Albemarle County Planning Commission
September 7, 2004

The Albemarle County Planning Commission held a meeting and public hearing on Tuesday, September 7, 2004 at 6:00 p.m., at the County Office Building, Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia. Members attending were William Rieley; Rodney Thomas, Chairman; Bill Edgerton; Cal Morris; Marcia Joseph and Pete Craddock, Vice-Chairman. Absent was Jo Higgins.

Other officials present were Wayne Cilimberg, Director of Planning & Community Development; Yadira Amarante, Senior Planner; Bill Fritz, Chief of Current Development; Glen Brooks, Senior Civil Engineer and Greg Kamptner, Assistant County Attorney.

Call to Order and Establish Quorum:

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

Other Matters Not Listed on the Agenda from the Public:

Mr. Thomas invited comment from the public on other matters not listed on the agenda. There being none, he stated that the meeting would move on to the public hearing items.

Consent Agenda:

SDP 2004-062 Clifton Inn Site Plan Waiver - Request for site plan waiver approval for a parking lot addition at the Clifton Country Inn. (Tax Map 79, Parcels 23B & 23C) (Francis MacCall)

Approval of Planning Commission Minutes - June 8, 2004, June 15, 2004, July 13, 2004 and July 27, 2004.

Mr. Thomas asked if there was any item on the consent agenda that any Commissioner would like to pull for discussion.

Mr. Edgerton asked that SDP-2004-62, Clifton Inn Site Plan Waiver, be pulled from the consent agenda for clarification from staff. He asked why the issue in the paragraph at the bottom of the first page, which refers to the County's Historic Planner, is not a concern to the Commission.

Mr. Fritz stated that the issue in that particular case is that the special use permit was approved with no specific condition to determine the location of the parking to support the expanded use of the facility. There is nothing in the site plan waiver or in the Site Plan Ordinance that speaks to the historic preservation comments or allows us to interpret those comments or enforce them. They are simply being provided as information. If that comment had been made during the special use permit review, it is possible that the special use permit could have added a condition that prohibited a location of the parking in this general location. It is staff's policy to pass along comments of the Site Review Committee.

Mr. Thomas asked if Mr. Fritz's explanation satisfied his question.

Mr. Edgerton stated that it did.

Mr. Thomas asked if any other Commission had any other questions. There being none, he asked for a motion.

Mr. Morris moved to accept the consent agenda as submitted.

Mr. Rieley seconded the motion.

The motion carried by a vote of (6:0). (Higgins - Absent)

Public Hearing Items:

SDP 04-023 Faulconer Construction Final Site Plan: Request for final site plan approval for the construction of office, shop, and storage buildings totaling 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 Route 738 (Morgantown Road) approximately 1 1/8 miles west of the intersection of Morgantown Road and Route 250 at Ivy. The Comprehensive Plan designates this property as Rural Areas in Rural Area 3. (Yadira Amarante)

Ms. Amarante stated that this was a final site plan application for Faulconer Construction Office and Shop. The applicant is requesting approval of the final site plan to construct about 15,540 square feet in two offices, several pole barns, a maintenance shop and the pole barns for storage. This plan will be in two phases. The second phase will be for the construction of the second office building. This property is described as tax map 58, parcel 37 and it contains approximately 27 acres in the Samuel Miller District on Morgantown Road. The preliminary plat for this project was before the Planning Commission on September 23, 2003. At that time the Planning Commission granted approval of a critical slope waiver request and approved the preliminary site plan. Both of those actions had a number of conditions attached to them. One of those conditions was that the final site plan comes back before the Commission at final review. Those conditions that were placed on the critical slope waiver in the staff report have been listed in the staff report in the order that they appeared on the approval letter. The staff report explains how the applicant has succeeded in meeting those conditions that the Planning Commission placed on the preliminary site plan and the critical slope waiver. Because it is the staff's opinion that the applicant has met all of those conditions, staff is recommending approval of the final site plan with no conditions. There is an addendum to the staff report, which staff has distributed to the members of the Planning Commission. (Attachment 1 – See Staff Report and Addendum) Staff held a meeting with the members of the Ivy Community. One of the citizens brought up a concern regarding the projected noise levels that could be expected from machinery, the trucks being repaired and the trucks idling on the property. It seemed to Engineering staff that it is a legitimate concern. Therefore, staff has asked the applicant to come tonight and be prepared to address those concerns in terms of how they are going to abate those noise levels at the property line. The applicant is here tonight to address those concerns.

Mr. Thomas asked if any Commissioners had any questions for Ms. Amarante.

