

**Albemarle County Planning Commission
August 23 2016**

The Albemarle County Planning Commission held a regular meeting on Tuesday, August 23, 2016, at 6:00 p.m., at the County Office Building, Lane Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Mac Lafferty, Pam Riley, Jennie More, Daphne Spain, Tim Keller, Chair; Karen Firehock, Vice Chair and Bill Palmer, University of Virginia (UVA) representative. Members absent were Bruce Dotson. Ms. Firehock arrived at 6:08 p.m.

Other officials present were Rebecca Ragsdale, Senior Planner; Scott Clark, Senior Planner; John Anderson, representative for the County Engineer; J.T. Newberry, Senior Planner, Elaine Echols, Acting Chief of Planning; David Benish, Acting Director of Planning; Sharon Taylor, Clerk to Planning Commission and John Blair, Senior Assistant County Attorney.

Call to Order and Establish Quorum:

Mr. Keller, Chair, called the meeting to order at 6:02 p.m. and established a quorum.

Public Hearing

d. SP-2016-00001 Kapp Driveway – Stream Crossing (Signs 75 & 77)

MAGISTERIAL DISTRICT: Samuel Miller

TAX MAP/PARCEL: 098000000004C0

LOCATION: Sutherland Road (Route 697), approximately 1.5 miles west of its intersection with Monacan Trail Road (US 29)

PROPOSAL: Grading in the floodplain for two culvert stream crossings for road access

PETITION: Grading activities in the Flood Hazard overlay zoning district under Section 30.3.11 of zoning ordinance; No dwellings proposed.

ZONING: RA Rural Areas - agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots);

FH Flood Hazard – Overlay to provide safety and protection from flooding COMPREHENSIVE

PLAN: Rural Area – preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources; residential (0.5 unit/ acre in development lots)

(Scott Clark)

Scott Clark presented information and recommendations regarding SP-2016-00001 Kapp Driveway – Stream Crossing in a PowerPoint presentation.

This is a special use permit in the rural areas for two fill sites in the floodplain at the South Fork Hardware River for two culvert stream crossings for road access and grading activities in the Flood Overlay zoning district. This use requires a special use permit. The site is located on Sutherland Road (Route 697), approximately 1.5 miles west of its intersection with Monacan Trail Road (US 29) just over Chalk Mountain. This is a very large parcel of 207 acres and the locations proposed are shown on the slides.

The landowners own several adjacent parcels and have access to their property over Sutherland Road as it exists now. However, the public road portion of Sutherland ends at the northwest corner of the map. The private section of the road goes past a winery on one side and crosses a

very small pipe that is down near the floodplain. It has been there for many years and goes up into the property in this location. The applicant proposes two crossing locations that could access their property from the public portion of Sutherland Road that their property fronts on. The tributary crossing location would be used as access into their existing property to the southwest where they have some dwellings.

DETAILS OF THE PROPOSAL:

- Floodplain fill and construction of two culverts for stream crossings on 207-acre property
- Crossings would be built over South Branch of the North Fork Hardware River & a tributary
- “Proposed Tributary Crossing Location”
- Would provide access to three dwellings on adjacent property under same ownership (TMP 98-14 – 485 acres)
- Alternative access to current route on private portion of Sutherland Road
- Approximately 9,400 square feet of fill
- Located 1,600 feet from Sutherland Road
- “Proposed Second Crossing Location”
- Would provide access to currently undeveloped portion (~120 acres) of TMP 98-4C that has no public-road access
- Approximately 16,500 square feet of fill
- Located 1,850 feet from Sutherland Road

Floodplain area adjacent to tributary.

Tributary stream near proposed crossing – approximately 2 feet wide.

Floodplain area.

Stream near second crossing site – approximately 6 feet wide.

No substantial detriment. The proposed special use will not be a substantial detriment to adjacent lots.

- No flood impacts on adjacent properties

Character of district unchanged. The character of the district will not be changed by the proposed special use.

- No change in district character from requested fill
- Floodplain crossings could change the character of the district by making more development possible
- Recommended conditions are intended to limit the capacity of the crossings – to permit requested access without encouraging development

...and with the public health, safety and general welfare.

