Albemarle County Planning Commission

The Albemarle County Planning Commission held a worksession on Tuesday, February 4, 2003 at 4:00 p.m., at the County Office Building, Room 235, 401 McIntire Road, Charlottesville, Virginia. Members attending were William Rieley, Chairman; Rodney Thomas; Bill Edgerton; Pete Craddock; William Finley; and Tracey Hopper, Vice-Chairman. Absent from the meeting was Jared Loewenstein.

Other officials present were Wayne Cilimberg, Director of Planning & Community Development; David Benish, Chief of Planning & Community Development; Greg Kamptner, Assistant County Attorney; Joan McDowell, Senior Planner; Steven Biel, Senior Planner and Michael Barnes, Senior Planner.

Mr. Rieley called the meeting to order at 4:14 p.m. and established a quorum. He asked that they begin with the worksession on the Mountain Protection Ordinance.

4:00 P.M. MEETING ROOM # 235:

4:00 – 5:00 Worksession: Mountain Protection Ordinance – Provide overview of the proposed ordinance (David Benish).

Mr. Craddock arrived at 4:20 p.m.

Greg Kamptner and David Benish presented an overview of the proposed Mountain Protection Ordinance and the proposed schedule.

5:00 – 5:30 Worksession - Community Facilities Plan – Discussion of update of Community Facilities Plan (David Benish).

Mr. Benish passed out the Community Facilities Plan and provided an overview to the Planning Commission. He noted that another worksession was scheduled for February 18th. He suggested that they review the materials starting with Attachment A before the next worksession.

The meeting adjourned at 5:15 p.m. for a dinner break.

The meeting reconvened at 6:00 p.m. for the regular meeting in the auditorium.

The Albemarle County Planning Commission held a meeting and a public hearing on Tuesday, February 4, 2003 at 6:00 p.m., at the County Office Building Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia. Members attending were William Rieley, Chairman; Rodney Thomas; Tracey Hopper, Vice-Chairman; Bill Edgerton; William Finley and Pete Craddock. Absent from the meeting was Jared Loewenstein.

Other officials present were Wayne Cilimberg, Director of Planning & Community Development; Yadira Amarante, Planner; Margaret Doherty, Senior Planner; and Greg Kamptner, Assistant County Attorney.

Call to Order and Establish Quorum:

Mr. Rieley called the regular meeting to order at 6:10 p.m.

Other Matters Not Listed on the Agenda from the Public:

Mr. Rieley invited comment from the public on other matters not listed on the agenda. There being none, the meeting proceeded.

Consent Agenda:

Approval of Planning Commission Minutes – November 26, 2002, December 3, 2002 and December 10, 2002.

Mr. Thomas made a motion to approve the minutes of November 26, 2002, December 3, 2002 and December 10, 2002 on the consent agenda.

Mr. Finley seconded the motion.

The motion carried unanimously (6:0). (Loewenstein absent)

Items Requesting Deferral:

SP-02-063 CVS Pharmacy, Store #1554 Drive–In Window (Sign #85) – Request for special use permit to allow a drive-in window to serve a retail pharmacy in accordance with Section 22.2.2.10 of the Zoning Ordinance which allows for drive-in windows serving or associated with permitted uses. The site plan application has been submitted to support this request, please see SDP-02-114. The property, described as Tax Map 32, Parcels 41A and 41D1, contains 1.85 acres, and is located in the Rivanna Magisterial District on US Route 29 north across the street from the Timberwood Parkway intersection. The property is zoned C-1, Commercial. The Comprehensive Plan designates this property as Regional Service in the Hollymead Community. (Margaret Doherty) **APPLICANT REQUESTS INDEFINITE DEFERRAL.**

AND

SDP-02-114 CVS Pharmacy, Store #1554 Preliminary Site Plan – Request for preliminary site plan approval for 11,516 square foot retail pharmacy, with a drive-in window (see Special Permit Request #SP-02-63) on 1.85 acres zoned C-1 Commercial (Margaret Doherty) **APPLICANT REQUESTS INDEFINITE DEFFERAL.**

Ms. Hopper moved to accept the applicant's request for indefinite deferral of SP-02-063, CVS Pharmacy, Store #1554 Drive-In Window.

Mr. Edgerton seconded the motion.

The motion was unanimously (6:0) approved. (Loewenstein absent)

Ms. Hopper moved to accept the applicant's request for indefinite deferral of SDP-02-114, CVS Pharmacy, Store #1554 Preliminary Site Plan.

Mr. Finley seconded the motion.

The motion was unanimously (6:0) approved. (Loewenstein absent)

Regular Item:

SDP-2002-128 Faulconer Construction Office and Shop Preliminary Site Plan – Request for preliminary site plan approval for a construction office, shop, and storage buildings, 35,044 square feet, on 27.37 acres zoned LI, Light Industrial. The property, described as Tax Map 58, Parcel 37 is located in the Samuel Miller Magisterial District on Rt. 738 (Morgantown Road) approximately 1-1/8 miles west from the intersection of Morgantown Road and Route 250 at Ivy. The Comprehensive Plan designates this property as Rural Area 3. (Yadire Amarante)

Mr. Rieley stated that he had been told that the microphones were for recording and not for projecting. Therefore, they would do their best to speak loudly.

Ms. Amarante presented the staff report. (See the attached copy of the staff report.) The applicant is requesting approval of a preliminary site plan to construct a contractor's office and equipment storage yard on Morgantown Road or State Route 738 in Ivy. They are proposing to construct a 15,500 square foot maintenance shop, three 4,320 square foot pole barns for storage, one 3,032 square foot office building for an office and one 3,512 square foot office building. They are not proposing the last mentioned office building right now, but it will be built at a later date as part of Phase II of this development. Parcel 37, which is the parcel in question, is currently vacant. It is a heavily wooded lot with several small streams flowing through it that drain into Ivy Creek. It is located within a small industrial park that currently houses a child daycare center and several commercial warehouse facilities. The area immediately surrounding the business park is zoned Rural Areas. The neighbors are Virginia Murray Elementary School and several residential parcels to the north of this particular parcel and to the west. Tonight the Commission needs to take some type of action on the preliminary site plan as it is proposed. In order for the Commission to make that finding, they will need to take action on three waivers requested by the applicant. One of the waivers is a request to waive the provisions of the critical slopes which say that no land disturbing activities in the County can take place on critical slopes of 25 percent or more. The applicant is also requesting to waive two other sections of the Ordinance that deal with curvilinear parking and one-way circulation in a parking area. Normally these actions can be done administratively, but several abutting property owners have called this item up to the Commission for your review and action. The Site Review Committee has reviewed the site plan and all three waivers and recommends approval of the site plan and the three waivers to the Planning Commission tonight.

Mr. Rieley thanked Ms. Amarante and asked if there were questions for staff at this juncture.

Mr. Edgerton stated that he would like to state for the record that there was some concern because of his previous employment by Faulconer Construction on this site several years ago that perhaps he should preclude himself from this. He pointed out that he checked with the County Attorney and the Zoning Department and found that there was no reason to do that. He stated that he did not have a conflict. He asked staff for clarification on page two of the staff report where she stated that staff has cautiously determined that this proposal does not comply with the Comprehensive Plan. He asked for clarification of that statement.

Ms. Amarante stated that she used the word cautiously because she was aware of the conditions surrounding this project and did not want anybody to think that we could disapprove this site plan because it was not in conformance with the Comp Plan. The truth of the matter is that the property is currently zoned Light Industrial and this development does fit the definition of a contractors office and equipment storage yard. She noted that some history might be important. At one point back in the 70's when the County first adopted the first Comprehensive Plan; this property was slated for industrial development at that time. She felt that led the Board of Supervisors at that time to zone the property B-1 and ultimately LI because it was shown on the Comprehensive Plan at that point as industrial property although our current Comprehensive Plan has it for Rural Areas uses. The current Comp Plan for this property is for Rural Areas uses as opposed to the 1970 through 1989 Comp Plan which showed it as being industrial property.

Mr. Rieley asked if there were other questions for staff. Before he opened the public hearing, he asked Mr. Kamptner to review briefly the issues before the Commission. It will be instructive for those speaking to us to know the perimeters of those issues.

Mr. Kamptner stated to follow up on Mr. Edgerton's question as to the consistency of this site plan with the Comprehensive Plan. He stated that it was important to understand that the Comprehensive Plan is a policy document that guides the County in legislative decisions such as

rezoning and special use permits. On this property that decision was made at least twenty years ago when the property was zoned LI. The decision that is in front of the Commission tonight is not a legislative decision. It is what is considered a ministerial decision. That means that what the Planning Commission's job is to look at the Zoning Ordinance and all of the requirements that will apply to a site plan and decide whether or not the site plan meets all of those requirements. It is simply applying the existing regulations to this particular site plan. There are also three waivers that are before the Commission tonight. The waivers include the critical slope waiver, the curvilinear parking and one-way circulation. These decisions are not policy decisions as to whether or not any of the waivers should be granted. The Planning Commission has specific criteria that they need to apply in deciding whether or not to grant those three waivers.

Mr. Rieley stated that before he opened the public hearing, he would explain how the system works. He explained that the applicant would be allowed ten minutes to make a presentation. After that anyone who would like to address this issue may do so. We have a sign-up sheet. They will begin with the people that are signed up on the sign-up sheet. After they exhaust that list, then anyone that wishes to address this issue may do so. We will stay as long as we need to. Each person listed on the sign-up sheet will be allowed three minutes. After they exhaust the list, then anyone left may speak. They will stay as long as they can. At the conclusion, the applicant will be allowed five minutes for rebuttal. At the end of that time, the matter will then be brought back to the Planning Commission for discussion and possible action. You will probably encounter times during various presentations in which you will be attempted to applaud because somebody is particularly eloquent in expressing views that you agree with. Please do not applaud because it will only prolong the length of time that we are here. Quite often in the long run it detracts from the dialogue and may even have an adverse effect. Thank you very much for the last ten minutes because the group has been very quiet. That is your part. Our part is to speak loudly. We will do our very best. He apologized that they did not have a sound system that would make it possible for everybody to hear when they are speaking in conversational tones. The Planning Commission will do our best to speak loudly. He asked for the public's help. He opened the public hearing and asked if the applicant would like to speak to the Commission.