Mr. Rieley asked staff for further clarification of the point regarding the issue of sound. He noted that the applicant would probably want to address that issue later. He pointed out that he was struck by Mr. Brooks' memo in which it said that the engineer's report essentially said that noise from the vehicles idling would be limited because the vegetation and distance should dissipate the sound. As the Commission has discussed a number of times, there was a significant study that was done for the National Park Service by the Mittor Corporation a few years ago in which they discounted the effect of vegetation on noise. That is one of the two variables discussed in the engineer's report. He pointed out that he was a little surprised to see the following sentence on page 17 that, "Normal operations at the project site are not anticipated to violate Albemarle County's noise ordinances." It goes on to say on page 21 that, "Vehicles idling will be limited, and vegetation and distance should dissipate sound." While these types of statements, accompanied by the engineer's certification, are generally acceptable, the fact that residents are raising questions may call for an explanation of the technical reasoning or data behind them." It goes on to say that it remains a concern. He stated that this statement was enormously vague and he did not see any reason why it should be generally acceptable, particularly in light of the fact that further down in the memo Mr. Brooks goes on to say that one could expect that the decibel level could be brought down

to about 60 to 70 decibels, which is still above our ordinance. He asked if staff could explain how they could still recommend approval without any condition relative to the noise.

Mr. Brooks stated that he would have to refer that issue to the applicant. He pointed out that he did bring that to the Commission's attention in the memo. The 60 to 70 decibels, which was taken down from 90 decibels, was just a calculation done with a basic doubling of the distance. Anytime you double the distance from the source you bring the decibel level down by approximately 6. If they were 100 foot from the property line, then it does bring it down to 60 decibels. That is still vague because they don't know exactly where Faulconer would be doing their operations and where the sound source will come from on the site. He stated that he was a bit conservative in that calculation and took it from the edge of the site or the edge of the storage yard where the pole barn is located. More than likely they would do that sort of operation closer to the maintenance shop, which was much more interior to the site. Therefore, he did not figure any vegetation in the calculation at all because he basically felt the same way. He felt that the vegetation would not have any effect on the noise, particularly in the winter time. But, there are so many vague areas. As Mr. Rieley said, the applicant really needs to address this issue more.

Mr. Rieley stated that they don't know if they are beginning at the right number at 90 decibels.

Mr. Books stated that 90 decibels was also an approximate number.

Mr. Rieley stated that he really appreciated Mr. Brooks' informative memo and that it was very helpful.

Mr. Thomas asked if there were any other questions for the staff.

Ms. Joseph pointed out that Mr. Brooks not only talked about the engines idling, but he talked about the machinery that would be used for the maintenance. She assumed that there might be air compressors, impact wrenches, and other machinery that makes a lot of noise. In Mr. Brooks' memo, he also talks about the fact that there will be machinery within the maintenance building itself that would include items such as impact wrenches, air compressors and other items that make a lot of noise that have not been considered in the certified engineer's report.

Mr. Thomas asked if there were any more questions for the staff. He stated that before he opened the public hearing that he would like to read a statement to explain to the audience how they have gotten to this point and how the Commission is going to arrive at a final decision. The matter before us tonight is a review of the final site plan for Faulconer Construction Company's proposed contractor's office and equipment storage yard. The County's Site Review Committee and current Planning staff have recommended approval of the final site plan. The purpose of our review is to determine whether the final site plan complies with the technology requirements of the Zoning Ordinance, including the conditions imposed by the Commission when they approved the preliminary site plan last year. Our review is ministerial in nature. If the final site plan satisfies the applicable requirements, we are obligated to approve it. If these requirements have not been satisfied, then we are required to inform Faulconer what the deficiencies are and what it needs to do to correct the deficiencies. With that being said, he opened the public hearing and invited the applicant to come forward to address the Commission.

Richard Carter, representative for the applicant, stated that he was going to be very brief and then just be available to answer questions. He stated that the staff report was complete. This application was started in February, 2001. They are here again almost three years later. They have done everything that was asked of them to meet all of the conditions. He stated that the staff report shows that and the staff has actually said that. As to the noise, he wanted to remind the Commission as to how this site is going to be used. The heavy equipment, the bull dozers, the graters and all that will not go on this site everyday or come off of this site everyday. That equipment stays on the job. The only heavy equipment that is going to be on this site is equipment that is brought to the site for maintenance. Some days there may be two vehicles that are being worked on. Some days and most days there will be none that will be worked on. The dBA's that are mentioned in this are often the times when the equipment is at full load, moving dirt and grinding as hard as it can. What they are talking about is the noise ordinance requirement that the noise level must be for five continuous minutes. There is not going to be five continuous minutes. If the

mechanic has to turn the engine on to hear it idle, he is not going to leave it on for five minutes. He is going to listen to it and then work on it. Then later he will turn it on again to see if he did the job. That is the way that this is going to be used. How in the past have we addressed noise situations. The number of applications that he has been involved in, which have been numerous, the applicant says that it is not a problem. The people who are against the application say there is a problem. He pointed out that they don't think that it is a problem here. In the past if there has been a problem he has noticed that the County staff will enforce the noise ordinance. He felt that this was a situation where the garages and the repair shops are so inward to the site that the noise from the machinery that is being worked on is not going to be in violation of the noise ordinance. He stated that he would be happy to answer any questions. He pointed out that the owner, Mr. Sanford, and their engineers and architects are all present. He stated that he would prefer to answer any questions and then save the remainder of his time for rebuttal.

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

Mr. Rieley stated that he would like to take Mr. Carter up on his offer to supply more information about the sound. Frankly, he was expecting some technical information and not the assurances of an attorney that everything is going to be okay.