Principal safety concern is flood impacts on adjacent properties

- Engineering review of applicant’s studies indicates any flood impacts would be limited to this property
- Access:
 - Fire/Rescue recommends weight capacity of 46,000 pounds for the crossings
 - Fire/Rescue recommends 10-foot minimum width (also required by Zoning Ordinance)
- Erosion & Sediment Control:
 - Staff has recommended conditions requiring approval of an erosion and sediment control plan, and of a mitigation plan, for disturbance of the stream buffer.

- The mitigation plan would establish areas to be replanted with approved vegetation to make up for vegetation lost during construction

Consistency with the Comprehensive Plan. The use will be consistent with the Comprehensive Plan.

Providing access to otherwise-inaccessible land for residential development is contrary to Comprehensive Plan goals for limiting Rural Area development. In order to limit the amount of residential development that could be accessed by the proposed crossings, staff has recommended two conditions of approval:

- Condition 2 would limit the width of the travel way on each crossing to a size (maximum width of 12 feet) that would permit no more than two lots on the side of each crossing beyond the floodplain
- Condition 3 would further restrict the “Proposed Second Crossing Location” to providing access to no more than one dwelling.

ADJACENCY TO AGRICULTURAL-FORESTAL DISTRICT

- This property is not in an Agricultural-Forestal District
- Property is adjacent to parcel 98-14, which is included in the Chalk Mountain district.
- County policy is to consider possible impacts of land-use proposals on adjacent Districts
- At their meeting on July 18, 2016, the AFD Committee voted 5:1, with one abstention, to support approval of this floodplain-fill proposal.

SUMMARY:

Staff has identified the following factors favorable to this proposal:

1. The proposed floodplain fill would not impact adjacent properties.
2. Impacts to the stream buffer would be offset by mitigation plantings.

Staff has identified the following factors unfavorable to this proposal:

1. Additional access to land for residential development is contrary to Comprehensive Plan goals for reducing Rural Area development. Proposed conditions of approval would limit the extent of residential development that could be accessed by the proposed crossings.

RECOMMENDED ACTION:

Staff recommends approval of SP201600001 Kapp Driveway with the conditions.

1. The stream crossing locations shall be in general accord with the locations shown on sheet 3 of 4 of the plan titled “Kapp Driveway SP,” prepared by Shimp Engineering P.C., and dated 5/25/16.
2. The travelway on each stream crossing shall be at least ten feet in width but shall not exceed twelve feet in width.
3. No more than one dwelling shall be accessed via the crossing labelled as “Proposed Second Crossing Location” on sheet 3 of 4 of the plan titled “Kapp Driveway SP,” prepared by Shimp Engineering P.C., and dated 5/25/16.

4. Prior to construction of either stream crossing, the applicant shall provide signed and sealed documentation from a licensed engineer establishing that each stream crossing is designed to support a minimum weight of 64,000 pounds for fire-apparatus access.
5. The applicant shall obtain a Program Authority approval for an erosion and sediment control plan, and obtain a land disturbance permit according to the Water Protection Ordinance requirements, prior to the start of construction of either stream crossing, regardless of whether the project exceeds the minimum disturbance limits.
6. The applicant shall obtain a Program Authority approval of a mitigation plan prior to the start of construction of either stream crossing, and provide mitigation according to Water Protection Ordinance requirements.
7. The applicant shall obtain approval from FEMA for changes to the floodplain, and update the FEMA maps. This shall include FEMA's conditional approval prior to the start of construction of either stream crossing. Prior to permitting of a land disturbance in the floodplain, the applicant shall obtain from the Federal Emergency Management Agency (FEMA) a conditional letter of map revision (CLOMR, or CLOMA), and prior to use of the permitted stream crossings the applicant shall obtain from FEMA a letter of map revision (LOMR or LOMA). In addition, the applicant shall copy the County Engineer on all correspondence with FEMA.
8. The applicant shall obtain all necessary federal and state agency approvals prior to the start of construction of either stream crossing (including but not limited to the Army Corps of Engineers and the Department of Environmental Quality).

Mr. Keller invited questions for staff.

Mr. Lafferty asked the height of the crossings; and, Mr. Clark replied the applicant would have to provide that information since that is not in the presentation.

Mr. Lafferty said he has to reflect back to the View at Crozet where they had actually designed the crossings and knew what the culvert is going to be like, and this does not seem to have any of that work done. He wondered if the applicant has investigated the alternative means of getting to the property such as going off Chalk Road.