Richard Carter stated that he represented Faulconer Construction Company who was the applicant. He stated as the Planner and the County Attorney have stated that they were here tonight for preliminary site plan approval and action on three waivers. That is why we are here and that is what he would speak to. When you are looking at critical slope waivers, you look at the location of the disturbance to see if they can minimize the effect of the development. He asked that they review the site plan which was located in their packets. He asked why they have the disturbance of the critical slopes and where are they located? The location of the disturbance was mainly where the entrance road crosses the two streams and then as the road to the shop crosses the stream. Most of the disturbance of the critical slope is where the road crosses the streams. When looking for the justification of the critical slope waiver, he would call their attention to Attachment F that is a letter from Brent Nelson, of Roudabush, Gale and Associates. That letter addressing the things that we look at and the test that they try to look at in looking at whether to grant the critical slope waivers. For instance, the standard for critical slope waivers is Section 4.2 of the Zoning Ordinance, which is to protect and conserve steep hillsides to prevent potential soil erosion, sedimentation, water pollution and septic disposal problems. That is why you don't want to mess around with critical slopes unless you have to. If you look at Attachment F, it goes down the list. It lists soil erosion and how we address that. It lists sedimentation and how we address that. It also lists excessive water runoff, protection of existing streams, loss of aesthetic resources, encroachment into floodplains, and large-scale movement of soil and rock. All of those things that are to be addressed in order to grant the critical slope waiver are addressed in Attachment F. Here is what you do. If you find that the alternatives proposed by the developer would satisfy the purposes of Section 4.2 to at least an equivalent degree, then you may pass and grant the waiver. He asked that they look at what they want to do and see if they have taken the proper procedures to keep them equivalent or at least equivalent to what they are now. He stated that they believe in Attachment G that is done. He stated that the reason that he said that was contained in Attachment I. Attachment I is the spin submission and comments from

the County's Engineering Department. They don't necessarily believe what we say, but they turned it over to their own Engineer's and asked if what we are saying is true. The Engineering Department, on page 2 of their report, goes down the same things, the movement of soil and rock, excessive stormwater runoff, siltation, loss of aesthetic resources, and septic effluent. Every one of those things is included in the test that the Engineering Department and our private engineers went through. He asked what they found. They found that the critical slopes that are being disturbed are going to be at least equivalent to what they were, in regards to these items, when the critical slopes are graded and disturbed. He called their attention to Attachment I in which Engineering says the following, as to disturbance of critical slopes necessary to provide reasonable access to the site that "there is no reasonable alternative location for alignment to provide access to the usable portion of the site." So what have we done? They have had Engineering review it. They have had staff review it. They have had the Site Development Committee review it. They have had private engineers review it. The Engineering for the County says that this is the only place that you can do this and reasonably use the site to have the minimum disturbance. He pointed out that this was a by-right use that they wanted to use for this purpose. In order to do that, there are critical slopes. What is the best procedure to use? Now how about the amount of the disturbance. This site is 27.37 acres. The total critical slopes are 4.4 acres or 16 percent of the total site is in critical slopes mostly because it has these streams running through it. Only 1.53 acres or 35 percent of the critical slopes will be disturbed. We have 27.37 acres in all and 1.53 acres will be disturbed with .63 acres being disturbed for driveway construction. There are other critical slopes in here that is included in this. But they are not as staff's review indicated as a concern because they were man-made. When Dettor, Edwards and Morris owned this property, they were going to put in a new warehouse and graded the property. He stated that maybe they did not need a permit, but noted that he was not sure. However, they created critical slopes when they graded the property. The man-made critical slope is not part of the open-space plan composite map. What are the protections that the County has to make sure that we do what they say? He asked that they look at the conditions attached to the staff report. There are eighteen conditions attached to the staff report. He believed that at least 9 of the conditions refer to making sure that the ordinance is adhered to and that it will be at least to what it is now. He commended them to conditions 2, 3, 4, 5, 6, 7, 8, 9, and 10. They have done what they have to do to meet the ordinance. He asked for their consent to these waivers. When they met early on with staff they were told to stay out of the stream buffers. They were told not to put any development in these 100-foot stream buffers. In order to do that they need the curvilinear parking and the one-way travel lane in front of the office. It was a better plan, but they could go back and put them in the stream buffers. He pointed out that this was the best way to do it because they thought it was good planning. He asked that the Commission approve the waivers. He noted that he would be happy to answer any questions.

Mr. Rieley asked if there were any questions for Mr. Carter.

Mr. Thomas asked what the percentage was of critical slopes that were man-made. He asked if the area in the drive way was the entire section.

Brent Nelson, representative of Roudabush & Gale, stated that there were some critical slopes that they were crossing with the road and the stream crossing.

Mr. Carter stated that there were some man-made critical slopes under the shop.

Mr. Thomas asked what percentage of critical slope was man-made.

Mr. Nelson stated that he would have to look at it at his seat and get back with the Commission. He noted that he could give them a percentage.

Mr. Rieley stated that he would summarize that for the people who could not hear. He reiterated that Mr. Thomas asked Mr. Nelson the percentage of the critical slopes that was man-made. Mr. Nelson said that he did not have the figures with him, but he could have them for us later. He

stated that before they go on with the other speakers that the Commission would give Mr. Butler time to adjust the microphones. He asked if there were other questions for Mr. Carter.

Mr. Rieley stated that they would begin with the first person on the list. He stated that each person would be allowed three minutes.

Vincent Day, a Hydrogeologist/Principal of TrueNorth Environmental, LLC, stated that his company has been retained by Ivy Community Associates to review environmental aspects of the referenced site and associated site plan and to offer an opinion regarding the feasibility of the development and to provide recommendations to help reduce environmental impacts to the neighborhood and the community of Albemarle County. He noted that his first concern deals with the groundwater. The adjacent residences are on ground water with individual wells. He noted that he had provided a copy of his report earlier to the Commission. Concerning his recommendation, he asked that the Commission base their decisions on information rather than maybes. He recommended a hydrogeological assessment, an environmental assessment to Little Ivy Creek and what the plans would do to remove or reduce the threat to it of human error. He noted that on the site plan it indicated that the drainfield would be installed at 15 feet below the surface of the ground. He asked to have that reviewed as well. He requested that the Commission take the time to review his report. (A copy of Mr. Day's letter is attached.)

Tom Hutchinson, Professor at the University of Virginia, resident of "Hardendale", Ivy and President of the Ivy Community Association, spoke against the approval of the site plan and the waivers. He stated that when he first met Mr. Rieley at a meeting with Sally Thomas, that one of the things that Mr. Rieley pointed out was that this committee has the discretion to be certain that the following language is followed, "And to ensure that land use is in a manner that is efficient, harmonious with the neighboring property and in accordance with the Comprehensive Plan and the provisions of this chapter. This language comes from Chapter 18 of the Ordinance. He asked Mr. Rieley if he was quoting him correctly in this matter.

Mr. Rieley stated that he was not certain since his recollection did not go back that far. He stated that if he was quoting the Albemarle County Ordinance that he thought he was on firm ground.

Mr. Hutchinson presented a slide presentation to display the area in question. He noted that the community was saying that the use does not blend with the neighborhood. He pointed out that the Commission has the right to deny this proposal.

Mr. Rieley asked what the date was of the aerial photograph that he displayed?

Mr. Hutchinson stated that the date was around 1999.

Brian Wheeler, a resident of 89 Langford Place and PTO President at Murray Elementary, asked that the waivers and preliminary site plan not be approved. He asked that the Commission retain the authority for the final review of the site plan, should it go forward. The review of something of this magnitude can't be delegated to staff before you have seen the certified engineer's report, which may describe what Faulconer really has in mind for this site. He asked that the Commission reject all of the applicant's waiver requests. He stated that they were very concerned about their children's risks primarily about noise, water pollution and traffic. They were told by the Zoning Administrator that, "Safety and environmental concerns are more appropriately considered during the site plan review." He asked why this information was not available at the preliminary site plan review. He stated, "The community would like to officially request that the rest of the zoning ordinances not be waived." He stated that Faulconer's use is not compatible with this site. (A copy of Mr. Wheeler's statement is attached.)

Jack Sanford, Jr., President of Faulconer Construction Company, stated that they were waiting for the Certified Engineer's Report to address some of those issues.

Chris Hyland, abutting landowner and Vice-President of the Ivy Community Association, stated, "that over the past 17 months that the Ivy community has been struggling to make sense of the development proposed by Faulconer Construction Company. We have made innumerable requests to the applicant to sit down and converse with the community regarding his proposal. To date none of Faulconer's representatives have accepted our offers and sat down with the community to discuss their plan. Each and every community meeting has presented an opportunity for the applicant to do this." "We, as a community, do not wish to deprive Mr. Sanford of his right to develop the property he has purchased, it is the nature of the proposed development that is in question." He questioned why there were so many unanswered questions regarding the BMP, stormwater management plans, etc. which are integral to the impact of the disturbance of the critical slopes at this phase. He voiced opposition to the approval of the requests. (A copy of Mr. Hyland's letter is attached.)

Carrie Coulson stated that she was a resident of Ivy, mother to Sam, a second grader at Murray Elementary, and to Lucy, my three year old, who is excited to be in her first year of preschool at Millstone School. In addition, she was on the Board of the Grassmere Farm Homeowner's Association and the treasurer of the Ivy Community Association. She urged the Commission not to grant any of Faulconer's waiver requests. In her attached letter, she pointed out, "As a member of the Planning Commission you have both the discretion and the obligation to deny these requests. According to County Code, land is to be " . . .used in a manner which is efficient, harmonious with neighboring property and in accordance with the comprehensive plan." (Chapter 18, section 32.1) "Faulconcer's proposed use of this property meets none of the qualities of this ordinance. Planning staff's own determination is that ". . . this proposal does not comply with the Comprehensive Plan." (Site review comments, page 2, subheading Comprehensive Plan). She noted concerns with the traffic, water and the close proximity to the school and daycare facility. (A copy of Mr. & Mrs. Coulson's letter is attached.) She asked that the Commission deny Faulconer Construction's requests. She pointed out that the County has an obligation to minimize the use. She stated that staff states that the storage of dynamite, blasting caps and other explosives is prohibited on this site, but for their purposes the conditions shall mean the existence of these materials on site for no more than four consecutive hours on any one day. If staff is admitting that it is unsafe to have dynamite on the site or that it is not zoned properly, then how is it determined that it is safe to store explosives provided that it is only for four hours. She asked who would monitor the four-hour rule. She pointed out that the transporting of these explosives would still occur on these narrow country roads.

Frank Buck, attorney with Buck, Toscano & Tereskerz, Ltd., stated that his company represents Ivy Community Association and landowners adjoining the Faulconer site, Thomas and Colleen Hutchinson and Christopher and Denise Hyland. He submitted a letter to be made part of the record that includes a couple of affidavits of long time Ivy residents regarding grave sites that exist on the property. (A copy of Mr. Buck's letter is attached.) He pointed out that other residents would address the issue that this is a bad proposal that threatens the safety of school children, endangers their water supply and adversely affects the Ivy Community. "In this letter I will set forth the reasons why we believe that the Faulconer site plan approval should be denied or, at a minimum, delayed until the County staff and Planning Commission members receive information necessary to make a fully informed decision." He expressed concerns about various issues that included the water supply being endangered. "In conclusion, the Commission can exercise its authority for the benefit of the public safety and welfare, and for the benefit of our environment and public drinking water, to only allow a development which is dramatically reduced in intensity and scale. The proposed site plan calls for the maximum intense development of the site and as such it is not entitled to Commission approval. As it is stated in subsection 32.1, "nothing herein shall require the approval of any development, use or plan, which shall be found by the Commission or agent to constitute a danger to the public health, safety or general welfare . . ."

Brian Cohen stated that this was precisely the venue to consider all of the vital consequences flowing from the floodgate this Commission opens as a result of your decisions. He felt that they were well aware of the Code of Virginia's subsection regarding the purpose of Zoning

Ordinances. It also parallels a section from Albemarle's Comprehensive Plan subsection 15.2.2.22, that says zoning ordinances shall be for the general services of promoting the health, safety or general welfare of the general public and to further accomplish the objectives of some other subsection. Of course, you could tell me that it relates to such elements such as traffic, schools, and water that are the very things that this community is worried about. Laws are not created in a vacuum where you cannot hear a child's scream in an accident between a school bus and an oversized construction vehicle. He stated that the quality of life under the Commission's watch is always a consideration even at this hour and even during the brief life of the rubber stamp. He urged them to consider the big picture of those global issues and deny the critical slope waiver or refer the decision to the Board of Supervisors.

Pam Evans, parent of two children at Murray Elementary, stated that they live, bike, and walk on Morgantown Road. This is the heart of their community. It is where they bring their children to school and where they hold their annual 5K race. She noted that the placement of the heavy industrial storage yard and repair shop would destroy not only the view, but also the current usage of this road and the heart of this community. She stated that Faulconer's site would be seen from three sides as you travel down Morgantown Road. She pointed out that the Millstone Preschool would actually look down on this. The County has yet to explain what happened to the four conditions put on the property which allowed Mr. Dettor to use it in the first place. These conditions were put in place to protect our community. None of these conditions are currently being enforced. She asked why the community should be forced to put up with this bargain. The conditions were that the site would not be visible from Morgantown Road to protect the aesthetics of the area. Faulconer will destroy the aesthetics of the area forever. The second condition was that trucks would travel on a short route in and out from Route 250 west on Tillman Road to the site and not in front of the school. The third condition was that a lovely little fishing pond and recreation area would be put on the site, which is now the Faulconer site. The fourth condition was that a 200-foot buffer on the west side would be kept in place to protect the community from just this type of inappropriate use we are talking about. Amazingly all of the protections for the community have disappeared. To top it off, the community has been asked to accept Faulconer's use as fitting into a Light Industrial site. They have been playing a magic game with us regarding all of the zoning ordinances. Since dynamite storage is not allowed in LI, the County says don't worry it won't be stored there, but just kept for under four hours. She asked who would check and monitor this. By granting the waivers, the Commission would allow Faulconer to overuse this space and then to pull heavy construction vehicles out on this small country road right at the school zone. She submitted a picture that showed her family walking to school. She noted that the trucks would be pulling out in the road right at the school. She submitted a map, drawn by her son who was sick at home, which showed him walking to school. There is also a picture attached. (A copy of the map and picture are attached.)