Richard Carter stated that he did not realize that he made the offer, but if he did that he would do whatever he said.

Mr. Rieley stated that he had said that they have technical people here to answer technical questions. Frankly, he felt that there was going to be some technical backup on this issue. Right now they have a memo from the Engineering department saying that they would likely be in violation of the law. He stated that he thought that the applicant was going to be able to give them some technical assurance that was not the case.

Mr. Carter stated that with all due respect, he did not read the memo that way, but he understands what he was saying.

Mr. Rieley stated that the memo says that they could bring the sound level down to between 60 and 70 dBA. The County Zoning Ordinance requires no more than 60 dBA.

Mr. Carter pointed out that was for five continuous minutes. He pointed out that he was telling them that it was not going to be five continuous minutes.

Mr. Rieley asked if that was on the basis of his experience.

Mr. Carter stated that was on the basis of his information from the vice-president of the company who works on this everyday.

Mr. Rieley stated that was disappointing. Frankly, he really thought that they were going to be able to have something solid to hang their hats on.

Mr. Carter stated that was all that they had.

Mr. Thomas stated that there were 35 persons signed up to speak on this application. He stated that each presentation was limited to three minutes per speaker. He invited the first speaker on the list, Brian Wheeler, to come forward and address the Commission.

Brian Wheeler stated that he was a parent of two children in County schools, a School Board member, and President of the Ivy Community Association. (Attachment 2 – Comments from Brian Wheeler to Albemarle County Planning Commission on Faulconer Construction Final Site Plan Review dated September 7, 2004) We have come a long way since 2001 when we first learned of Faulconer's plans to move to Ivy. The community has united and demonstrated that by working together they can change our community for the better. You are going to hear from many of them tonight. They will share their real concerns about the impact Faulconer Construction will have on our neighborhood and our schools. My

comments tonight are to encourage you to reject this plan as incompatible with this particular light industrial site. This use is not acceptable on a narrow country road adjacent to two schools and several hazardous intersections with Route 250. You have the power to make that determination tonight and in so doing you can demonstrate to the public that the site plan review process works. The County Zoning Code is what protects all Albemarle residents from industrial activity when it threatens our quality of life. It is not anti-business. It is common sense. Some industrial activity can reach outside its borders and threaten public health and safety. This Faulconer site plan is a clear and present danger to our community. When staff prepared their report in February 2003 on the preliminary site plan, they wrote, ". . . existing road conditions are not optimal, however, the County does not have the authority to require off-site road improvements as a condition of approval." You may not be able to require the applicant to make those improvements such as traffic lights and new roads with sidewalks "as a condition of approval," but the zoning code clearly states all site plans for an industrial site must have these off-site factors, or "external relationships," assessed. That gives the Planning Commission the responsibility to do so, as well as the right to reject the plan, or portions of it, in the event you think these conditions cannot be met. Staff has looked at this site plan very narrowly when it comes to public safety. They have told us they approach this from the belief that they are limited in what they can require the applicant to do. The zoning code does not place those constraints on the Planning Commission, if you can give the applicant specific reasons for your rejection. You had the foresight to ask that the Planning Commission give the final review of this plan, and now it is time to make your assessment. I believe you can reject this site plan as incompatible with this site under Code Section 32.7.2 regarding safe and convenient access, under Code Section 32.1 which states the developer is not relieved of compliance with other laws, including among them Code Section 26.12 and 26.12.1 which is this County's Code for all industrial districts and requires the assessment of off-site impacts of industrial development. This is a precedent setting case for Albemarle County, and this Planning Commission has the challenge and the responsibility, to consider all these facts tonight. I urge you to reject this plan as totally incompatible with public safety and inconsistent with the character of this business park. You just heard Mr. Carter argue for business as usual in Albemarle County. They are asking them to do business differently. Regardless of the outcome tonight, our association will continue to keep our eyes on Ivy, as well as development in the rest of Albemarle. I would ask those in the audience that agree with me to please stand and I thank them for coming tonight.

Carrie Zontine Coulson, resident of Ivy, stated that in his memo to the Board of Zoning Appeals on August 30, 2001, Greg Kamptner, Assistant County Attorney, provided background on the scope the BZA could undertake with respect to the Zoning Administrator's determination of use. He wrote, and I quote, "The Zoning Administrator did not determine whether a contractor's office and equipment storage yard is appropriate in the light industry zoning district, whether a contractor's office and equipment storage yard is appropriate on Faulconer's property or whether the potential impacts of a contractor's office and equipment storage yard on the Faulconer property should prohibit that use. These three determinations pertain to the permitted uses of the property under the zoning ordinance, are legislative in nature and, thus, beyond the purview of the Zoning Administrator and the BZA." What this says is that it is the Board of Supervisors who has the legislative power to make these determinations based on the zoning ordinance they approve. The Zoning Administrator's job and the Planning Commission's job are to administer the zoning code. In the case of Faulconer Construction, the Zoning Administrator wrote, "The decision before the board (of zoning appeals) is whether the use proposed by Faulconer Construction Company is a 'contractor's office and equipment storage yard.' The merits of a specific site proposal are not relevant to this zoning determination as to the category of use." Thus, by its own arguments, the county staff made a determination in favor of Faulconer that was totally blind to the location in which those activities would take place. It was not a site-specific determination. Today we ask that the blinders be removed and the final site plan of Faulconer Construction be reviewed in accordance with the zoning ordinance in the full context of this light industrial site in the Ivy Business Park. We believe you will see it for what it is . . . a clear and present danger to the Ivy community, and as such your only course is to reject the portions of the site plan that present those risks, specifically the repair shop, which poses the greatest risk to our air and water quality, our road and pedestrian safety, as well as our enjoyment of a lovely and quiet rural community. I also ask you to notice that the originally proposed 'use' for this site