Mr. Clark replied that our engineering staff has reviewed preliminary culvert designs. He apologized that he did not have that information in the presentation; but, he thinks the applicants can give you an idea of the height of the crossings. The applicants are proposing to use arched culverts, which are mostly flat on the bottom and arched on the top, and not pipe culverts that we tend not to prefer. Also, these crossings are quite a distance of 1,600 to 1,800 feet downhill from the public road so visually speaking the height is not going to be that apparent. There are a couple of issues with the access from Chalk Mountain Trail, which he pointed out on the map. He noted it is a private road and also at the point where you would access this property you are at the top of the ridge in very steep territory with critical slopes. In a lot of ways there would be a lot more impacts to the property. Even if access was practical it is a very narrow steep private road with a very difficult terrain to access this portion of the property from that really impacts coming across the floodplain where they are proposing it.

There being no further questions, Mr. Keller opened the public hearing and invited the applicant to address the Commission.

Justin Shimp, engineer representing the request, said Jason Knapp who was the land owner of these properties was also present. He said he would give a brief overview of why we are here

because he knows that floodplain fill permits are sort of unusual and wants to cover a couple of things to explain what the nature of this floodplain is. Most of the time when you think about floodplain you think of Rivanna River, Moore's Creek or some significant area prone to major flooding where there could be structures damaged by flooding. Every now and then you run across what they call a Zone A flood map area, which are referred to as approximate. Basically these are areas that he guessed probably in 1980 somebody took a topo map from 1965 and drew some lines on it estimating the floodplain in this area and it becomes a map. In fact, based on the county ordinance that line is imprecise as it is created and then precisely becomes the floodplain; and, then any activity within that boundary is subject to the floodplain ordinance.

Mr. Shimp pointed out the property as outlined in red on the official flood map in the PowerPoint presentation that shows the drainage area for one-half of this crossing and for reference the drainage area for the other crossing that follows the Chalk Mountain Road and comes around. He said so more or less this is floodplain that originates in our own property and is not miles and miles of river that creates a floodplain. He said it is basically the drainage out of this little property albeit a large property. He displayed a couple of pictures to scale in order to give you an idea of the creek. In the lower section it gives you an idea that it is not a river; but, it is a good size creek. However, it really is not the kind of thing that we typically associate with the floodplain.

Mr. Shimp noted the other item that sort of brings us to this plan is the access on the private portion of Southerland Road. He pointed out the winery on the left side of the picture that was built a few years ago there and the one-lane road that is an access to and from the Kapp's property. He said Jason Kapp would describe some of this; but, there certainly is some traffic challenges in some locations that is hard to see. He pointed that there is a big ditch off the side of the road there; and, so if you happen to encounter somebody in that section of the road somebody has to back up a couple hundred feet to the nearest place to get a safe place to pass. Therefore, it really is not an ideal situation as far as road access for a house.

Mr. Shimp said originally when we looked at this plan we knew that fill in the floodplain special use permits are generally not encouraged in the county; however, in this particular application we had a couple of choices. One thought we had was to go to FEMA and say we are just going to amend this floodplain to get rid of it because essentially he did not know if it meets the requirement to be a floodplain. He said since we know the process for that we can go through that; however, there was a down side to that and since the Kapps are not developers and live back there they bought the land from a developer. He pointed out the Kapp's goal is to get a driveway across to a state portion of Sutherland, which is the tributary crossing; but, then leave some access to another building site on the 207 acres they purchased. He pointed out in a way that would not encourage either development if it ever were to be sold. If we left the land as is the by right sort of maximum use as you bring a cul-de-sac off the road with 6 or 7 lots and a driveway over the Kapps could be done by right. But, we felt if we devised a plan that had restrictions on it that said okay we are going to do this; but, once this is done to continue this use you cannot change these conditions being the width of the road. So our proposal to create this scenario where we can do a driveway from the state road would preserve one building site that we view as a potential for maybe their family down the road or if they did need to sell this. It is a big investment for land conservation only for 207 acres; and, we feel that to put one house on that is not an unreasonable request. So that led us to this plan and why we are coming across the floodplain. There really is no other way to get to these parcels without using that private Sutherland Road access. He asked that Jason Kapp talk for a minute about his experience there concerning traffic and things like that.