Shaun Evans, abutting landowner to the Faulconer site and the proud parents of two children who live on Morgantown Road and attend Murray Elementary School, requested that the Commission deny the request for the three waivers. The subject property is located on the side of a hill with which is traversed and bisected by two streams. From the western boundary to the eastern boundary where a creek is located, the property's elevation drops at approximately 75 feet in a distance ranging from approximately 400 to 500 feet. Even when the slope is not classified as critical slope, there are still steep slopes that run towards the creek that feeds into Ivy Creek and the public water supply. Development of the property as proposed by Faulconer can only be permitted if we ignore the intent of the critical slope ordinance of protecting and preserving steep hillsides together with public drinking water supplies which is quoted from the ordinance. If Faulconer is allowed to disturb these critical slopes, level the land and redirect all of the run-off and rain water, what happens to the three wells on properties to the north of the site of which the wells are supplied by run-off water and ground water. Faulconer is now proposing to mitigate and remove that from this plan. He asked that the Commission deny these waivers and protect his drinking water. He stated that granting the critical slope for Phase II of the development only allowed the applicant to maximize his return on his investment. The ordinance specifically excludes the pecuniary interest of the developer as justification for the waiver. The damage to

the critical slopes and stream buffers is compounded by Faulconer's request to cross the streams not once but twice to gain access to the southern half of the property. He submitted that these waivers would be detrimental to the public health, safety and welfare, particularly to the adjacent properties. He asked that the Commission deny the waiver requests. The applicant is trying to maximize every square inch of the land that is not subject to stream buffers and setback lines. He asked that the Commission deny the waivers so that they cannot fit onto this site. He stated that Section 18.4.12.1 states that development proposals that seek to maximize building areas or otherwise intensify development to the extent that these minimum regulations are not satisfied shall be deemed contrary to the purpose of the ordinance. He asked that they retain the right for approval of the final site plan because there was too much missing information to allow the rubber stamp of an administrative approval.

Garrick Louis, Assistant Professor of the Environmental Systems and Informational Engineering at the University of Virginia and an Ivy resident, stated that his professional interest was in the siting of environmentally sensitive facilities. In addition, he noted that he has a 2-½ year old son who will be attending the Millstone Preschool, which is very close to the site in question. Therefore, his interest in this was very personal. Due to the close proximity of the schools, he has four areas of concern about this location, particularly if such use entails heavy diesel powered machinery. The first concern is that the emissions from diesel engines are high in toxic matter. These will compromise the air quality in the area surrounding the site and impose a potential health risk to the development of the respiratory systems of the many young children adjacent to this site. Secondly, the eventual spills and leaks of diesel fuel and petroleum based lubricants can migrate into the ground water and contaminate the drinking water supply for the Millstone School and the surrounding residences, all of which rely on well water for their drinking water supply. Thirdly, the entrance and egress of heavy construction vehicles to and from the site onto Morgantown Town will significantly interrupt and increase the risk of accidents with regular vehicular and pedestrian traffic, particularly the children along that road. Fourthly, the noise associated with the operation of heavy construction equipment will create a distracting nuisance for the children at school and to the rest of the quiet residential community that lies near the site. These four concerns could be addressed by a comprehensive and environmental impact assessment of the proposed use of this site for Light Industrial activity. Such assessment would first have to establish how the Light Industrial zoning is compatible with the use of heavy diesel powered machinery at the site. It would have to demonstrate how the environmental control plan for the construction and the operation of the site would prevent the air, ground water, traffic and noise impacts that are the subjects of concern. The development and use of this site without such assurances would be a grave disservice, not only to the residents of Morgantown Road but to all of Albemarle County. This Commission would set a precedent that sets the desires of property developers above the health and welfare of its most vulnerable citizens.

Audrey Nikiforov, stated that he was very concerned that the applicant has shown no regard at all for the safety and health of the community in particular the people living on Morgantown Road and the hundreds of school children that go there everyday. He stated that he was a neighbor who lived in the Peacock Hill community. He stated that he was very concerned about the introduction of diesel powered heavy industrial equipment and trucks which will create a serious health hazard to the children attending Murray Elementary School and Millstone Preschool. He stated that he was a PH.D toxicologist with almost 20 years of experience in evaluating the impact of chemical exposures on human health. The heavy equipment and trucks that Faulconer Construction Company plans to operate up and down Morgantown Road hundreds of times per week will release high concentrations of diesel exhaust to the children of these schools and the residents of Morgantown Road continuously. He summarized the impact of diesel exhaust on the health and environment from an August 2002 issue of Environmental Health Perspectives (journal of the U.S. National Institute of Environmental Health Sciences). (A copy of Mr. Nikiforov's presentation is attached.) He asked if the potential for long-term and serious health effects to these vulnerable populations was worth the risk or are there safer alternatives?

Chase Stokes stated that he was seven years old and was a student at Murray Elementary School. He presented a model of Morgantown Road. He stated that the road was 18 feet wide and the red part was the road. He stated that he had a model of a school bus that he and his friends ride to school that was 9 foot wide. When he puts the school bus on the road with the 892 excavator, that was 11 feet two inches wide, it showed that there was not enough room for both of the vehicles. He asked that they consider the ability of everyone to be able to walk or drive to school.

Angela Stokes, mother of Chase Stokes, asked that the four other children listed on the sign-up sheet be allowed to be moved up on the list to speak.

Mr. Rieley stated that sounded like a reasonable request. He asked that they go ahead.

Daniel Goldeen stated that he was a fifth grader at Murray Elementary School. He pointed out that he was worried about the pollutants caused by the project and the overcrowding of Morgantown Road. He stated that the cleaning agents kept at the site would include diesel fuel, antifreeze, and cleaning agents. He tried to obtain a list of the actual chemicals that would be stored on the site, but his email to Faulconer bounced back without a response. He asked how much of the cleaning agents would run off when the trucks were cleaned. He asked what the run off could do. The run off has the potential to go into two different creeks. He voiced concern with the potential of harming the fish that live in those creeks, the cutting down of the trees for the project and the endangering of the water and wildlife. After the recent drought, he felt that they needed to be very careful about preserving their water. In addition, he felt that they need to be careful about the air pollution created by the large equipment. He stated that children are more prone to the effects of pollution because their bodies are still developing. He presented pictures of the site that show how Faulconer stores their chemicals.

Kelly Abrams, fourth grade student at Murray Elementary School, stated that the noise from Faulconer would bother her especially if she was taking a test. She stated that the noise from the large trucks would be very distracting. She asked that they not allow Faulconer to go in and affect their logo that Virginia L. Murray, a great place to learn.

Evelyn Stokes stated that she was a part of the Murray community. She stated that they were concerned about Faulconer's proposal because it could be dangerous. The flag that they fly at Murray is the American flag. Based on recent events, they know that flying the American flag is important to this Planning Commission and she agrees with them. They know it stands for justice, fairness, responsibilities and freedom for all, which they enjoy around the local area. A flag that they do not fly at Murray is the Bangladesh flag. According to research Bangladesh is known to have the worst contaminated water in the world. Many of the children and people in Bangladesh are sick because of the poor water supply. Currently we don't have to worry about this at Murray. But if warehousing and trucks are brought in that use chemicals, then the water will be affected. They would like for their water to be kept clean. Another flag that they don't fly at Murray is the Afghanistan flag. Afghanistan is known for having big issues with explosives that hurt innocent children and people. The Murray community does not want to be like Afghanistan and have loads of explosives coming down little Morgantown Road that could endanger the students. Bus drivers from Murray and parents that pick their children up from school want to continue not having problems with driving on Morgantown Road. Finally, our community does not want the property to look like the scarred land in Brazil. We don't fly the flag of Brazil because we want our mountains and forests of our area to be kept the way they are. We don't want the tragedy of deforestation to happen. If Faulconer does move in, we will still fly the same American flag, but the question is will it mean the same thing when we come to school each day? She did not think that it would mean the same thing. The constitution says that there shall be safety for all of the citizens. To allow Faulconer to come in and store all of the big trucks and dynamite will not bring safety to students and they are part of all of the citizens. It would also change the beautiful mountainous area into land that looks like a dump.

Abbey Wheeler stated that she was a fifth grader at Murray and will be talking about chemicals that might get into Murray's water system. The chemicals used will be hydraulic fuel, engine oil, transmission fluid and antifreeze. If you have been to the Faulconer site, you have seen that these chemicals could easily seep through the ground. She presented a picture of the way they already have them. (See the attached picture.) She voiced concerns about being able to get a clean drink of water from the school since she has done research on this topic. She asked that they consider the children of Murray Elementary School.

Robin Hammil-Ruth, resident of Morgantown Road for 8 ½ years and a mother of six children, stated that there were multiple concerns that she had about this project including the risk of water contamination that has already been addressed. The relaxed interpretation of Light Industrial was her main concern. She questioned what Heavy Industrial is if this does not fit that description. The other concern was the definition of accessory use. If 6,500 square feet of this was office space and more than 25,000 square feet was related to the ancillary or accessory use, then she has to wonder whether this is truly accessory or not. The Planning Commission's responsibility was to access the impact of the traffic leaving the industrial park even if you don't have control over VDOT's preview. She stated that they need to access that. She expressed significant concerns about the risk of traffic on this road. She asked that the Commission consider the traffic hazards when they review the site plan.

Deborah Stockton stated that she has distributed a packet of information for the Commission's review. She asked that they turn to Attachment A that was the staff report. She noted that concerns from paragraph one would be addressed. When she first moved to Ivy the beautiful picture previously shown was her first sight and that memory would remain forever. Those woods are located on the Faulconer site and are among the least disturbed in Ivy and will be lost if the critical slope waiver is granted. She stated that Faulconer's request was an abomination and she would show how it was illegitimate. The staff report to the Planning Commission contains several errors and omission critical to the history of this land. In particular the omission of a 200-foot swath of land on the property that retains a RA zone. All of these things are attached. Paragraph one asserts that on July 16, 1970, the Board of Supervisors, at the request of the owner, William Dettor, rezoned 48 of his 60 acres from A-1 Agricultural to B-1 business, and 12 acres from A-1 to RS-1, Residential. This, in fact, did not happen. The Board of Supervisors approved a partial rezoning of the land, leaving approximately 30 acres of the western portion zoned A-1. (The additional history is addressed in Ms. Stockton's presentation that is attached.) She questioned the legality of how the 200-foot buffer could be eliminated by the Zoning Department. "When we submitted a FOIA request to the Zoning Department, on December 31, 2002, asking for documented proof, in the form of Board of Supervisor's minutes and ads for public notification, of the change in zoning status of this 200 ft piece of A-1 land, the Zoning Administrator replied, "The records sought in your December 31, 2002 do not exist, because the property described therein was never rezoned from Rural Area (RA) to Light Industry (LI)." "Since, as we believe, the 200 foot swath of RA land still exists the entire site plan is in violation of the zoning ordinance." She stated that she has been fighting this for the last 1-½ years and would continue to fight it with every ounce of her being as we the people are asked to have something to say.