has changed. In all of Faulconer's preliminary site plans the project was called a 'contractor's office and storage yard." The final site plan states that it is 'Faulconer construction office and shop. Zoning code (Section 27.2.2) states that a special use permit is required for body shops in LI districts. The zoning administrator has ruled that the repair shop portion of this project is an accessory use, as defined in zoning code as "a subordinate use…customarily incidental to and located upon the same lot as the primary use…" Using logic it is difficult to explain how the repair shop is considered 'subordinate' to the 'primary' contractor's office, when the repair shop represents a 15,000 square foot building with a five ton hoist to remove engines from their biggest equipment. By comparison, the 6,000 square foot office building seems to be the minor or subordinate use. Likewise, it is hard to justify that the shop is 'customarily incidental' to the contractor's office, since Faulconer Construction currently houses their office and shop on separate sites. Thank you. Please reject this final site plan. (Attachment 3 – Carrie Zontine Coulson, 9/7/04 Planning Commission Statement: The Determination of Use was not Site-Specific)

Pam Evans, resident of 3341 Morgantown Road, addressed the Commission. (Attachment 4 – Statement submitted by Pam Evans) I believe that according to County law the Planning Commission should deny this site plan because – The Planning Commission must administer the zoning ordinance to promote the public health, safety or general welfare. With regard to the final site plan submitted by Faulconer Construction Company, we believe that the plan contains uses which are not permitted by right and that it is now the Planning Commission's responsibility to ensure the zoning ordinance is properly administered. That, after all, is the point of the site plan review process. If you see things brought to your attention by the public that were not evident at the time of the determination of use, then you must act to ensure the public safety. In the Albemarle County Land Use Law Handbook, Chapter 12, it states that: "In its most basic terms, the purpose of zoning is to preserve and improve the quality of the community in which we live and work… The scope of the zoning power is broad enough that the County is enabled to prohibit a specific use of land and the power to prohibit includes the power to regulate. However, this regulation may not be arbitrary, capricious or impair constitutional rights. To be valid, the regulations must promote the public health, safety or general welfare." In his letter to the Planning Commission dated February 4, 2003, the ICA's attorney, Frank Buck, made the following points: Code section 18-32.1 states: "The purpose of this section is … to ensure that land is used in a manner which is efficient, harmonious with neighboring property and in accordance with the comprehensive plan and provisions of this chapter. Nothing herein shall require the approval of any development, use or plan, or any feature thereof, which shall be found by the Commission or the agent to constitute a danger to the public health, safety or general welfare…" Frank Buck continues pointing out that: "As provided in Code section 18-4.2.5(b), the Commission may modify or waive any requirement of Code Section 4.2 in a particular case upon finding that: 1. Strict application of the requirements of Code section 4.2 would not forward the purposes of this chapter or otherwise serve the public health, safety or welfare…" And Mr. Buck points out that the requirements of Code Section 4.2 may be waived or modified when, and I quote, "granting such modification or waiver would serve a public purpose of greater import than would be served by strict application of Code section 4.2." On a personal note, I do not see how this plan provides for the safety of my children or me by proposing a turn lane through my driveway and front yard. I have driven throughout Albemarle County and can find no other site where a major truck entrance goes through a residential driveway. My children and I daily walk to school. How can this be safe? How is the County protecting my by right use to enter and exit my residence whether it is by car, bike or walking. I ask that the Planning Commission find an alternative to this turn lane in my driveway. Thank you.

Drew Battista stated that he lived in Ivy with his wife and daughter. (Attachment 5 – Comments for Albemarle Planning Commission hearing September 7, 2004 – to approve or deny site plan for Faulconer Construction Company in Ivy submitted by Drew Battista) There are a few moments in life when you have the easy opportunity to do what's right and be a hero. The egregious decision made by a zoning administrator three years ago permitted this ludicrous site plan to stumble through a series of steps throughout which, planning staff, Planning Commissioners, and the public were told that we had no choice but to accept heavy industry in our neighborhood and next to our schools. In fact, each of us has