Jason Kapp, owner of the property with his wife, thanked the Commission for their consideration here and explained they brought the original property back in 2008 and had lived there while their house was being built. He pointed out that really what precipitated this whole thing was when the vineyard came into play since it is a very narrow road and on the weekends it can be problematic for us to get access to our place. When our neighbor was suggesting to sell her property we thought we would be able to solve a lot of problems with this one purchase by being able to get our driveway access and also help preserve the rural character of the neighborhood back there. He said he would be happy to answer questions.

Mr. Keller invited questions.

Ms. Firehock asked Mr. Kapp to elaborate a little more about trying to solve the problem of the winery because she did not really understand.

Mr. Kapp explained that the residents actually live beyond where we are hoping our new driveway would go so we would be able to cut back on the traffic ourselves that contributes to the ongoing traffic problem that we have back there. There was always concern in the area about what would happen if this giant parcel of land were to be sold to a developer and so we bought it. We are not developers; but, we are trying to preserve a couple of the nice building sites on there for value and perhaps for our kids in the future.

Ms. Firehock said she thinks you were just basically saying that you were trying to avoid having to down by the winery to access your property and contend with all the traffic. She asked if that was part of it.

Mr. Kapp agreed that is part of it and another part of it was just to help preserve the rural character of the neighborhood. They did not want anybody to just come in and buy this land and have it become a cul-de-sac.

Ms. Firehock asked the applicant to elaborate on the design of the stream crossing and what staff was talking about the half dome.

Mr. Shimp replied that the proposal is for arched pipes, which are like a bridge and is a one-half pipe. We use those for a lot of reasons. One is they pass a lot of water so they cause limited restriction. We have a situation here where we do have neighboring properties up stream. It is a requirement of a special use permit to be a good neighbor, and we don't want to do anything that will back water up on our neighbors. He pointed out the tributary stream there is 2' to 3' wide. We have a 26' span pipe over it. So it takes a lot of rain to get the water up to where it is even approaching the top of that 26'. The height was asked and it is about 6' to 7' from the creek to the top of the road.

Mr. Lafferty asked if that was for both of them

Mr. Shimp replied yes; but, the second crossing is a little larger area and maybe it is a foot higher; but, in general it is the same scale. The crossings are not big. The stream sits down 3' or so from the field so the driveway will rise up a couple feet and go across the stream and then back into the woods. But, we don't have any intention of actually touching the water with our work.

Mr. Lafferty asked what is the area of runoff for these streams.

Mr. Shimp replied that the second point is around 1.7 or 1.8 square miles for the second crossing and the first one is a lot less than that. It is probably in the neighborhood of 600 or 700. Since he does not actually have that, he said that John Anderson actually has the file if they are curious about the specific number, and we can talk about that. But, they are ranging from hundreds of acres to less than 2 square miles.

Mr. Lafferty asked what coefficient of runoff did you use.

Mr. Shimp replied that we used rural regression methods, which are the standard for that size water shed; and, particularly in a rural area like that he would suspect that our theoretical flows are pretty high. He said that particular area back there is beautiful and there are a lot of mature forest. He pointed out he helped with a project across the street there to help somebody with a driveway and we computed a certain flow and two years later the culvert does not fill up because the woods are so healthy there is no runoff.

Mr. Lafferty asked if most of it was wooded area, and Mr. Shimp replied yes, most of the watershed is wooded.

Ms. More said she understands in the report it says any impact would not affect the adjacent properties and it would just be on this property. But, she was wondering if the base flood elevation would be affected by the fill or if there is any information about that.

Mr. Shimp replied that we submitted the study to the engineering staff about that. He noted there is no base flood elevation in Zone A; it actually is a space horizontally not vertically. He said we mapped that and that is in the file. But, basically what we find is when computing the flood plain it actually is narrower in almost every place than the map floodplain. So actually we did a survey; we surveyed nine cross sections; and we do a hydrologic analysis the same way FEMA does for the Rivanna River basically but on a smaller scale. We actually say the floodplain is not 220' wide as the map shows; it is 141' wide or some precise number based on our calculation. So when we run that model you do increase the elevations locally because with a culvert the water does rise a little bit and it is a restriction. But, our study shows at the far end of the property at the neighbor's property line there is no change in base flood elevation. So if there was a BFE, a base flood elevation, for the property we would show no increase beyond our property; we would show an increase down sort of in the middle of our property right at the culvert.