Kathryn Russell stated that as a taxpaying citizen of this county, she was very concerned about the issues of precedence and liability on this. As a taxpayer, the County's oversight on this plan and approval of this plan would be tragic in terms of the liability passed on to the taxpayer in the event if a number of things may happen. With no coordinated plan addressing water quality, stream buffer encroachment, run-off and erosion control and depletion of the water table, especially considering the water crisis of this past summer, the County is assuming responsibility for the damage of the local water supply as it runs out of the City of Charlottesville. The storage of explosives has been declared a "by-right accessory use" by the zoning administrator, despite strong language in the code to the contrary. (In the 1987 ZTA regarding this issue, upheld by a Supreme Court decision, "by-right accessory use" in this case does not exist.) She questioned

why they were even considering allowing explosives to be stored next to these schools, especially after the 9/11 incident and the potential terror alerts. She noted that there was also the issue of liability regarding the traffic safety. She stated that her taxes were high enough without being increased to cover Faulconer. The County in ignoring the 200-foot buffer put in place by the Board in 1975 is setting up taxpayers for another big hit down the road. Their own attorney recognized existence of this strip. What has happened to the County's recognition of this buffer? She questioned what Home Depot would do if the County approves these critical slopes. (A copy of Ms. Russell's presentation is attached.)

Jim Willis stated that his wife owns Millstone Preschool that abuts the Light Industrial property that they were talking about. In a meeting about 18 months ago before the Board of Zoning Appeals on this same topic, Mr. Carter said that anyone who would have moved in or purchased property in this area since 1970 really does not have much to say about this. It was zoned Light Industrial, so just live with it. He disagreed with Mr. Carter. They bought their property in 1990 and the Light Industrial zoning was there. The property directly behind us was owned by Smith Time. They made clocks. That property today is owned by Dave Mathews. As we know Dave makes music. The next property over is a company that installs running surfaces at high schools. Even the Dettor Edwards activity did not really disturb the community when it was in operation. It was my understanding that a contractor's shop and storage yard can be located in Light Industrial or Heavy Industrial. He felt that this use was more of a heavy industrial contractor's shop and storage yard. At that same meeting, Sheriff Bailey, who was one of two out of five members who voted against the Faulconer project, said that he could not vote for this because he had been called to too many accidents at the Tillman Road and Morgantown Road entrances to Route 250. He was talking about automobile accidents and not accidents involving the size of trucks that they were discussing here. He noted that by the size of the audience, he felt that the Ivy Community was saying that this use was not compatible with this property's zoning. They were urging the Commission to please not grant these waivers and don't let this come into the Ivy community.

Jack Taggart, resident of Ivy for 34 years, stated that he was an attorney by trade. He stated that he called Albemarle County about his land and was told that because of the sensitive nature of this property that the County would never allow anything of a higher use than was already there with Dettor, Edwards and Morris. He was assured that he was not to worry about this. If this is approved, I will hear every noise. He stated that he would hear the beeper noise every time a piece of equipment was put into reverse. A waiver is asking you to forget the guidelines that are set up. Instead of using the guidelines, they would just ignore them. Why are we waiving them? They would waive them so that they could have a more intense use of the property. What does that mean a more intense use? It means that the stream that he crosses everyday going home is going to have pollutants. It is going to happen. You can't utilize that site that heavily without cutting all of the trees off of it. It means that 350 children will everyday be exposed to dynamite. Oh, it is just 4 hours. Well, tell that to the parents when that dynamite goes off one of these days and one of those children are dead. You can say it is only 4 hours, they are protected. What does it mean when there is an accident? You cannot get a truck and a car down Morgantown Road together. He stated that he knew this because he travels the road 4 or 5 times per day. He asked them to tell that to the first parent when one of these trucks hits somebody and kills them. Oh well, that is not our responsibility. Yes, we approved a denser, more stressful use of the property than what the planner said because we allowed waivers. He pointed out that those rules were there for a reason and that the Commission needs to exercise their discretion. He stated that to allow this use of this land to be even more concentrated by granting these waivers would destroy their community and endanger their children.

Denise Hyland stated that she and her husband were abutting landowners to the Faulconer property. When they were buying this property 7 years ago, they were promised by County staff when they inquired about the potential development of the Light Industrial park that nothing more intensive than what existed there could ever go in. Based on that promise, they bought the property and have been restoring their 19 acres that had been neglected for many years. The circumstance around the rezoning in 1970 was morally wrong in the first place because the

petition of the local residents was reversed by an on record promise by Bill Dettor to build a lake for them. For many in the neighborhood at that time, that meant food and recreation. She stated that she would not go into the issue of race involved here. Why then would the County government go out of their way by bending the rules and looking for loopholes to make way for this heavy industrial operation on property that was virtually spot zoned in the first place? As you should know by now, one of the glaring concerns is that the County staff removed the strip of RA zone land that was explicitly retained by this body and the Board of Supervisors. If you actually read the Board minutes, you will see that strip of land was proffered and not conditional to warehouses. It also becomes perfectly clear that the intent of the Board members was simply for the protection of the surrounding community. Considering that Faulconer has most of its development within that 200 feet of protected land, it appears that this site plan is in fact illegal. She believed that it was incumbent on this body to do your own careful research to find the truth. It has been stated over and over that this is a by-right use. We all really know that is still very much in question. While you say you are constrained by the determination of use, the development of the land itself is within your jurisdiction. She hoped that each one of the Commissioners have walked that land. She stated that if the waivers were granted, the hillside that they look upon would change to heavy equipment storage and a maintenance facility with no tree buffer that is hardly compatible with the rural setting that already exists. She asked that they act with full consideration of the residents who live here. She stated that she has had many sleepless nights over this, and you should too. She asked that they not grant these waivers.

Gregory G. Faust, resident of 340 Grassmere Road, stated that he has not choice but to use Morgantown Road to get in and out of his property. He asked Mr. Thomas what the percentage of critical slope that they actually intend to disturb is natural. He believed that the answer is 100 percent.

Mr. Thomas stated that he asked for man-made critical slopes.

Mr. Faust stated that the man-made part was not what they were disturbing for this waiver. The waiver is 100 percent natural.

Mr. Rieley pointed out that the ground rules do not allow the public to have a dialogue with individual people. He noted that he was free to say whatever he wanted to within his three minutes.

Mr. Faust questioned whether the Commissioners have actually been on the site. He believed that anyone with an ounce of common sense that has looked at Morgantown Road would know that this proposal is strictly ridiculous. He questioned where the common sense would be applied in this process.

Phil Marx, of Morgantown Road, stated that they have 3 children who attend school. He stated that if they approve this request that they would be taking away from the residents their ability to walk and run along Morgantown Road. He objected to the maximizing of this site since they were aware of the industrial park when they moved here. Faulconer's proposal is not light industrial and you should not consider approving any waiver that would result in more intense utilization of the site. He asked the Commission not to bend the rules to accommodate this inappropriate use in Ivy. He stated that Albemarle County has an obligation to its citizens and under State Code to deny this plan and protect its citizens. He asked that they not allow Faulconer to run over their rights or their children.

Carolyn O'Neal, Manager of Peacock Hill Service Company, stated that recently Governor Mark Warner proposed water policy reform legislation designed to implement long-range water supply planning for the first time in Virginia's history. Governor Warner also signed an Executive Order 39, which maximizes the state's existing resources for meeting the need for clean, safe drinking water. The Initiative also sets a goal of cleaning 450 impaired streams in Virginia by 2010. Albemarle County should embrace the Governor's initiative. However, the proposed approval of

Faulconer Construction Company's site plan and waivers combined with the fact that a lawsuit had to be brought to monitor and decontaminate the Ivy landfill forces the Peacock Hill Service Company to question the County's commitment to clean, safe drinking water in Ivy. In Yadira Amarante's report dated 2/4/03, she states "well water monitoring will not be part of the County's review process." Peacock Hill Service Company spends thousands of dollars every year in water testing for both organic and inorganic contaminants. Fortunately, our community of approximately 150 houses can hold up under the cost. What of the homes, schools and small businesses around the Faulconer Construction site. Who will monitor their water and bear the costs? Will evidence of contamination be communicated to all Ivy residents? Will the County provide water lines to the Ivy area to replace contaminated wells? This seems unlikely since (1) Ivy is designated a "low-growth" area and (2) recent drought conditions suggest Albemarle County cannot support current water use. These questions raise the issue of accountability. Who is ultimately accountable for the health and safety of Albemarle county residents? The Peacock Hill Service Company concludes that in approving Faulconer Construction Company's request Albemarle County is forsaking its accountability to the Ivy Community. (A copy of Ms. O'Neal's presentation is attached.)

Mr. Rieley asked Kimi Jorchens to speak next. He acknowledged that Ms. Jorchens stepped out. He asked that the next speaker Gary Hatter come forward to speak.

Gary Hatter stated that he moved back to this area two years ago with his children to start a new adventure. He pointed out that two of their joys include the schools and the surroundings of their neighborhood. He stated that the quality of life and the beauty of the area was extraordinary, particularly the trip to Murray School from their Peacock Hill home. He asked that they not move forward without considering the big picture. He asked that they consider these three guiding principles: common sense, community and conscious. He asked that they do the right thing and deny the request.

Chris Baumer, resident of Grassmere Farms, stated that the technical issues have already been discussed particularly by Debbie Stockton who pointed out that this hearing should not be happening since it was based on bogus premises. He stated that the Planning Department's mission reads to promote the public's diverse interest as represented in the Albemarle County Comprehensive Plan and related policy documents for the equitable administration of ordinances, regulations and planning practices. When he moved to the Ivy area two years ago he felt that it was rural areas with a business park. He felt that Faulconer's use did not fit into a business park. He voiced concerns with the noise that would be created by Faulconer.

Tim McLaughlin, husband, father and resident of the Ivy community area, read his presentation against the Faulconer proposal. (A copy of Mr. McLaughlin's presentation is attached.) In summary, he stated that, "18 years ago in the same Ivy Business Park, a local company proposed a use for this property that concerned the community called Unogen. Unogen wanted to put a small lab on that site. The local community had concerns regarding safety, water pollution, and the fact there was a public elementary school next door. At that time your experts and community's experts all lined up to cite reasons why this was not a good idea. The local fire chief was concerned about having sufficient resources to address an emergency at this site. The Water commissioner stood up and said this area was a critical watershed to our water supplies and jeopardizing it would have very serious consequences. A physician stood up and cited the health concerns of sharing a water table with a public school's well water system. Other community members both expert and non-expert stood up and spoke, but tonight I'd like to focus on 3 issues from that proposal 18 years ago: safety, safe clean water, and an nearby public elementary school. Eighteen years ago your predecessors came to a fork in the road for the community. And they chose safety, safe clean water, and a suitable environment for our young children…they chose this over special corporate. We have arrived at the same crossroads tonight. And not only are the issues the same, but they are compounded by several factors. . . . " He asked that they make the right decision tonight for their children and turn down the proposal.

He stated that he did not understand why a legal technicality would make this any safer today than it was 18 years ago.

Vince Derr stated that he was employed by Faulconer Construction Company and was a resident of Albemarle County. Faulconer Construction Company has employed people in this County for over 60 years. He asked to address two topics that had been talked about a lot tonight. One issue was pollution and the other safety. He stated that they believed at Faulconer that one of the best indicators of a company's good citizenship is rather than to speculate about things is to consider the record. Their shop property has been located on Woodburn Road for over 30 years, which was adjacent to many residential dwellings. After they had been there 22 years, the school board felt fit to build Agnor Hurt School right down the street from us at approximately the same distance that Murray Elementary School is to our proposed site. In that thirty years they have been about one-quarter of a mile from the main Rivanna Reservoir. Over those three decades they have never caused any damage to the reservoir or to any of their neighbors. The DEQ, State and local fire marshals as well as other regulatory agencies have routinely visited our yard and they have provided us with a clean bill of health. Finally, with regard to safety, they have a very proactive safety program at Faulconer. The liability and their employee's safety are very critical. They have received numerous safety awards. One of the compelling facts is that their insurance company has awarded us their top public safety award for four consecutive years. That puts them in the top 10 percent of all the firms and companies which they insure. He stated that they believe with the three decades of experience that indicates that Faulconer will not and does not intend to cause any undue safety or pollution concerns.

