District. Before getting to the main analysis, Staff would first like to clarify that the amendment as proposed defines a microbrewery as a brewery that produces less than 15,000 barrels of beer per year for sale either on- or off-premises. Staff recognizes other terms, such as nanobrewery, brewpub, and microdistillery are often used to describe similar small-scale beer production which varying production amounts. For simplicity sake, Staff will consider all such facilities as microbreweries. As you will recall, the proposal was considered at the November meeting, during which several citizens voiced their concern with regards to the proposed language prohibiting live entertainment. Due to past issues with businesses overtime morphing into nightclubs, Staff included the live entertainment provision to avoid similar situations in the future. While the current Ordinance does not define a nightclub, the American Planning Association provides the following definition in their Planner's Dictionary: "a commercial establishment dispensing alcoholic beverages for consumption on the premises and in which dancing and musical entertainment are permitted". As was stated in the previous meeting, it is important to find a balance that allows hopeful microbrewery owners the freedom to operate a successful business, while also maintaining compatibility with the variety of land uses in the downtown area. After much discussion, the majority of Commission members and citizens were in agreeance that instituting a cut off time for live entertainment of 10 or 10:30 pm was reasonable. Concern was further raised with regards to the proposed microbreweries being treated differently from current bars and nightclubs downtown. To this point, Staff would like to state that several such businesses, including Coasters and the former Logan Rayes now Hoppin' John's, are subject to limitations on live music and entertainment. More specifically, the Alleyway Encroachment Agreement between the City and the aforementioned includes a provision limiting all music and entertainment to the hours of 10 am to 10 pm daily. Furthermore, hours of operation standards are currently in place for a variety of businesses in the Unified Development Ordinance, including billiards, bingo facilities, and pawnshops if they are located adjacent to residentially-used or zoned properties.

As a reminder, the decision made tonight is simply a recommendation to the City Council who must still call for a hold a public hearing before making a final determination. Should the Council make any substantial changes from the amendment as proposed, it would be referred back to the Commission for further consideration.

This concluded the report.

Mr. Dean Schaan had signed up to speak. He was called forward. Mr. Schaan stated that he is the managing partner of ECBC, LLC; also known as Elizabeth City Brewing Company. They are the property owners at 113 North Water Street who has the intent of turning the property into a microbrewery. He stated that again their end result is to be able to develop the building into a microbrewery where they will be able to brew and sell beer on site. Part of that is investing a million dollars into this project and part of that

[investment] is to revitalize the historical Fowler building into upgrades for the building. Mr. Schaan stated that they feel such a restriction even with the 10:30 curfew that is very limiting for them. Especially, when entertainment is not a core function to what they will be doing. It is an ancillary thing just like selling t-shirts. Mr. Schaan stated that they do not understand why there is a restriction going to be put on that, especially when there are no other restrictions on downtown businesses like that. He stated that even during this past Friday at Art walk there were restaurants with bands on the streets but they are being limited on their entertainment. He stated that it just does not make sense to them. His question is what standard are they being limited and what does a 10:30 PM entertainment curfew do to them. They understand that there are some proposals coming in the alleyway which is outside. But again, they do not understand how a guitar player inside a building has to have the 10:30 curfew. Those type of curfews and that type of restrictions effect revenue/income. He stated for them to put this much money toward a downtown project and then be restricted on things that will definitely hit them in the pocketbook, seem unfounded, unjust and unresearched.

Mr. DiGirolamo asked Mr. Schaan what location is he. Mr. Schann stated that they are on North Water Street--the old Fowler building; 133 North Water Street.

Vice-Chair Witosky asked for questions from the Commission. Mr. White asked did not the Commission give direction to Staff at the last meeting. Ms. Alcock stated yes they did. Mr. White asked for an explanation for the redirection. Ms. Alcock stated that it seemed to be the consensus at the end of the meeting that limiting hours of operation... That's just for the music portion not for overall. They can stay open past 10:30 PM but any sort of live entertainment will need to cease at 10:30 PM. The discussion seemed to be 10:00 or 10:30. There was also a discussion about not permitting a cover charge and there was a discussion about decibels limits but it has since been decided that the decibels are covered in the noise ordinance so it doesn't need to be duplicated in this amendment. Mr. White asked Mr. Reese if he had heard what they were discussing. Mr. Reese came in late to the meeting. Mr. Reese stated yes. Mr. White stated that his partner behind him has concerns about being made to just down the entertainment at 10:30 PM. Mr. White asked Mr. Reese what his thoughts were.

Mr. Reese came forward and signed up to speak and remained at the podium. Mr. Reese is the president and owner of Ghost Harbor Brewing Company. He is looking to open at 606 B Colonial Avenue. Mr. Reese stated that as far as the 10:30 cut-off for live entertainment and the no cover charge, his only concerns would be the restrictions being put into the text amendment for the ordinance. It doesn't seem to be the place for those. He stated that there is an ordinance in place for noise. If they have entertainment that starts at 9:00 PM and then have to turn them out at 10:30 PM--he stated that there's no other businesses that have those kinds of restrictions on them. Initially, they do not plan on being open all hours of the night. He stated he should say initially he means traditionally. Craft beer houses manufacture their products. His main draw to the establishment will be the craft beer that they produce. The entertainment will be just that. It will be for their customers that come and enjoy their products. Mr. Reese stated that he hopes to be able to provide them with entertainment and mainly from local artist. He stated that they will all have to apply for a Special Use Permit. Inside there he is certain will be something regarding noise and levels to keep it at. For him, he doesn't want to restrict the growth potential that his business will have.