Ms. More asked Mr. Shimp to elaborate on the decision not to get updated maps from FEMA. She noted in the beginning he talked about that as a way to proceed.

Mr. Shimp replied that the options would be to actually not say update the map; but, to simply say petition it to be removed. So we could go to FEMA and say we only have 2 square miles and your threshold is 3 square miles or whatever that number may be since it depends on the factors; and we should actually move the flood plain downstream, which then would not need a special use permit. But, sort of the down side of that is that if your perspective is one of land conservation it actually might open up development for the parcels that you might not want. So rather than go that route to say let's get rid of the floodplain we would say we will keep it and try to work within the confines of the regulations and develop a plan that does not really cause more development; but, in fact allows some level to occur that would decrease the overall potential of development. So FEMA does not create a detailed study for an area like this; it is either a Zone A approximate or it is nothing.

Ms. More pointed out in the conditions that staff have outlined that is number 7 even though some of the language was changed ultimately you would get FEMA's conditional approval and maps would be updated. So the potential is there for that change to be made as part of your process as you move forward conditionally.

Mr. Shimp agreed that was correct, and we would have to go through that process. Basically, as he understands the process, the flood map would be revised per our study and so it will get generally smaller across our property; but, it will still be there.

Ms. Spain said since you seem to be concerned about protecting that parcel on that land from development have you thought about a conservation easement and in that context would these same criteria or requirements apply.

Mr. Kapp said he would take the first question. He explained we have thought about a conservations easement; it is not something that we would want to do for a number of years until we actually got to know the land itself. As it is even though it is contiguous to our property we don't have a direct access to it and have to go all the way out to Sutherland Road and come in. He asked what is the second question.

Ms. Spain said she wondered if it were in a conservation easement would it affect whether you would need a permit for these bridges.

Mr. Clark replied that it would not change flood plain whether or not it is in a conservation easement, and if they decide to put the land in an easement later whatever work or improvements are already approved on the site the easement the new organization would just adapt to what is already there in their assessment of the conservation value of the land.

Mr. Keller said just as a follow up to that he asked do you have other parcels under conservation easement.

Mr. Kapp replied no. He pointed out that he believed that it was supposed to be contiguous to a public road, and our current land is not that way. He said if we were to link these two parcels, then we would have that ability.

Mr. Keller asked how many acres do you have in this full holding, and Mr. Kapp replied the full holding was going to be close to 1,000 acres.

Mr. Keller invited public comment.

Werner Hambsch said he was Mr. Kapp's neighbor and there was a concern which Mr. Kapp mentioned. The private road is Sutherland and continues from the state end to his property and we share the driveway and it is a very narrow road for one car only at a given time. He can say that Mr. Kapp would eliminate that particular road; and, it is right next to the winery. He can only stress that since the Kapps moved to North Garden, which was 7 years ago, he has been an exceptional good neighbor and a very good steward of his land. Whatever Mr. Kapp has done he has done to perfection. So if Mr. Kapp proposes that driveway to the property he would encourage you to consider that because he could not find a better neighbor. Thank you.

Tom Ward said he was Mr. Kapp's neighbor on the other side and the person who would be most impacted by this road. He said he lived across the road from Werner Hambsch. He pointed out

that Jason Kapp has to drive through his property to get to his own, and he certainly understands why he would like to put in a new road. He explained his only concern basically is that in the flood plain itself it is how the downstream impact will be. Even though he has been assured he has not seen any documentation on this that if there is flooding it won't affect my property. He feels like Jason has been a very good neighbor and when he says he is concerned about the environmental quality of the neighborhood he takes that as fact much more than the prior neighbor and glad that Mr. Kapp has this property. He said his basic concern is downstream water quality; he told that to Jason and was sure you are perfectly capable of addressing that. Thank you very much.

Mr. Keller invited the applicant if he had a summary.