Jack Sanford, Jr., President of Faulconer Construction Company, stated that they have three issues before them tonight. They bought a piece of property that is zoned Light Industrial. It is by right. He asked the Commission to focus on those three waiver issues that they brought before them tonight and vote in the affirmative for Faulconer as the staff has recommended pushing this matter forward.

Will Crowder, resident of 2980 Morgantown Road, expressed his frustration that this was the only opportunity that they have had to express their comments. He voiced concern with the proposals that the Commission is considering today because they pose a serious threat to what they have tried so hard to achieve. He noted concerns about the fact that even the slightest spill of solvents or the waste run-off from the washing of equipment may permanently damage local streams and groundwater. (A copy of Mr. Crowder's presentation if attached.) He strongly urged the Commission to deny the critical slop waivers to Faulconer Construction.

H. Wayne Elliott stated that he lived in Northfields. He stated that he opposed the request because it does not make any sense for all of the previously stated reasons. He stated that he represented the Albemarle Neighborhood Association. On January 30th, they discussed the Faulconer request at the meeting of the Albemarle Neighborhood Association. After a full consideration of the proposal, it was the consensus of the neighborhoods represented and in attendance that the proposal and the waiver request should be rejected. The contemplated use is inappropriate for the area. It is difficult to concept of earth moving equipment within the category of Light Industry. One would only have to look at the size of such equipment and the function it performs to appreciate that there is nothing light about it. They felt that this use would be more appropriate in Heavy Industry. Several of their concerns include the noise created by the equipment and it being distracting to the elementary school children. The road network is not sufficient to handle the traffic, particularly in the morning when the school buses arrive at school since that is the time that the equipment would be deployed off the site. The Albemarle Neighborhood Associated urged the Planning Commission to disapprove Faulconer's proposal and waiver requests as an inappropriate use of the land and as a use inconsistent with any reasonable definition of the phrase light industry.

Mr. Rieley asked that Adnan Gear come forward to speak. Since she was not present, he asked that the next speaker Henry Waller come forward to speak.

Henry Waller stated that he was a member of Ivy and was speaking on behalf of the Afro-Americans in Ivy. In the 50's approximately 80 percent of the neighborhood was Afro-American. Morgantown Road has been widened several times. Each time it was widened it was done on the left-hand side, which is the side where most of the Afro-Americans live. He stated that if this was approved that they feared that it would destroy their church. When large trucks and school buses go past the church the entire church shakes. He fears what will happen when the larger construction equipment is placed on the road. He hoped that the Commission would look at this and see that it would damage the community and all of their lives. He asked that they not allow this project to go through.

Mr. Rieley asked that Debby Steva come forward to speak. Since she was not present, he asked that James Yates come forward to speak.

James Yates stated that he moved to Ivy to escape a nightmare of unchecked development in south Florida. He stated that he was speaking tonight because he did not want that nightmare to continue. "A horrible injustice is being committed: Our government is giving corporate interest priority over its people. This injustice has been years in the making and is destroying our way of life. Our government has increasingly become a government of the corporations, by the corporations and for the corporations. In despair, I have watched our elected and appointed officials on federal, state and local levels, participate in a wholesale give away to corporations that has resulted in the degradation of our communities, our environment and our way of life. Your approval of Faulconer's Heavy Industrial equipment repair shop and storage site would be just one more example of this wholesale giveaway. . . . I was shocked and sickened to learn of several incidents in which the people of this community were not given a full opportunity to make their voices heard regarding this decision. Most disturbing was the failure of the Board of Zoning Appeals to reschedule a critical hearing that happened to fall on September 11th. Whose interests were served by those actions? I will not enumerate the many reasons why it is wrong to give Faulconer the right to endanger our community, our environment, and the future of our children. I will leave that to the people who have spoken before me and who will continue to speak. Please do your job. Listen to the people – put our interests first over corporations. Stand with the people you are here to serve and protect. Reject the waiver requests." (A copy of Mr. Yates presentation is attached.)

Lyle Solla-Yates, resident of Ivy and a fourth-year urban planner at the University of Virginia, stated that the first sentence of the American Institute of Certified Planners Code of Ethics and Professional conduct is this: "A planner's primary responsibility is to serve the public interest." He asked if allowing the critical slopes to be bulldozed serve the public interest? He asked if the short term benefit of tax revenues outweigh the long-term costs to the health and welfare of Ivy residents? Changing the rules to benefit Faulconer will hurt the community will have consequences in every area. "This project violates the core principles of urban planning. I am ashamed that it made it this far. Someone pointed out that Faulconer didn't appoint you, but even if they did. Even if you were all Faulconer executives, the public interest is still your main responsibility. I know that you'll do the right thing." (A copy of Mr. Solla-Yates presentation is attached.)

Charles Trachta stated that he lived in Woodbrook and wanted to speak about two of the reasons why they should reject this. The staff recommended approval and the County Attorney's office concurred with the reasons, but yet when Wendell Wood wanted to build his Home Depot in Rio the County turned him down. To make a long story short, he sued the County and the Court upheld the County's ruling. He asked why. It was because to do what he wanted Mr. Wood needed to plow over the streams and alter the critical slopes. The only way that the applicant can do what they want is to plow over the streams and alter the critical slopes. He asked what he was missing here. He asked if the County has changed its ruling on critical slopes. If they haven't, then they must reject the application. He pointed out that critical slopes lower a property's value because they make the land unusable. He stated that for a buffer to disappear,

the public needs to know. An eraser is not good enough to change what was approved in the public arena no matter who is using the eraser. Not only should this Board reject this application, you should ask for an investigation into why the buffer disappeared and to have it done by an independent agency from outside the Albemarle/Charlottesville area. This investigation and its finding would be easier for the public to accept if the Board asks for it instead of making the public go to Richmond and asking them. Since the applicant cannot do what they want and if the buffer was still in effect, you must reject this application for the second point. There are many good reasons to reject this, but these two points give you no room to negotiate. He asked that the Commission do what is right and reject this application.

Bessie Maupin Jackson stated that she grew up right around the corner from Murray Elementary School. She stated that her parents raised nine children and they all attended Murray. She stated that she moved back to the area so that her two children would have some roots by attending Murray. She stated that her dad grew up minus two fingers and a thumb due to a dynamite cap that was thrown off into the woods. She pointed out that she was concerned about the safety of everyone in the community particularly the church. She noted that the increased traffic was a serious issue. She stated that their church was 130 years old and the cemetery would be affected. She noted that nobody has even addressed the cemetery that is located on the property. She asked what is going to happen to that. The more they dig into these things, the more things are coming to light. Twenty-five years ago Ivy was a predominantly black neighborhood. We did not have a voice because nobody listened to us then. She stressed that now they needed to listen to them because they do have a voice and they should be preserved as a historical community because they were probably one of the oldest black communities in Albemarle County. You can go to the cemeteries and see that people have been buried there since the early 1800's. When will it make a difference? What is going to happen to the houses? What is going to happen to my mom pulling out of her driveway? She pointed out that there were a lot of elderly people who would have to pull out onto this road. She asked if they were going to take their own lives into their hands or are you all going to take our lives into your hands?

Berry Solla, real estate agent, stated that she could not get clients to look at property near the Ivy Dump. She stated that the clients would not get out of the car to look at those properties. She stated that from start to finish this proposal was unacceptable. She hoped that they understand that the fact that Faulconer needs all of these variances or waivers says that the use does not fit the property. She asked that they support the people in the County.

Mr. Rieley stated that the next speaker was Diane O'Kusa. Since she was not present, he asked that the next speaker John McLoid, II come forward. Since he was not present, he asked that David Rogers come forward to speak.

David Rogers stated that he was the Principal of Virginia L. Murray Elementary School. He stated that they had heard a lot of evidence that his school and the Ivy community were in upheaval. He thought that the reason for this was that a lot of the questions that have been asked don't seem to have definite answers. He noted that the Commission has a difficult decision to make. He stated that if they make their decisions on the smaller elements that they still determine the broader issues. He stated that he has faith in their judgement and certainly in your integrity. At the same time he urged them to please get the answers to these questions before you make the final decision. He asked that they hold the final review of the other aspects of the project as it goes along because this is a huge issue. He stated that the residents of Ivy are deeply concerned. He stated that the Commission needs the best information in order to make their decision. He urged them to get all of the information and answer all of the questions for themselves as well as for the rest of us as you proceed with this. He stated that they all wanted to know.

Mr. Rieley stated that they were at the end of the sign-up sheet. He asked how many other people would like to speak. He asked that they come up one at a time to speak.

Cathy Butler stated that she manages the trauma center at the University of Virginia. She stated that she has been a trauma nurse for 23 years. She voiced concern with the increased risk of serious injury or death should the Faulconer project be permitted. She stated that she actually owns one of the horses shown in the pasture in the picture shown earlier. She pointed out that horses are very sensitive to noise and movement. Many children, including her young daughter, ride within hearing and sight of this proposed project. No doubt any citizen behind her has had to stop or at least slow down for young children who lead horses across Morgantown Road by themselves. They will be at an increased risk if large trucks are frequently on this road. Pedestrians and bikers are on this road. They will be at an increased risk of serious injury or death. She stressed the hazard of the very narrow road for the community. Several of the homes are very close to Morgantown Road. Sharing the road with large vehicles is an extreme concern. There is also a blind curve on Morgantown Road. They have been trying to slow the speed down on Morgantown Road due to these concerns. She asked the Commission to consider the rights of the people in this audience and that community.

Tom Goodrich stated that he was an Ivy resident who egresses onto Morgantown Road every day. He stated that as a member of the Western Albemarle Rescue Squad for ten years he has responded to numerous motor vehicle accidents on secondary roads. A lot of the accidents have involved large vehicles versus small vehicles. He noted that larger vehicles have a reduced or no mobility to avoid hitting a smaller vehicle, a pedestrian or a bicycle. He stated that he said this with 23 years experience of being a police officer going to accidents in New York City. He asked that they consider the safety aspect concerning this road.

Zack Rice stated that he grew up on Morgantown Road and they have never had any problems with their air being clean. He asked that they not take away their fresh water and clean air. He voiced concerns about the narrow road. He asked that they not approve the waivers.

Adele Wood stated that she was a guide at the Ivy Creek Natural Area and had lived in Ivy since 1978. She stated that the piece of property was rezoned when Jimmy Dettor took a petition around to the black people that lived in that neighborhood and told them that he was going to build them a lake and a recreational area and asked that they sign it so they could rezone it to M-1 and then turn it into light industrial. She stated that was part of what was underlying the controversy tonight because that was not the democratic process, as we know it. This property does come with baggage because people were deceived. Now they have a situation that even if waivers are given and they develop the property of which they have the right to do that. She stated that was not the right thing to do. She stated that there was a lot of money at stake here. She prayed that the Commission seriously think about this.

Barry Strange stated that if you approve the waiver for critical slopes and permit them to clear-cut it would be a serious impact on the charge water recharge. The woods are very important in recharging the ground water. Of course, there is also the concern that something could run into the stream and pollute the water as well. That is a realistic concern. Another thing that stuck out was that one of the pictures showed a 102 inch wide vehicle. He pointed out that he has driven a 102-inch vehicle, which was 8' 8" wide. The mirrors don't go out far enough to let you see behind it. It takes a special permit to have that vehicle legally on the road. He stated that he did not envy the men that have to drive those trucks on anything other than the interstate. On a narrow road like this, he really did not envy them. He stated that the worse scenario was a 2,000 to 3,000 pound vehicle meeting an 80,000-pound vehicle and there is not enough road for everybody. This project is just out of place. The Zoning Department might call this light industrial, but an 8 foot 8 inch wide vehicle is in no way light. There is another thing that you really need to think about. That is the precedence that this would be setting. If you allow these slopes to be leveled and the topsoil removed, it will do environmental damage. He asked how you could approve one and disapprove another without sooner or later ending up in court. He stated that it was unforgivable that the applicant was unwilling to work with the community.