Vice-Chair Witosky asked for questions from the Commission for Mr. Reese. Mr. DiGirolamo stated that his question is relative to when these places are built. He stated that he lived in Texas for a while. There are a couple of strips down in the Galveston area that are just strictly entertainment. In some of the areas where they were close to residential area they were able to stake out a place where the band/platform would be and somehow put some acoustic in there to limit what would travel outside. That would be the only way he sees them getting the 10:30 PM time jacked up a little bit. He mentioned that one of the problems he sees downtown is that there are scattered apartments here and there.

Mr. Reese stated that the building he is looking at is rather small and entertainment for him would be a guy in the corner playing an acoustic guitar. Even with the noise ordinance, he stated that the talking and chatter in the establishment would be louder than the music and instruments that he would plan to bring in. With that being said, just to put it in the text amendment to the ordinance--the restrictions for future breweries or as they expand--to shut down all live entertainment at 10:30 seems too restrictive. He stated that they will have sound stuff put in place, but speakers and any of that stuff would not fit his business model. Mr. Reese stated regarding the cover charge--if they have a local artist that starts pulling enough of a draw that it would warrant a cover charge to perhaps regulate the attendance. He stated that they would like to pay that artist the cover that they draw to be fair to the artist. If they are not allowed to do some kind of cover charge it would be a direct cost to the business. Mr. DiGirolamo stated that he thought he saw something in the Staff Report regarding the cover charge. Ms. Alcock stated yes, it was discussed in the previous meeting as a way to keep that transitioning from happening as seen in the past. Mr. DiGirolamo asked for her to define transition. Ms. Alcock stated that the City has had certain businesses open under certain pretenses that has tended to morph into a more club type scenario--being open later with bands or DJ's with speakers which draws in noise complaints with disturbance calls. They are trying to limit that kind of thing. Mr. Reese stated that one difference he would note from a brewery and a club is that the brewery operates under the Federal TTB (Tobacco Tax and Trade Bureau). There are a lot of regulations and rules that they apply to them that they have to follow. One regulation is that they cannot sell hard liquor. He stated that every square foot of his businesses zoned for tax purposes. That's all they are interested in. There is a lot of things as a brewery that they have to abide by that would prevent them from becoming anything like a nightclub. Mr. Reese stated that he would lose his brewery license and that is more of a concern for him than the noise.

Mr. O'Neal asked Mr. Reese what his normal hours of operation will be. Mr. Reese stated that his current business plan has them opening from 5:00 PM - 9:00 PM on Thursday, 5:00 PM - 10:00 PM on Friday, 5:00 PM - 10:00 PM on Saturday and 2:00 PM - 7:00 PM on Sunday. Mr. White asked, "Then why is this 10:30 a problem?" Mr. Reese stated that he will still maintain his job in Chesapeake when he first opens his business. In the future if he wants to stay open until 11:00 PM or 12:00 AM he would not want the restrictions on it. That is his personal reason. He is not sure if about Mr. Schaan.

Vice-Chair Witosky stated to Ms. Alcock that in her report she had mentioned when Thumpers and Logan Rayes were open that they had restrictions to 10:00 PM. He asked Ms. Alcock to go over that part of her report. Ms. Alcock stated that is a part of the alleyway encroachment agreement between the City, Logan Rayes (now Hoppin' Johns),

Coasters, and Thumpers (now closed) for use of the alleyway. One of the stipulations of the agreement is that live music and entertainment be limited from 10:00 AM to 10:00 PM. While that doesn't cover all bars and nightclubs in the City, we do have restrictions. Vice-Chair Witosky stated that it was a special circumstance. Ms. Alcock stated yes. He stated that it was a professional courtesy, but another restaurant not in the alleyway would not be restricted. Ms. Alcock stated correct.

Mr. White asked if there was an alleyway behind the old Fowler building. He stated that he thought there was. Mr. DiGirolamo asked what category Groupers falls in. Ms. Alcock stated that they are a restaurant and bar. He stated that they have entertainment on the deck. Mr. White stated that Groupers is not limited to 10:30 PM. Ms. Alcock stated no.

Mr. Tony Stimaz asked for clarification that the alley restriction only applies to the alley. They can still have entertainment in side after that time period. Ms. Harris asked for Mr. Stimaz to sign in if he wished to speak. He stated that he was not speaking, he has questions. He stated that he is trying to clarify for his notes that the alleyway restriction only applies to the alleyway--does not apply to the business itself, inside. Vice-Chair Witosky stated he had one other question and would get back to Mr. Stimaz. Vice-Chair Witosky asked if there had been any resident to come and express any concerns about the microbreweries. Ms. Alcock stated no.