Mr. Justin Shimp said he would address the last comments to make sure everybody was clear on that. He explained they have a detailed model they submitted over to the county engineers we just talked about which shows there will not be an impact upstream. Downstream and using the arched pipes we stay out of the water. So it is really sort of the way to do this with absolute minimal disruption of the stream, really now; and, we will have to also for everywhere we disturb we will have mitigate that in a 2:1 ratio. So what is say currently the field adjacent to, which is a hay field and they are not running cattle right now, a portion twice of what we disturb becomes wooded basically. We are required to plant those and it will become a wooded area rather than a field area. So we are not actually getting into the stream; but, in that perimeter around it we will be enhancing the buffer as part of our work. He hopes that addresses the neighbor's questions.

Mr. Keller asked if there were any further questions for the applicant.

Mr. Lafferty asked what is the nature of the existing crossing of the floodplain on Sutherland Road.

Mr. Shimp replied it is a 48' metal pipe, and an old metal pipe that has been there since 1975 for the record.

Mr. Lafferty said he wondered if it ever backed up, and wanted to make sure that the cross sectional area was at least compatible with that.

Mr. Keller said he had a question to ask counsel about the second connection. He asked does that second connection carry the same ability that an easement would so that if another party in the future wished to come in for that parcel, if it remains a separate parcel, and wanted to do a development by right for as many units as that 200 plus acres would allow they could come forward and ask for another special use permit to do that, correct.

Mr. Blair replied yes, they could.

Mr. Keller said he was persuaded on the first piece; but, on the second he just can't see the argument as a strong one unless you were willing to truly say that it is going to be limited to one development.

Mr. Shimp replied that there was nothing to stop this other property in ten years for somebody coming back to you from saying we are scraping this special use permit and we are going to proceed with a different plan. But, what we thought would sort of protect this area better was the fact that this is all tied to one special use permit so as long as the road or driveway to the Kapp's current home is in use, then the condition applies to all the property. He said we would be agreeable to some condition that required us to remove the current connection off Sutherland

because we intend to do that anyway. So the ones that the special use permit establishes that creates this driveway through the property somebody would be into it already that much and to start over would be less ideal than say start again today. So if we have that connection we don't have another way out, that is our driveway and that one crossing we had approved than both crossings, then really for someone to go back would sort of challenge that whole existing access. We feel like it is sort of like the poker term "pot commitment". We are going down this road and you want to keep going down this road; otherwise, you are going to have to start from scratch completely. There are no guarantees that somebody wouldn't try to do that; but, certainly if they wanted to use that access off Sutherland then only one dwelling could be permitted in that second area and to step aside from the easement route that certainly is the greatest protection that can be provided to that area.

Mr. Keller asked if there were further questions. There being none, he closed the public hearing to bring the matter before the Commission for discussion. Mr. Keller said he was comfortable with the first crossing; however, he was still not convinced as to the benefit of the second crossing.

Ms. More said she had a question and thinks the answer would probably be as it has been in the past that things are taken on a case by case basis. But, she just wonders when the comprehensive plan is very clear about additional access to land for residential development if it is contrary to the goals set forth in the comprehensive plan yet staff is able to make a finding and create some reasons why this is favorable she wonders what sort of precedent that could set for future developers to come forward and us not to follow the Water Protection Ordinance that we have in place.

Mr. Blair replied that he would let staff address the comprehensive plan. But, legally there are a couple of things to keep in mind. First, when you talk about precedent typically in a land use context it is a legislative decision. So as a legislative decision if the Commission or the Board of Supervisors can point to any aspect of the parcel or the action or the conditions that are different in a separate case there really is not a precedent set. That is from a legal perspective. From a policy perspective you can look at it a couple different ways as to what are we doing; are we really opening ourselves up from a policy perspective to say this is what we favor from that policy perspective. But, legally again it is a legislative action and if you can differentiate in any way this parcel on this application from another parcel application you don't set a legally binding precedent.

Ms. More asked if staff wants to comment at all.

Mr. Clark replied that clearly we typically hope that we won't see environmental impacts in the rural areas happening to allow more development to happen. He thinks here given the limited amount of development that the applicants are requesting on the site with that one site across the flood plain, staff felt that given that we could hold that to just one house; there would be the mitigation plans that would offset the crossing; we are talking about a 120-acre portion of the property with one dwelling on it and that is not atypical for a large estate in the rural area. If the applicants had come in and said they just want an unlimited crossing of the floodplain to access our development, our recommendation would have been entirely different. Staff would have said that is inappropriate in the rural areas to open up all that land for development through those kind of impacts. Staff felt like this was such a limited request that we could off-set it to some degree with the limitation on the number of dwellings and requiring the mitigation plantings.