Jeff Werner, of the Piedmont Environmental Council, stated that he had been following this project since its inception and as you all know there is a lot going on in Albemarle County right now. There is only so much of himself that he could spread around. He felt very frustrated with the members of the community. He noted that he spent a great deal of time with one gentleman yesterday and part of today going through some final ideas. He repeatedly told these folks when they called him to get involved and get informed and get organized and come out and speak up. He tipped his hat to Mr. Hutchinson because as he counted there were over 200 people here tonight and he never generated an outcome like that. He felt that was a huge turnout. He stated that he wanted to comment on that. He asked the Commission to take the time to fully consider everything that you have heard tonight. You have heard about traffic concerns, groundwater concerns, noise issues, air pollution, petroleum run-off, legal issues and even explosives. The concerns of these citizens must matter for something. Additionally if the critical slopes had been so written and subsequently interpreted just that this decision process is merely an in depth approval process. It has been said before that he strongly urges the County to take a good hard look at this. Just a thought about property rights as a law professor of mine use to put it this way, I will give you every right to swing your arms wildly about but that all changes the minute that you hit me. After hearing all of these voices tonight, what I hear is a group of people trying very hard not to get punched in the nose.

Billy Newtrump stated that she lived on Morgantown Road and would literally be the next door neighbor to Faulconer. She noted that her concerns had been addressed tonight, which was the issue of ground water. The concern of the repercussions of the flattening of the critical slopes and what it will do to the aesthetic resources in that particular region. For the record she respected the record of Faulconer. She also respects the length of time that many of the residents have lived in Ivy. She stated as a fourth generation native of Albemarle County and to this date there have been six generations that have lived on the land that she grew up on in Scottsville. She seriously asked the Commission to take a long look at this issue before you make your decision. Just because one can do a thing by right does not necessarily mean one can do it. She asked that they please consider all of these issues before you make that decision. She stated that all of know that Albemarle County is renowned for its beauty around this globe. She found that out when she went to France in 2000. She came across someone who knew of the beauty of the University of Virginia grounds and the beauty of the home of Thomas Jefferson. She asked if you couldn't look at this decision from the standpoint of progress, please look at it from a moral standpoint. Are we all not going to be satisfied until every inch of this renounced County is developed?

Collen Hutchinson stated that she lives adjacent to the property in question. She stated that Morgantown Road is part of the historical Three Notch'd Road from Richmond to the Blue Ridge Mountain which dates from 1733. (See the attached copy of Ms. Hutchinson's "Architectural Pattern Associated with Virginia Road Traces.")

Thelma Godlin stated that when they were discussing this project with their pastor he asked that they pray about tonight's hearing. She prayed God's blessing on the Commission in that they would do the right thing and deny the waivers.

Thelma Whiting, resident of the area, referred to today's newspaper which said that massive deaths from the shuttle might have been wrong. She believed that the accident was the result of a waiver since they knew the panel was broken when it went up but they did nothing about it. My request to you is to deny the waivers. If they can come in without waivers, then it would be fine. She stated that she did not want her family to have to mourn the loss of their family members on this narrow road.

Jim Haulin, an Albemarle County resident, stated that there must be dozens of more suitable sites for this project that Faulconer Construction is contemplating in Ivy. In particular, a site that has more access to roads, not in close proximity to homes and schools. He encouraged the folks from Faulconer Construction to consider a different site than this one. He asked that the

Commission not approve their waiver. He stated that he knew they could not consider the traffic and those things that have been discussed, but they could consider the waiver. If they cannot do this site without the waiver, he would encourage them to not approve the waivers.

Reverend Walker, of Ivy, stated that Ivy was a nice place and he hoped that they could keep it like that. He stated that he was a school bus driver years ago and it was a pleasure to drive a school bus because there were not a lot of big trucks on the road like there now. He stated that it was very dangerous to drive a school bus today. He stated that he knew they would feel bad if one of the school buses was hit by one of those big trucks and killed some children. Then you would say that we have made a bad mistake. He hoped and prayed that everyone would get on his or her knees and prays to God that he will help you make the right decision. There are many senior citizens living here as well as people using oxygen. All of the pollution would not be good for them. He stated that just driving behind one of the big trucks took his breath. He asked that they think about these things and to not make a quick decision. He encouraged them to take their time and talk to the Lord and let the Lord hear you and guide you. May God ever bless you.

Mr. Rieley asked if anyone else would like to speak on this issue. There being none, he asked Mr. Carter if he would like to take five minutes for a rebuttal.

Mr. Richard Carter congratulated everyone who showed up tonight. He felt that this was what it was all about. You should come and say what you want. He stated that they could disagree without being disagreeable. He felt that for a large part that was what they had here tonight. He read that the children as part of a civics lesson or something on how things work, and he congratulated them. They saw the process and how it does work. There are three things that he would like to rebut that were said. One, was that a gentleman said that the Home Depot case was upheld on the merits. That is not true. The Home Depot case was dismissed because the wrong plaintiff was in there and the proper plaintiff could bring up that case again. He stated that was wrong and you should not be told that. Mr. Taggert says that these rules are here for a reason. He stated that was true, but the waivers were here for a reason too. The reason is that there are so many critical slopes in this County that it is not going to be unusual for people to come and ask for critical slope waivers. As Mr. Buck said that this was a health, safety and welfare issue. Health, safety and welfare is only one of the criteria in Section 4.2.5.b.1 and all of those criteria are or. They are not and. They are or and he would refer you to the County Attorney if you have a question on that. Seven percent of the critical slopes are man-made. Forty percent of the whole site was going to be fully undisturbed. Let's talk about clear cutting by looking at the site plan. Forty percent of it is going to be undisturbed. The other issue raised was harmony with the neighbors. If I look at the immediate neighbors standing in front of this place that use to be Dettor, Edwards and Morris and Dave Mathew's, that building has almost 100,000 square feet. Then there is the place that makes the tracks on the top of the hill. From looking at this, this is an industrial park. Look at the sign when you come in. It says Ivy Industrial Park. It is there for light industrial. So he would say that there has been a lot of talk about fairness. Fairness runs both ways. Fairness is when you are in the County and the highway department condemns your property and you have to go somewhere else. You look around for light industrial property. There is very little light industrial property in this County. He noted that you would not get anything else zoned light industrial. You find some light industrial property, but they say that there are streams here and you will need a critical slope waiver. You do the things according to the ordinance with the approval of the engineers and the County. Then they say wait a minute that is not fair to us. Well it is not fair to us either. We have done all that we can do on this. There are three things before you tonight. He asked that the Commission consider them carefully and give them the waivers.

The Planning Commission took a ten-minute recess at 9:15 p.m.

The meeting reconvened at 9:40 p.m.

Mr. Rieley called the meeting back to order. He stated that the public hearing was now closed. He stated that he would like to thank everyone that is here and everyone that spoke tonight for really one of the best public hearings that he has attended. He really appreciated the attentiveness and the politeness that generally prevailed throughout the evening. It really helps the decision making process when we are speaking to each other and not at each other. He thanked everyone for that. He stated that most of the Commissioners have questions for staff about some of the many things that they have heard tonight. He asked if any of the Commissioners have questions for staff.

Mr. Thomas stated that along the lines of the critical slope waiver, he asked if there was another route that the applicant could have taken into the property other than the one that they chose without affecting the critical slopes. He asked if there was another way that the entrance could have gone into the property.

Ms. Amarante stated that the existing entrance off of Morgantown Road is the entrance to the Ivy Park, and it just happens to be on this property. Off of Morgantown Road they would not have been able to come in any other way. Once you get onto Dettor Road and actually start making the access into the property, the site plan that came in 2001 showed some different scenarios and different stream crossings which was really discouraged by our engineering department, in particular the Water Resources Manager because of the impacts that they had on the buffers. She stated that the applicant responded to that with what they have submitted. The engineering department has made their determination through their critical waiver review that there is no other reasonable alternative than what they are presenting.

Mr. Thomas stated that this is the best way to do it then.

Mr. Finley asked if they have attempted to study if the trucks can be routed so that they would not go past the school by signage on Route 250 and so forth.

Ms. Amarante stated that their Transportation Planner, Juandiego Wade, is working with VDOT on trying to get that route restriction. She noted that he could speak to that if you would like to hear about some of his work with the Ivy Community and VDOT in trying to get some of the traffic issues addressed. She stated that staff has not gotten a decision from VDOT as to whether or not a route restriction for the trucks coming off of Route 250 would be the possible scenario. We just don't know.

Mr. Finley stated that they stated that 40 percent would not be disturbed at the site. He asked if the trees would remain in that area.

Ms. Amarante stated that the applicant would be required to submit a landscape plan as part of their final plan review. Part of the landscaping plan will be a conservation plan to make sure that those trees are not damaged or destroyed in any way.

Mr. Rieley stated that he would direct a question to Mr. Kamptner that focuses around Section 32. He asked about Section 32 of Chapter 18 that a number of people quoted. The purpose of this section is to encourage innovative and creative design and facilitate the use of the most advantageous techniques and the highest standards for the development of the land and to ensure that the land is used in a manner which is efficient and harmonious with neighboring property in accordance with the Comprehensive Plan and the provisions of this chapter. The question for Mr. Kamptner is the degree to which that section of Chapter 18 gives us discretionary authority beyond the ministerial action before us in the site plan and the waivers.

Mr. Kamptner stated that Section 32.1 is a statement of intent for a purpose and the statements in that section are implemented in the rest of Chapter 32 through all of the regulations that apply in a site plan review. We would not use Section 32.1 as an independent regulation or referring any independent regulatory authority.

Mr. Rieley stated that another issue that came up tonight that se have heard for a long time is that of the disappearing 200-foot buffer along the western edge of the property. What is the County Attorney's perspective of the status of that 200-foot buffer?

Mr. Kamptner stated that the County Attorney's Office's perspective is reflected in Attachment C in the staff report which was Mr. Davis' letter to the Board of Supervisors which outlines the zoning history of the property. Just a brief outline of that history is in 1970 a conditional use permit was issued for a warehouse and that is where the condition pertaining to buffers originally appeared. In 1975 the property was rezoned most of it to M-1. The conditional use permit and the buffer conditions for the warehouse use remained. In 1980 the property which was M-1 and A-1 was rezoned as part of the County's comprehensive rezoning and that was when the bulk of the property except for the 400-foot area to the north was rezoned to LI. Again, the conditional use permit with the buffer condition remained. In 1987 the LI district regulations were amended which made the warehouse use or most warehouse uses a by-right use which had the effect of nullifying the conditional use conditions because it was a by-right use. That is our office's review of the zoning history.

Mr. Edgerton stated that before they get of that, he was trying to follow Mr. Kampnter. He noted that he reread the letter several times but he was trying to figure out the County Attorney's position. He questioned how the conditions stayed in place for three different changes, but then it disappeared in 1987. He asked how a promise that had been made could disappear?

Mr. Kamptner stated that the conditional use permit became a nullity in 1987 when the LI zoning regulations were amended. A use that had been allowed only by what is now called a special use permit, which would be allowed with those conditions, became a by-right use with that change.

Mr. Edgerton stated that when they approve special use permits with conditions down the road all the conditions could disappear.

Mr. Kampnter stated that if the use became a use by right. The County has made a legislative determination that the use should be allowed by right without conditions that address impacts that might be particular to that use.

Ms. Hopper stated that she had a question about the intermittent stream that Mr. Buck mentions in his letter and about that requiring stream buffers. First of all the stream was not located on the site plan and then a buffer was not required for an intermittent stream.

Ms. Amarante stated that she had not had a chance to read that letter since she just received it.