Ms. Alcock stated that in the Staff Report they decided to not do any type of separation requirement because with it being in the downtown area if you start putting limitation such as a 200 foot separation would restrict the locations that the breweries could go. However, other jurisdictions do tend to place a property separation in terms of residential uses/zones, which negates the need for live entertainment regulations.

Vice-Chair Witosky recognized Mr. Stimaz to speak. Mr. Stimaz stated that he is just asking for a clarification of the restrictions in the alleyway. He stated that it is his understanding that it only applies to the alley itself. It does not apply to the inside of the two buildings. Ms. Alcock stated that is correct. It states, "Outdoor cafe activities including music and entertainment shall not be conducted or played at a volume as to disrupt activities of the adjacent land uses. All music and/or entertainment shall commence no earlier than 10:00 AM and end by 10:00 PM daily." Mr. Stimaz stated, alleyway cafe. Ms. Alcock stated correct. He stated not the (inaudible). Ms. Alcock stated correct and that she was just pointing out that there are restrictions in place. Granted there are some difference, but they are in place. Vice-Chair Witosky confirmed that it is restricting outdoor activity. Ms. Alcock stated yes.

Mr. DiGirolamo stated that he did not realize that the 10:30 cutoff was paramount. Mr. White stated that he thinks Ms. Alcock stated it well that we are trying to safe guard it from morphing into something other than its original intent. Ms. Alcock read an excerpt from the City's Noise Ordinance as follows: "The playing of any musical or electronic sound-amplification equipment in such manner or with such volume, particularly during the hours between 11:00 PM and 7:00 AM that would unreasonably disturb persons of ordinary and reasonable sensibilities in the vicinity." She stated that this is unlawful. Also there is a table in the noise ordinance on the next page for commercial businesses that states between the hours of 7:00 AM and 11:00 PM the decibel max is 65; between the

hours of 11:00 PM and 7:00 AM the decibel max is 55. This would be subject to law enforcement going out with a noise meter to check.

Vice-Chair Witosky asked if anyone on the Commission would like to share their thoughts on this issue. Mr. White stated that he just wants to make sure we "feed everybody out of the same spoon." Vice-Chair Witosky stated his thoughts. He stated that he realizes that there is a difference between microbreweries, taverns and restaurants. But there is a lot in common, too. To him it's the serving of alcohol, the serving of food and the option of entertainment and all three have that. He stated to restrict a microbrewery on something that a restaurant would not have a restriction on is unfair. It is a difference, but it is a minor difference. He stated that there has not been any residents come and express any displeasure with the microbreweries. He stated that is his personal feeling. Mr. White stated that he concurs with Vice-Chair Witosky and he stated to let it be regulated by the current City ordinance. Mr. DiGirolamo stated that he agrees. Vice-Chair Witosky stated that he does understand Staff's concerns, but does not feel it is great enough to place restrictions on the breweries. Mr. O'Neal stated that with the timeframe they will be working in he has no problem. Vice-Chair Witosky stated that he just wants them to be successful. He stated that he thinks it will be great for Elizabeth City. Mr. White stated that downtown needs all the help it can get.

Vice-Chair Witosky called for a motion. Mr. White made a motion to APPROVE all sections excluding 6 and 7 in ordinance 11-4.50.1 section B to be inclusive of 1-5 and to exclude number 6 and number 7. Ms. Harris requested that Mr. White repeat the motion. Mr. White made a motion to APPROVE Text Amendment 11-4.50.1 section B in Operations to include 1-5 and to exclude 6 and 7. Ms. Alcock asked for Mr. White to clarify if he was including 11-4.50.1 section A which is requiring a Special Use Permit in the Central Business District as well as C for Outdoor Storage and the definitions.

Following a brief discussion Mr. White amended his motion as follows--to **APPROVE** Text Amendment 01-16 as proposed by Staff excluding number 6 and 7 in Article 11-4.50.1(B). *Mr. O'Neal seconded the motion. ALL IN FAVOR: WITOSKY, DIGIRALOMO, O'NEAL and WHITE. NONE OPPOSED. MOTION PASSED.*

Next item on the agenda was **CASE NO.: RZ-02-16** - filed by Water Street Properties, Inc. for property located northwest of the intersection of North Water Street and Pearl Street. (Parcel ID# 891420905413; Tax Map 5-B-7). The site lies approximately 375 feet from the intersection of Water and Elizabeth Streets. The applicant is requesting a Rezoning from General Industrial (I-2) to Central Business (CB).

The applicant was not present. Following discussion Mr. White made a motion to **TABLE** RZ-02-16 until the Planning Commission's January meeting and for Staff to contact the applicant. Mr. DiGirolamo seconded the motion. *ALL IN FAVOR: WITOSKY, DIGIRALOMO, O'NEAL and WHITE. NONE OPPOSED. MOTION PASSED.*

With no further business, Mr. White made a motion to adjourn. Mr. O'Neal seconded the motion. All were in favor. Motion passed and meeting was adjourned.

Respectfully submitted by,

Dawn Harris, Secretary to the Board