Ms. More said she was sensitive that they have a point of access that is not desirable because of the nature of that road being narrow. However, that is a concern from a policy standpoint that

there is an access and so to create an alternative access may be opening the door for future requests where maybe the floodplain is not a Class A or there are not always explanations as to why the impacts are smaller. She was conflicted because she appreciates the applicant's desire to have a safer access to their home site and she sees the pictures of that road. However, she does worry because they do have access and so we are not looking at a place where there is no access other than taking this action.

Mr. Keller said he thinks your point is well stated; however, the applicant has stated that they did not have direct property access before and it is through a right-of-way through someone else's property and with this purchase of land they now have the ability for a direct access and they can mitigate some of the issues with a development at the end of that public road where the private road is. So he is more comfortable with the first one than he is with the second one. He pointed out he shared Ms. More's view in terms of the second one.

Ms. Spain said a point of clarification, does the 10' width limit the possibility for further development.

Mr. Clark replied that the 12' maximum width being required is intended to prevent these crossings from meeting the 3 to 5 lot subdivision standard for just 14'. So essentially the area is accessed by these 10' to 12' crossings and could only be divided into 2 lots.

Ms. Spain said so does that address your concerns.

Mr. Keller replied not mine because we see people coming back for reworking special use permits all the time; we have some tonight. So it means just changing that standard next time; so no he does not see it.

Ms. Firehock agreed with Mr. Keller since she understands the need for the additional crossing to provide an access to a residence; and, she understands that they do have some access. But, she also has been down there when the winery is open and going and can understand some of those traffic concerns. She does not see the need necessarily for the second crossing except to open up some investment potential, and she did not know why they would need to approve that. It is simply an applicant's request to have more investment value out of their land to potentially sell in the future, and she does not know if that is the business we are about. The other thing she would mention is that we talked a lot about the stream crossing and she wanted to make two quick points about that. One is that it is not just a crossing but the road that then would go through the entire property because there is a crossing there. So there is the impact of the road. Then the last thing she would say is Mr. Shimp commented on the fact that these are just tiny streams and we have the dog ruling to check how big they were. But, those small trees are quite fragile and there are actually quite a lot of wetlands back in that area. So it is not simply just because there is a small stream that it does not matter; it is actually more sensitive to disturbance than a larger river system.

Mr. Keller asked if there was any further discussion. There being none, he asked if there was a motion.

Ms. Firehock asked if she wanted to make a modification to what is up there if she needs to include everything here and the modification or do you want a separate motion to make the modification first.

Mr. Blair said he preferred to make the modification first just because it provides clarity on what you are voting on at each time.

Mr. Clark pointed out that there was a typo in condition 4 in the wind capacity was listed as 64,000 pounds and it was actually supposed to be 46,000 pounds. He noted it had now been corrected on the screen and pointed out that would be part of the Commission's motion.

Ms. Firehock said with regards to SP-2016-00001 Kapp Driveway she motioned to amend the request to remove the second stream crossing that was proposed on the site plan as the proposed second crossing location.

Mr. Keller seconded the motion.

Mr. Keller invited discussion.

Mr. Lafferty said if they are going to allow one stream crossing which is contrary to the comprehensive plan we might as well allow two. He thinks the applicant is certainly aware of the conservation nature of this project if he is willing to have the restrictions about the buildings. He said the proposal is a better part of something that is wrong in doing stream crossings.

Ms. Firehock pointed out that she already talked about the sensitive nature of the streams and she would note that the reason that she proposed to not have the second one, she is not being arbitrary or capricious, she is simply stating that the first stream crossing seems to have some merit to it because it also helps the current landowner to live more comfortably on the land and not have the conflicts with the one-lane road situation by the winery. So there was a compelling reason to me beyond simply investment potential to approve that first one. She did not hear the same rationale for the second one nor has the landowner particularly proposed any specific conservation activities. She was sure he was a great guy and sure he did a great job with his land; but, she can only deal with what is actually written before me.

Mr. Keller said he would add to that we heard the applicant say that they would be willing to close off the access point so in effect one of those is going away. So we would have one instead of two or in your case three. The other one is that he thinks that our counsel has shown us actually that staff is taking a big leap of faith, and we have even heard this from the applicant in terms of whether it is really going to lower the development on that parcel.