a choice, and a chance, to do what's right. What purpose does the Planning Commission serve if not to intervene when the County's residents and their children need its intervention? Whose interests does the Planning Commission serve if you fail to act on behalf of those who elect you? In a few minutes, you will hear from a man who has dedicated a lifetime to public service. It's unlikely that any of you will reach the lofty post of Secretary of State of the United States, but the gravity of your vote tonight will impact the children of Ivy as much as most any decision made at the national level. Perhaps the County's attorney has led some of you to fear a legal reprisal from Faulconer construction should tonight's vote not go its way. If cowardice and fear motivate you, I urge you to FULLY consider the consequences of voting in favor of this site plan. As an example, just last Friday, as I drove north on Free Union Road, I came upon an accident at the intersection with Woodlands Road. Along with me, two school buses (one on Free Union, one on Woodlands) approached the scattered debris just minutes after the crash. The look of fear in the eyes of those children was a haunting reminder of a collision in which my wife, as a child, was the victim when a cement truck traveling at a very slow speed plowed into her school bus. Her tiny nose was crushed. The look of fear in the eyes of those children should serve as a chilling reminder of your responsibility tonight. You will be held accountable. So what should you do? If nothing else, you should table your final decision until the final noise testing is complete. Thank you.

Robin Hamill-Ruth, MD, resident of the County, stated that tonight she would like to speak to the traffic impacts of the Faulconer Site Plan. (Attachment 6 – Planning Commission Statement: Traffic Impacts of the Faulconer Plan are Inconsistent with the County Vision, Mission and Zoning Ordinance - Submitted by Robin Hammill-Ruth, M.D. dated September 7, 2004) The Albemarle County Vision is: To maintain Albemarle County's stature as a quality community by promoting the values of education and life long learning, historic and scenic preservation, and SAFETY, etc. that make the County a desirable place to live. The Mission, as noted on the website, is "to enhance the well-being and quality of life for all citizens…. Code section 15.2-2283, the purposes of zoning ordinances: Zoning ordinances shall be for the general purpose of promoting health, safety, and general welfare for the public… to protect against danger and congestion in travel and transportation, or loss of life, health, or property…" The proposed Faulconer construction project is a contradiction to these tenets on many fronts, some of which you have already heard, others are to follow my remarks. Tonight, I will speak to the safety concerns raised by the projected 140 trucks per day in or out of the site. Morgantown Road is a scenic place where many people walk, jog, cycle and ride horses. The road is narrow with poor sight distances, and in some parts, school buses and cars have difficulty passing each. They are anticipating heavy load approximately every 30 minutes. There is poor visibility clearly in exiting off of Morgantown Road. These are major trucks that will be making this turn on a blind curve. The road is not big enough to accommodate these large vehicles. Now let me provide some definitions and statistics from the Insurance Institute for Highway Safety (IIHS) data base: Large truck is defined as one that weighs over 10,000 pounds. The larger trucks are anticipated to be greater than 72,000 pounds. In 2002, 434,000 large trucks were involved in traffic crashes in the United States. A total of 4,897 people died. An additional 130,000 were injured. When a large truck and a car collide 98 percent of the mortality is from the passenger vehicle. Clearly bikes and children have not a chance. Basically, what is my point? As a critical care physician, my concern is that when a car collides with a child or vehicle, people die. She pointed out that she has spent many nights trying to keep people alive. She has spent many nights speaking to families when they have not been successful resuscitating their loved one. Basically, if safety is a primary component of the mission, vision and the zoning code, how could they possibly take this as acceptable and approve this plan in good conscience? The nature and volume of the increased traffic further increases the likelihood of more accidents at Morgantown, Tillman and Route 250. It is only a matter of time before someone else is killed at one of these intersections.

Lawrence Eagleburger, Former Secretary of State, stated that the reason that he could not match the decision this evening about the dangers of the legal issues here was that he could only talk to them about somebody who has gone out to look at this site with a neutral position when he started and who, to put it bluntly, could not understand how this issue got this far. As far as he was concerned, when you are putting in an installation such as this when there are two schools in very close proximity, it seems that one

of the conditions to anyone in the County that was judging this issue must ask is what the threats to life are. It would seem that to have these trucks and the school in of itself, is an extremely dangerous situation. From his point of view, one of the issues and a principal issue that must be put on their agenda, is the question of how dangerous this location would be for the children of these schools. Ladies and gentlemen, decisions lead to consequences. Those who make those decisions have to live with the consequences. He stated that he would close by giving an example. It is a gross exaggeration of what he is talking about, but it is the only way in which he could describe to the Commission what he feels. Some years ago he instructed their ambassador in Lebanon, who is personally a very good friend, to cross what is the green line which was the area between where they had some control over the territory and where they did not. It was for a real purpose, but he had to tell him to do it. He crossed the green line; he was ceased and murdered by the PLO with his naked body left on the side of a street. That was a decision that he made and he has had to live with that consequence ever since. He noted that this was an exaggeration, but his point, nevertheless is that one of the things that one must keep in mind was that whatever the legalities there are lives involved here and that must be something that you think about and that in the end, ladies and gentlemen, you will have to be responsible for the decisions you make. One of those responsibilities will be to see that the children in that area stay safe. Thank you very much.

Tom Hutchinson stated that he would be very brief because Mr. Eagleburger took some of the things that he was going to say in regard to responsibility and to looking at the better good. He stated that he appreciated that there was question of whether the Code was being adequately addressed. The main thing that he would like to do is show the Commission this picture. He presented a slide presentation.