Ms. Hopper asked Mr. Buck if he knew what page that was on.

Mr. Buck stated that it was located on page 6.

Ms. Hopper stated that it was in the second paragraph that was something I wanted to make sure that they did not forget.

Mr. Rieley stated that if she would like they could ask Mr. Graham and Mr. Hirschman to address that issue.

Ms. Hopper stated that would be a good idea.

Mr. Dave Hirschman, with the Engineering Department, stated that he could clarify the issue of the swale or stream. When the first plan came through in 2001, he went out and did a stream determination on the property and flagged all the intermittent and perennial streams. That particular valley was a swale and it did not cross either an intermittent stream so we did not

require that a stream buffer protect it. Part of their stream buffer mitigation plan is that they are to incorporate that area even though there was not a defined stream channel there. It is not a stream, but more of a drainage swale. He stated that it keeps showing up as stream probably because of the topography. Based on their field determination of streams on the property in 2001, the streams you see covered by a stream buffer are those that we identified.

Mr. Buck asked if he could make a comment.

Mr. Rieley stated that he could not since the public hearing was closed. He stated that a number of people raised the issue of the four-hour dynamite storage period. He asked Ms. Amarante to elaborate on that condition for the Commission a little bit.

Ms. Amarante stated that was a condition that staff wrote after we had asked the applicant if they would be willing or actually the applicant had said that they would not have any explosives on the site. Staff then asked the applicant if they would be willing to allow the County to approve the plan with the condition that no explosives would be allowed on the site. They agreed and staff came up with that condition. She stated that they needed to come up with a definition of storage and what they meant. Therefore, that is what she came up with thinking that possibly they would have explosives on the trucks and the trucks would have to stop at the shop and then they could make sure that condition could be changed if the applicant was agreeable to it. She stated that she did not have any suggestions.

Mr. Rieley stated that his understanding was that the storage itself unless voluntarily conditioned in this would not normally be prohibited in a Light Industrial zone. He asked if that was correct?

Ms. Amarante stated that was correct.

Mr. Kamptner stated that specific to the contractor's office and equipment storage yards. That was one of the issues in front of the Board of Zoning Appeals which was particular to the contractor's office.

Mr. Thomas asked if the TNT property still stored on the site for only four hours.

Ms. Amarante stated that it was still for only four hours as it stands in the current condition.

Mr. Edgerton stated that the applicant offered for no storage and you took it to four hours. He pointed out that Mr. Sanford was quoted in the paper last night that there would be no storage of explosives on the site. He pointed out that he was confused.

Ms. Amarante stated that it was not clear to her whether or not the applicant wanted to prohibit storage of explosives altogether or allow it on the truck as it visited the property but not keep it on the property. It was a time limit that she felt was reasonable.

Mr. Edgerton asked if they could clear that up with the applicant. He stated that he felt that this issue needed to be addressed.

Mr. Rieley asked if the applicant would address that issue.

Mr. Jack Sanford, Jr. stated that they agreed with staff that they did not need to store overnight explosives on the site. What they do is that they will order explosives and they will be delivered to us and at some point they have to make that transaction. Either two hour trucks that are licensed in the State of Virginia and go to our job site or they can deliver a large quantity directly to the job site. He felt that was staff's reason for allowing some period of time for transfer from a provider to the end user. What they do now is that they do store explosives at their yard now. They don't meet the requirements for distances under the Code of Virginia in order to store at this

site. They have to be so many hundreds of feet from the next residence or building or school that they were not trying to meet at this site.

Mr. Rieley stated that you understand of course the anxiety of the neighbors of having explosives so close to a school. If this is not something that you are going to do.

Mr. Sanford stated that same truck that is delivering to us or our truck could be at the Outback Steakhouse for lunch parked for two hours or it could be at Barracks Road Shopping Center or it could be on the interstate or Route 250. They wanted to remove that liability for storing overnight for us. We thought that was the best use to not store there. He stated that they were permitted with a State and Federal permit.

Mr. Rieley thanked Mr. Sanford. For clarification, the Commission may ask anybody to readdress the Commission to answer specific questions. He pointed out that he would not tolerate that type of outbursts. He asked if there were other questions.

Mr. Craddock asked Mr. Wade a question. There is a road plan from VDOT that looks like it goes back to 1990. He asked when Dettor Edwards closed up shop?

Mr. Wade stated that he would have to get back to him after he looked it up.

Mr. Craddock stated that the point that he was making is that a number of years ago there was another construction project near an elementary school and there was a lot of talk about it. A national expert came and talked about the mingling of truck traffic, private automobiles and school buses. The basis result of the problem was that cars and school buses don't mingle very well with dump trucks and heavy equipment. He pointed out that from looking at the figures, he thought that Dettor Edwards was closed at that point because it did not look like there were any serious accidents through here. He acknowledged the concern expressed by many citizens tonight concerning the potential safety issues associated with the narrow width of the road with the large sized vehicles being on it.

Mr. Wade stated that staff was actively working with VDOT on trying to address the trucking and the bus issues. He stated that initially he was trying to have a voluntary commitment that they would use Tillman Road. If that was the case, then VDOT said that they would look into a trucking route. Through these stages, it will be evaluated to see the impact of it. He noted that VDOT was not here tonight. He noted that staff has already been working with the Neighborhood Association in trying to address the speeding and truck traffic on Morgantown Road. Those things are still ongoing currently.

Mr. Thomas stated that there was something being done presently on Morgantown Road and Route 250 above Mechums River. He asked if there was something in progress on that intersection right now.

Mr. Wade stated that on the western most end, VDOT did a temporary two-way slip ramp of the intersection of Morgantown Road and Route 250. He stated that intersection would eventually be a cul-de-sac. It is currently on the County's six-year plan, but it is a few years out. It is not on the six-year funding cycle, but it is on the County's six-year priority list. That was a concern of the residents that staff has been addressing before this came that was speeding in that area.

Mr. Craddock asked about the eastern end.

Mr. Wade stated that there is nothing planned for the eastern end intersection at this point. There is a project planned for the intersection of Tillman Road and Route 250 to increase the site distance, which was a few years down the road in the County's priority list. It is a project scheduled to be done.

Mr. Finley stated that on page 5 of the report it says that thus far VDOT has recommended approval of this application for the improvements on the entrance to Morgantown Road. He asked why it stated thus far? He asked if VDOT has given a letter on this?

Mr. Wade stated that VDOT has reviewed this and that was their comments. They understand the concerns of the residents. As a result they have been out there trying to do something parallel to their comments as far as to try to address. He noted that VDOT probably thinks that their comments are sufficient, but they also understand that the County has to deal with the residents and their concerns. As a result, VDOT will try to work with the County with a trucking route. He noted that was something else that is being done in addition to their comments.

Mr. Finley asked normally how long that process would take to work with the County.

Mr. Wade stated that there were no state guidelines for a trucking route. As he understands it, it is left up to the resident engineer. Because it involves Route 250, VDOT is getting some direction from their Culpeper Office. He pointed out that the met recently with the local resident engineer and the district engineer on this and their suggestion was to first ask the applicant to voluntarily use Tillman Road to Morgantown Road for that short distance into Dettor. If that does not work, then we will monitor it. Then they will look into implementing a trucking route sign, but it takes a lot because they have to look at placing the signs on Route 250 in the best place and what that sign should say. That is something that VDOT says that they will look at down the road. Staff is still working with VDOT on how to address it. He pointed out that they have some good base information to work on it and it was an ongoing process.

Mr. Finley stated that the official confirmation of VDOT approval was not covered in the conditions. He asked if that should be in the conditions?

Ms. Amarante stated that it was not in the conditions.

Mr. Rieley asked if there were other questions for Mr. Wade. There being none, he thanked Mr. Wade. He stated that he had a question that was raised by Mr. Buck's letter. He acknowledged that fact that no one has had a chance to look at that carefully. He stated that there was an insertion that the southern part of this proposal fails to meet the requirement for a building site that is a rectangle that is no more extreme than a 1 X 5 proportion. He asked staff to address that.

Ms. Amarante stated that she could not answer that question.

Ms. Hopper stated that she had some comments. The building site argument was located on page 3 of Mr. Buck's letter. Mr. Kamptner has run off copies of the ordinance stating the standards for review for the Planning Commission relating to these waivers. After hearing everybody speak on all sides, she knew what her position was and how she was going to vote. She noted that she was going to state why and go over it using the staff report and the spin Commission comments in the statute or the ordinance. The ordinance at 4.2.5 states that any requirement of Section 4.2 may be modified or waived. She emphasized may. It does not say that they shall. It says that they may as provided herein. They give three instances. The Commission may modify or waive any requirement of Section 4.2, Critical Slopes, in a particular case upon finding that: 1) Strict application of the requirements would not forward the purposes of this chapter or otherwise serve the public, health, safety or welfare. She certainly did not think that the strict application of their critical slope protection ordinance would not forward the purposes of the chapter. That does not apply. The Commission may modify or waive if due to its unusual size, topography or shape, the requirements of the critical slopes ordinance would effectively prohibit or unreasonably restrict the use of the property. She stated that she would get back to them on this one. The third is that if granting such modification or waiver would serve a public purpose. Certainly granting this waiver would not serve a public purpose. She stated that she would go back to the second one and Ms. Amarante's comment in the report. She asked to

stop for a second and thank staff for all their hard work on this application. This has been a difficult, painful application to work on. She appalled Ms. McCulley for her good job. She pointed out that everybody has worked hard to do their job. Going back to Ms. Amarante's report on page 3, it says third paragraph down that there is not reasonably alternative location for alignment to provide access to the usable portions of the site. She quoted the engineer's report in Attachment I in talking about the critical. On page 3 above that statement, it says that approximately .63 acres of the critical slope disturbance are due to driveway construction. However, this application asks that 1.53 acres of critical slopes be disturbed. So even if there is an argument that this driveway or access, and it says driveway construction and the access is smaller than the driveway construction. Possibly that small portion of the critical slope would need to be disturbed maybe due to the topography. That is not what is being asked for here. It is being asked that 1.53 acres of critical slopes be disturbed. The Commission does not have to. Because of that, she noted that she would vote to deny this waiver. The other reason is that the Commission may waive the critical slopes waive, they don't have to. Moving on to the curvilinear parking waiver. The standards for curvilinear parking are under Section 4.12.6.5.c. It stated that curvilinear parking shall be favored for practical considerations warrant the Commission may authorize other angled curvilinear and/or parallel parking. She was going to vote against granting the waiver in this instance because there are no practical considerations that warrant this. The site is being over developed. If the site was not being over developed, then there would not be an issue of being able to preserve the stream buffers and have the perpendicular parking. This application is trying to cram too much on one site. Finally, one-way circulation under Section 4.12.6.2 is the ordinance site which says one-way circulation isles shall not be permitted, except that the Commission may approve one-way circulation in such case that the same is necessitated by the peculiar character of the site or of the proposed use. On this application on this site it is not necessitated by the peculiar character of the site or of the proposed use. What necessitates this or what the applicant is asking for is because, again, they are over developing the site. They can have this use and not need the one-way circulation. They just want to have this use in such a dense over-developed way on this site that it requires them to need to ask for one-way circulation to cram everything on this site. She stated that she would vote to deny all the requests for waivers based on those arguments**.**

Mr. Rieley stated that he finds it to be a sensible argument on the curvilinear parking and the one-way circulation. In regards to the curvilinear parking and the one-way circulation he thought it was an interesting argument that it is completely necessitated by the density of the development on the property. He felt that there was some merit to that argument. On the other hand, both the curvilinear parking and the one-way circulation allow for a compression of the built areas. It was hard for him to argue that we should not have smaller parking lots and smaller driveways, but that they should have larger ones. He noted that he could not recall a situation where this Commission has turned down curvilinear parking or one-way circulation. He stated that the critical slopes are a complex issue. There are a number of areas of critical slopes. There are critical slopes that are impacted by the driveway, which they have no authority over and which are not subject to our review. He pointed out that Brent Nelson has determined that the man-made critical slopes are 7 percent of the site. He noted that the reason he asked Professor Hutchinson the date of his photograph was because it clearly showed the disturbance of that area where those critical slopes were actually established at that time. He stated that was recent. It would be completely, in his view, out of character with the way our Commission has dealt with critical slopes not to grant a waiver of these man-made critical slopes on the southern portion of the property. He noted that he had difficulty with the critical slopes along the large portion of the northeast portion of the property. There is a big area and the critical slopes in some areas are contiguous and in other areas they are scattered. It goes from the driveway all the way up to the northern most building on the property. This is an area of the highest visibility from Morgantown Road and from the adjacent neighbors that would be the most affected by this. Once of the criteria that they are obliged to take into account is that they must determine that this has been adequately addressed in order to consider a waiver as a law of aesthetic resource. He stated that he could not in good conscious say that there is not a loss of aesthetic resource relative to that substantial area of critical slopes above those streams. Based on that he would vote in favor

of the curvilinear parking and the one-way circulation, but he could not support the critical slope wavier.