Mr. Lafferty pointed out that he was not talking about three crossings.

Mr. Keller said but on that second crossing you are assuming that there is only going to be one development.

Mr. Lafferty agreed that was right.

Mr. Keller said that counsel has told us that we don't have to accept that argument that there could be a new special use permit that would allow for multiple crossings so the only real way to ensure that there is one would be to have an easement on it that said that there was only going to be one development.

Ms. More asked Mr. Keller to clarify.

Mr. Keller apologized and noted when he says development he means a development unit, a house.

Ms. More asked if he could clarify when he said to close off the one because she did not understand since he said that they were going to close off one and they would only need two.

Mr. Clark pointed out that the applicants could potentially stop using their existing private road access off of Sutherland Road. They could not actually close that stream crossing that is there because it is not on their property and it is used by other people.

Ms. Firehock pointed out the applicant said that they were not using it.

Ms. More agreed they are not going to use it; but, it is staying there because other people potentially access their property by using that. She said the amendment is still on the floor; but, she was a little conflicted and wait to see if the amendment moves forward.

Mr. Keller said they could vote this one up or down and if it is voted down, then we would move to the next one. He said somebody would need to make a motion. He asked for a roll call vote. He noted there was a request for clarification and that the motion by Ms. Firehock is for a modification to the special use permit.

Ms. Firehock said it was to remove the second crossing.

Ms. More asked if she was not going to support the second motion should she abstain from the amended portion or support the amendment even though she is going to vote against it.

Mr. Blair replied no, right now this is a motion to amend the conditions in the proposed special use permit (SUP) and it is about whether you want to in effect delete the proposed second crossing location.

Mr. Keller asked if he could continue the explanation. He said so then the next vote after that one if that was approved would be to look at the first crossing.

Mr. Blair replied what you would do is in effect if the motion passed you would then, unless there was another amendment, vote on the amended SUP without the second crossing.

Mr. Keller said so you would have an opportunity to express it. He asked for a roll call vote.

Ms. Taylor called the roll.

Mr. Lafferty voted nay for the reason that he thinks that it is sufficient for me to take the applicant's explanation that he wanted to open up land for his children at a later date. If it came back to us and they wanted future developments he thinks they could turn it down for the reason that they are doing a development in the rural area.

Ms. Spain voted nay for the same reasons that Mr. Lafferty cited.

Mr. Keller voted aye.

Ms. Firehock voted aye.

Ms. Riley voted nay for the same reasons.

Ms. More voted no for the reason that she does not support the second crossing because it is contrary to what is called for in the comprehensive plan.

The motion to amend the conditions in the proposed SP-2016-00001 to remove the second stream crossing **FAILED**, by a vote of 2:4:1 (Lafferty, Spain, Riley, More nay) (Dotson absent).

Mr. Keller said the Commission can move on and go back to the special use permit as staff has proposed. He asked if they wanted to have further discussion on this or was there a motion.

Mr. Lafferty moved to recommend approval of SP-2016-00001, Kapp Driveway with the conditions outlined in the amended staff report.

Ms. Riley second the motion.

There being no further discussion, Mr. Keller asked for a roll call.

Ms. Taylor called the roll.

Mr. Lafferty voted aye.

Ms. Spain voted aye.

Mr. Keller voted nay for the reasons he has discussed before and he does not believe that staff and the applicant have convinced me that there would be limited development on the second so he is in support of the single crossing for the home, but not for the second crossing.

Ms. Firehock voted nay for the reasons expressed by Mr. Keller and expressed earlier by me.

Ms. Riley voted aye.

Ms. More voted no for the reason that she thinks the applicants made a valid case for the first crossing, but there is an alternate access so she does not think either crossing is supported by the comprehensive plan.

The motion to recommend approval of SP-2016-00001 Kapp Driveway failed by a tie vote of (3:3:1). (Keller, Firehock, More nay) (Dotson absent)

Mr. Keller said there is a 3:3 tie vote and this request will be going to the Board of Supervisors for their decision. He thanked everyone for a lively discussion on this.

The Planning Commission recessed at 8:32 p.m. and the meeting reconvened at 8:39 p.m.