The meeting recessed. (The power went out in the County Office Building. The recording equipment was disabled and had to be rebooted.)

Mr. Thomas called the meeting back to order and asked Mr. Hutchinson to continue his presentation.

Tom Hutchinson stated that his point was that they were in a bowl. The site is part of a bowl, which was a very important characteristic for the Commission to understand. Mr. Rieley was speaking to the issue of sound. Sound travels uphill far better than it does across a region. What will happen here is that the sound at the bottom of this bowl will easily travel up. He pointed out that vegetation would not stop the noise. This is an inappropriate location for this use. The number one reason is that this site is located 180 feet from the Millstone Preschool. That is a very significant issue. Thirty yards beyond that is Murray School. He stated that he was very concerned that the noise and pollution as a result from this operation, which has been zoned light industrial. The noise that will be generated from this will be anything but a light industrial operation. These are very large machines that are going to be worked on. His concern was that the Commission should not only take into consideration the neighbors, but the preschool and the elementary school itself with regard to noise pollution in this area.

Shawn Evans asked to address the proposed storage of 5,000 gallons of petroleum products. Albemarle County Code Section 18.5.1.20 states that no storage in excess of 600 gallons of petroleum products shall be established without County Fire Official approval. Code Section 32.6.6 of the site plan code specifically states that the final site plan shall contain detailed plans for all proposed water facilities. Since this site does not have access to county water or fire hydrants obviously they are going to need a substantial water facility to put out any potential accident with these 5,000 gallons of petroleum. None of these things are listed on the final site plan, in the Certified Engineer's Report nor are they mentioned in staff comments. He asked that the Planning Commission deny this site plan until such time as the applicant can provide this information, which is required by Code. According to the ATF, besides the manufacturer, explosives can either be in transport, in use or in storage. Nowhere in the Code from the ATF does it say that explosives may be present. I, therefore, submit that these semantics boil down to storage. Therefore, the site plan should contain the location and engineering data for a magazine or bunker according to the type and quantity of explosives used by Faulconer. Section 5.3.3 of the Certified Engineer's Report states that for over fifteen years the FCC has stored small quantities of blasting materials. Yet, the attached document that he had given with the blasting permit from the year 2002-2003 states that Faulconer stored 4,000 pounds of blasting materials and 1,000 blasting caps. This does

not seem like a small amount to me. Regarding noise, Faulconer is going to have to operate their heavy machinery, which exceeds the County's permissible levels. Section 7.1.05 of the County Code states, that it is prohibited to create any excessive noise on any street adjacent to any school or institution of learning. Because of their proximity to the school and residential property that he believed according to County Code 4.18.03 that the applicant should have to submit manufactured specifications for the sound level of their equipment and that the Certified Engineer's Report should demonstrate through engineering practices that these excessive noise levels will be abated. He stated that he knew for a fact that the sound levels from Faulconer's equipment can easily be reproduced and measured without developing the site and then appropriate engineering controls can be determined. This would be done before the County approves the site plan. He asked that the Planning Commission stipulate that Faulconer do this before approving this plan. Again, he thanked the Commission for their time. He reminded the Commission that they were not opposed to development on this site, but rather the inappropriate development. Regardless of the outcome, the residents of Ivy will always have their eyes on what goes on in Ivy. He stated that they would continue to live by the mission of Albemarle County and do their best to enhance the well being and quality of life for all citizens through the provisions of the highest level of public service possible. They will never stop being concerned about the welfare of our community or our children. (Attachment Missing)

Gary Hatter stated that when his family moved to Charlottesville they moved to Peacock Hill for one simple reason and that was to send their children to Murray Elementary. They have been delighted with that decision and their children are now enthusiastic third and first graders. They are indebted to Mr. Grider, teachers, staff and others from decades past whose vision and leadership have made the school such an asset for the community. He stated that his remarks tonight focus on leadership and vision. These are words that are thrown around a lot and form the core issue underlying what brings us together once again tonight. The words are inextricably intertwined and they really ought to be top of mind regardless of our station in life. Leadership presupposes the existence of a group and a larger purpose and self gratification. Vision presupposes an ability to see things in a broader sense than just the particular task at hand. Each of us makes choices everyday that affects others in how we drive, how we raise our children, how we manage our careers, and how we engage our neighbors. Some situations, like this one, show our individual, corporate and institutional choices can have broad unintended consequences, which must not be ignored. Some businesses are inherently more competitive than others and a construction business must certainly be one of the toughest. That might explain the attitude of Faulconer Construction in regard to this site and towards us the neighbors. Several efforts by our community to help find a mutually acceptable arrangement met with no sincere receptacle effort. No one else harbors ill will against Mr. Sanford or his team. In fact, they would welcome the corporate headquarters of Faulconer Construction for a light industrial use. But, they are 100 percent committed and united resolute and tenacious in their opposition to this potential misuse of the Ivy Business Park. Honestly, they are sick of this fight as they suspect you all are. Whereas, corporations can delegate to others and pay attorney fees out of deep pockets, they have spent hundreds of volunteer hours researching legal documents and going back and forth with County and State agency staff during precious spare time that ought to be spent with family and friends. But that is just it. They are all about family and friends and their mutual concern for one another's safety and well being. My friends have presented you with a wealth of facts and concerns, which ought to be enough to convince a thoughtful person, certainly you, our neighbors and public officials of the potentially catastrophic consequences of this development. They don't doubt that Faulconer has a good record for health and safety, but they have dire concerns that they cannot guarantee against a tired truck driver side swiping a school bus full of children at the end of an otherwise ordinary day. That is the inevitable conclusion to this story if you approve their plans. There will almost certainly be no willful, malicious act that turns our worse fears into reality. There will be an accident perhaps even a nominal incident were it to happen someplace else where school buses are only occasional passers by and where roads can accommodate such oversized heavy industrial vehicles. This comes down to a judgment call by each of you, which brings us back to contrasting vision and leadership along with common sense and good faith judgment. Rather than hoping