Mr. Rieley: It seems to me that we should start with the waivers and work our way through those because obviously the waivers will determine whether or not we can vote in approval for the site plan.

MOTION ON CRITICAL SLOPE WAIVER:

Ms. Hopper: Mr. Chairman, I move for the denial of the critical slopes waiver for SDP-2002-128 for all of the reasons that have been discussed this evening by the Commission after the public hearing was closed.

Mr. Craddock: Second.

Mr. Rieley: We have a motion to deny the critical slopes waiver and a second. Is there further discussion. May we have a roll call vote please?

Ms. Taylor: Mr. Thomas.

Mr. Thomas: Aye.

Ms. Taylor: Mr. Edgerton.

Mr. Edgerton: Aye.

Ms. Taylor: Mr. Craddock.

Mr. Craddock: Aye

Ms. Taylor: Ms. Hopper.

Ms. Hopper: Aye

Ms. Taylor: Mr. Finley.

Mr. Finley: No.

Ms. Taylor: Mr. Rieley.

Mr. Rieley: Aye.

The motion was denied (5:1). (Finley – no) (Loewenstein – absent)

Mr. Kamptner: Mr. Chairman, before we move on. Based on Ms. Hopper's comment that it was based on all of the reasons. He was not sure if that included all of the reasons that we have heard over the past five hours or four hours or whether it was just a summary. If you are comfortable in capitulating what those reasons were. If you could state that for the record.

Ms. Hopper: Thank you, Mr. Kamptner. The reasons that I am moving . . . (inaudible).

Mr. Rieley: I am sorry. At first I don't get it and then I keep it.

Ms. Hopper: I will be more specific than this. Mr. Kamptner and the Commissioners can help me. It includes everything since the public hearing was closed and since the Planning Commission started talking about it. But I will be more specific; it is due to the loss of aesthetic resources.

The statutory reasons that I cited from Section 4.2.5.b saying that neither 1, 2 nor 3 occurred allowing us to waive the critical slope requirement. And also the fact that the critical slope waiver may be modified or waived which also was one of the reasons that we discussed.

Mr. Rieley: Is that satisfactory? The second waiver request is for curvilinear parking. Do we have any further comments or a motion on that issue?

MOTION ON CURVILINEAR PARKING:

Mr. Thomas: That might be a moot point or a possibility.

Mr. Rieley: I don't know. I think we should act on all of the waivers.

Mr. Kamptner: I think in this case that you should do each one separately and act on them tonight.

Mr. Rieley: Do we have a motion.

Mr. Finley: Mr. Chairman, I move for approval of the waiver on the second one for curvilinear parking.

Mr. Rieley: That is right, Mr. Finley.

Mr. Thomas: Second.

Mr. Rieley: We have a motion and a second. Do we have further discussion? If not, may we have our roll call vote, please?

Ms. Taylor: Mr. Thomas.

Mr. Thomas: Aye.

Ms. Taylor: Mr. Edgerton.

Mr. Edgerton: No.

Ms. Taylor: Mr. Craddock.

Mr. Craddock: No.

Ms. Taylor: Ms. Hopper.

Ms. Hopper: No.

Ms. Taylor: Mr. Finley.

Mr. Finley: Aye.

Ms. Taylor: Mr. Rieley.

Mr. Rieley: Aye.

The motion was denied (3:3). (Edgerton, Craddock, Hopper – No) (Loewenstein – absent)

Mr. Rieley: Our final waiver is for one-way circulation. Do we have discussion or a motion?

Ms. Hopper: Mr. Chairman, I would like to ask for clarification. Because it was 3:3 does that mean that it is not approved?

Mr. Kamptner: It is not approved.

Ms. Hopper: I just wanted to clarify that.

MOTION ON ONE-WAY CIRCULATION:

Mr. Finley: I make a motion that we approve the one-way circulation waiver, the waiver for one-way circulation.

Mr. Thomas: I will second that motion.

Mr. Rieley: We have a motion and a second. Is there further discussion? May we have a role call vote, please?

Ms. Taylor: Mr. Thomas.

Mr. Thomas: Aye.

Ms. Taylor: Mr. Edgerton.

Mr. Edgerton: No.

Ms. Taylor: Mr. Craddock.

Mr. Craddock: No.

Ms. Taylor: Ms. Hopper.

Ms. Hopper: No.

Ms. Taylor: Mr. Finley.

Mr. Finley: Aye.

Ms. Taylor: Mr. Rieley.

Mr. Rieley: Aye.

The motion was denied (3:3). (Edgerton, Craddock, Hopper – No) (Loewenstein absent)

Mr. Rieley: Then the final action that we have before us is the approval of the site plan. This site plan cannot be approved without the waivers and the waivers have not passed. So we won't need a motion to.

Mr. Kamptner: Mr. Chairman, let me just, you do have a couple of options. One is that you could disapprove the site plan, and you need to articulate the reasons why it was disapproved and cite the Code sections to the applicant. The other thing that you could do is defer action on the site plan and see if the applicant was willing to come back with an amended site plan that might satisfy all of the requirements of the Zoning Ordinance.

Mr. Rieley: Thank you, Mr. Kamptner. That is an important distinction. What is the pleasure of the Commission?

Ms. Hopper: Mr. Chairman, I move for the denial of SDP-02-128.

Mr. Rieley: We have a motion for denial.

Mr. Edgerton: Second.

Mr. Finley: I would like to ask and this is in reference to various comments. What happens here should the applicant want to request a deferral? Can he do that? Or can we vote and that finish or how does it work?

Mr. Kamptner: Well, an applicant always has the opportunity to amend a site plan. If they do that, then it stays with you. If you act on it tonight, then if the applicant wishes it can be appealed to the Board of Supervisors.

Mr. Finley: But it is not required that you give him the opportunity to request a deferral.

Mr. Kamptner: No, it is not a requirement.

Mr. Rieley: We have a motion and a second to deny the site plan. Is there further discussion on that?

Ms. Hopper: I do want to open it up for discussion with the clarification that Mr. Kamptner just made about deferral versus going ahead and denying it and just invite people to discuss that more if anybody wants to.

Mr. Rieley: My feeling is that option should be left open. This is a by-right use. We have not granted the waivers that the applicant has requested. But it seems to me only fair to allow the applicant to adjust the site plan and bring it back to us in a form that does not require the waivers. I apologize. The issue is that we have a motion on the floor to deny the site plan. The other option that we have available to us is to not act upon the site plan and give the applicant an opportunity to bring the site plan back to us in a form that does not require the waivers that they have not granted.

Ms. Hopper: Mr. Chairman, thank you. Understanding that better, I wish to withdraw my motion. And I am so tired of forgetting the procedural word for that, but Mr. Kamptner can I just withdraw my motion?

Mr. Kamptner: Was there a second made to that?

Mr. Rieley: There was a second.

Ms. Hopper: There was a second.

Mr. Kamptner: Go ahead. It is too late. In Robert's Rules.

Mr. Rieley: The cleanest thing if you are not comfortable with the motion that you made.

Mr. Kamptner: If you want to withdraw it or do you want to amend it.

Ms. Hopper: I will amend it.

Mr. Kamptner: Okay. Let's go ahead and see if the seconder is willing to agree to a friendly amendment.

Ms. Hopper: Who seconded it? Are you open to a friendly amendment?

Mr. Edgerton: What is it?

Ms. Hopper: Questions, questions. My friendly amendment would be that we not vote to deny, but that we vote to defer for the purpose of giving the Commission a chance to look at this again if it was a different application or if it is an amended site plan.

Mr. Finley: Do we vote to defer or do we (inaudible).

Mr. Edgerton: I am confused because I am not sure that we can vote to defer. I don't think that we have that right.

Mr. Craddock: They have to ask for that.

Mr. Rieley: Greg, articulate again the reasons (inaudible).

Mr. Kamptner: If the applicant is willing to defer that is fine. The time period for you to act is due to run out on . . .

Ms. Amarante: Friday

Mr. Kamptner: . . . Friday. The applicant would have to give the Commission ten days notice to start the process to compel action. The best thing would be for the applicant to agree to defer action on the site plan so that the issues can be worked out.

Mr. Rieley: Mr. Carter.

Ms. Hopper: I did not realize that we didn't have the time. I am sorry.

Mr. Rick Carter: We would agree to that.

Mr. Rieley: The applicant agrees to request a deferral.

Mr. Edgerton: Then as a seconder am I allowed to withdraw my second and then that allows her to withdraw her motion.

Mr. Thomas: Amend your second.

Mr. Edgerton: Is that, I don't know.

Mr. Rieley: She is amending.

Mr. Kamptner: Yes.

Mr. Rieley: She is essentially amending her motion and you need to concur.

Mr. Edgerton: I concur.

Ms. Hopper: You concur.

Mr. Edgerton: Yes.

Mr. Rieley: Okay, we have . . .

Mr. Finley: So now do we have a motion then to accept the applicant's request for deferral.

Mr. Rieley: Yes, we have a motion to accept the applicant's request for deferral on the site plan. Is everybody clear? Thank you. It is late. I think that we got it right.

Mr. Finley: So now you must get another second, right.

Mr. Rieley: No, Mr. Edgerton amended his second as well.

Ms. Hopper: Mr. Edgerton seconded.

Mr. Rieley: Is there any other discussion on this issue? May we have a roll call vote, please?

Ms. Taylor: Mr. Thomas.

Mr. Thomas: Aye

Ms. Taylor: Mr. Edgerton.

Mr. Edgerton: Aye.

Ms. Taylor: Mr. Craddock.

Mr. Craddock: Aye.

Ms. Taylor: Ms. Hopper.

Ms. Hopper: Aye.

Ms. Taylor: Mr. Finley.

Mr. Finley: Aye.

Ms. Taylor: Mr. Rieley.

Mr. Rieley: Aye.

Mr. Cilimberg: Mr. Chairman.

Mr. Rieley: Yes.

Mr. Cilimberg: That deferral did not get a date, which was fine. It will be scheduled once we have reviewed an amended plan. I just wanted the public to know that they will notify them again and that it will be a new plan before you.

Mr. Rieley: There is so much interest in this, Mr. Cilimberg. Let's set a date if we can. You are going to have to redesign, right. Okay, well that's too, that's impossible.

Mr. Cilimberg: It may be problematic to set a date, but we will (inaudible).

Mr. Rieley: All right, so we will readvertise.

Mr. Cilimberg: We will renotify.

Mr. Rieley: Right, we have a motion and a second on the floor. Is there any other discussion? May we have a roll call vote?

Ms. Hopper: We voted.

Mr. Rieley: We did vote. I am sorry. Thank you. It really is late isn't it? Thank you. All right, so we have accepted the deferral and we have not passed any of the three actions. Now is there any further

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V. Wayne Cilimberg, Secretary

(Recorded and transcribed by Sharon Taylor, Recording Secretary.)