for Faulconer to suddenly demonstrate an appreciation for the value of his neighbors, they ask that they adhere to the County's commitment to smart growth that preserves the quality of life that we all cherish.

Phil Marx stated that he had lived in Albemarle County since 1975 and on Morgantown Road for over twenty years. My wife and I have two children currently in Albemarle County Schools and a daughter who graduated from Western Albemarle last spring. This is our 13th straight year with a child at Murray. We love our school and we love our neighborhood. I'm asking you to do your job and protect our family's safety, educational environment, health, quality of life, and the character of our neighborhood by not approving the Faulconer site plan. I'm asking you not just because this project falls in my neighborhood, but because it is inappropriate in any residential neighborhood in Albemarle County. I understand better than most the zoning history of this site including the 200-foot A-1 buffer between the industrial park and the adjoining rural/agricultural area that was required when this site was granted a "conditional use permit" over thirty years ago. This buffer remained Agricultural in a subsequent rezoning in 1975 that recognized its importance to the community. You have before you the facts, as stated by your County Attorney, that describe how a capricious decision by county personnel to color the current Faulconer parcel into a uniform zoning category cost this community its right to protection stipulated by your predecessors thirty-four years ago. This parcel existed as a split parcel for over ten years until Jan Sprinkle was instructed to color the entire parcel, including the A-1 two-hundred-foot buffer, to "Light Industrial" during the 1980 comprehensive rezoning without discussion with adjacent property owners or the Ivy community. Subsequent zoning category renaming and other sleight-of-hand as described by the county attorney somehow ended up with this required buffer between an ill-advised industrial zoning in an rural area determined to be not longer required. You all are the judge of whether or not your charge to protect the people of Albemarle County was served by the decision to color-in our neighborhood's buffer; a buffer we all knew existed to prevent the type of over-development before you now for consideration. The County has plowed ahead, hell-bent on paving the way for Faulconer Construction to over-develop a Light Industrial site for Heavy Industrial use. County zoning allows a "contractor office and storage yard" in Light as well as Heavy Industrial zones. It is up to you commissioners to determine if Faulconer's business is light or heavy, based on what you know of their operation since County zoning does not make that distinction. Faulconer's owner plan calls this a "shop." Your Zoning Administrator found the applicant's use appropriate based on the assumption that work performed in the shop would be limited, and I quote Amelia McCulley from her testimony before the BZA on September 11, 2001, in which she described the applicant's activities in the shop saying they "may have to weld or cut metal to replace a blade or sharpen a blade or something like that." We now know that is not to be the case. By the strict definition relied on by Ms. McCulley in her determination, Faulconer's use is not a storage yard but a shop or a garage for the maintenance of vehicles and that falls under the county's definition of a "public garage" which requires a special use permit which you have the power to deny as an inappropriate use even in Light Industrial. The use you have before you today is undeniably different and certainly "Heavy" compared to that considered three years ago when Ms. McCulley emphasized work performed on-site would be restricted to sharpening blades. I urge the Commission to consider the stated intent of LI districts as set forth in section 27.1 of the Code "to permit industries, offices and limited commercial uses which are compatible with and do not detract from surrounding districts." In addition, the applicant's site plan calls for multiple storage yards only permitted in Heavy Industrial, not Light. These are all issues that affect the safety and health of our community in Ivy as well as water shed protection for all of Albemarle. It is up to you, the commissioners, to deal with these issues now, not later after they become a real problem. I ask you to exercise your right to turn down this site plan and send the decision to the Board of Supervisors, the elected representatives of the people of Albemarle. (Attachment 7 – Comments to Albemarle County Planning Commission dated September 7, 2004 from Phil Marx, 3756 Morgantown Road and Memo dated March 7, 2003 from Larry Davis and Greg Kamptner to Albemarle County Planning Commission)

Tom Goodrich, a resident of Ivy, stated that he would like to thank the Commission for this opportunity to speak tonight. He noted that he was going to read some excerpts from a vision from rural Albemarle County, which was voted on by the Planning Commission two weeks ago and sent on to the Board of

Supervisors for their approval. Albemarle County envisions its rural areas as multi-faceted places. It over the centuries will protect the key elements that give the area its character. A clearly visible rural character achieved by supporting lively rural industries and activities and discouraging suburbanization of the rural areas. These are some of the guiding principles that were voted by the Planning Commission for the rural areas. Under land conservation, protect Albemarle County's rural land through planned management to prevent exportation, destruction or neglect. Under natural resources, preserve the County's rural scenic resources as essential to the County's character, economic vitality and quality of life. Protect and enhance the rural quality of life for present and future rural area residents. Establish developmental standards that are consistent with rural area characteristics and expectations. Consider the impact on rural land fragmentation in the evaluation of land use decisions. Under strategies, the County should review the zoning ordinances to reevaluate by right uses and uses by special use permit to encourage uses that promote the preservation of rural lands and activities, including but not limited to farm sales, etc. To be consistent with the guiding principles, the County's Land Development Policies must be changed to stop the ongoing trend towards fragmentation and loss of rural character. The definition of light industry from our American Geography Website is an industrial use that is used to conduct their operations such that no nuisance factor is created or apparent outside of an enclosed building. Heavy industry includes hallmarks of the form of industry are considerable capital investment in large machinery, heavy energy consumption and final products of relatively low value per unit weight. He stated that he would like to end his three minutes with silence, which is a natural resource that would be lost once this project is approved, if approved.

Davina Jackson, resident of Morgantown Road, stated that she had been an Ivy resident for thirty years and that her family has lived here since 1966. When they first moved to Ivy, it was known for its school systems that one could die for their children to go to and its clean nice quite neighborhood. Also, the neighbors are very loving and dedicated who stick together in time of need and that care for one another. Thirty-eight years later there is turmoil because of the rising construction of Faulconer. They come today as that same community asking and pleading that they allow this neighborhood to remain this way. She asked that the Commission make the right decision to save Ivy from this heavy industrial use with its heavy industrial vehicles, noise, pollution and the ability to store explosives next to their schools and community. She asked that the County have Faulconer move this use somewhere else outside of this neighborhood. She asked that the Planning Commission reject the site plan and stand up for the Ivy community.

Will Crowder stated that he lived with his wife and two children at 2980 Morgantown Road approximately one-half mile from this proposed site plan. (Attachment 8 – September 7, 2004 – Planning Commission Meeting; Re: Faulconer Construction – Submitted by Will Crowder) (Attachment 9 – Email from Will Crowder dated September 7, 2004) Thirty-four years ago, several acres of land in the community of Ivy were re-zoned to light industrial and now are known as the Ivy Business Park. Regardless of whether that decision was right of wrong; the citizens of Ivy have lived in relative harmony with the businesses in the park, most recently Mail Services of Virginia, Music Today, and others. Three years ago, the Albemarle County Zoning Administrator made a decision, with no due process for public comment or scrutiny, that the proposed Faulconer Construction site plan is light industrial. That determination sent a shock wave through the Ivy Community and we the people organized and came before this Commission to argue the egregiousness of that decision with the firm belief that we could make a difference on this matter that will so drastically impact our lives. We learned in these meetings, however, that the decision of this one person, the Zoning Administrator, effectively tied the hands of the Planning Commission and although some of you may have been sympathetic to our concerns, you the members of the Planning Commission could only respond to matters on the agenda, such as critical slope waivers and parking lot design. We heard many times the words "by right" in regard to Faulconer Construction Company's intent to proceed with this ill-advised plan. This evening is our last opportunity to come before this Commission to implore you to do what is "right by" the citizens of Albemarle County and the community of Ivy to protect the welfare of our children, the safety of our homes, and the integrity of our neighborhoods. From Faulconer's own estimates and the specifics of this site plan, there will be associated with this so called

light industrial site: 140 truck trips per day, a heavy load or oversized truck every 30 minutes, there will be fuel and dynamite storage, and added concerns about management of soil erosion, water pollution, and light pollution. It is incomprehensible that anyone could view this as light industry or make the determination that there are no safety concerns. This evening you have heard and will continue to hear people plead to you for the safety of their children as they travel Morgantown Road in cars and school buses and for the potential pollution of our water resources, and for the loss of aesthetic resources. We understand that you have a responsibility to abide by the codes, laws, and regulations that bind you in the planning process. That same codes, laws, and regulations obligate you to keep the citizens of this county out of harms way. We teach our children to correct their mistakes. A mistake has been made in this process that will have potentially devastating and tragic consequences for the citizens of Albemarle County. You have a wonderful opportunity tonight to correct this situation and say to the people, we put you first. This is the third time that he has come before the Commission. He stated that he did not feel that as a group of people that they have had a democratic process to come and say this is not for us. This has been about one person and one agency, Faulconer Construction. It has been very frustrating to this group and he must ask where the democracy here is.

Angela Stokes, member of the Ivy community, stated that the Commission's charge here this evening is to approve or deny a site plan proposed by Faulconer Construction based on the letter of the law. Your advisors are saying that all legal requirements have been met and the job is ready to move forward, but she disagreed. As a public servant and a civic leader in this community, your first charge is that you do no harm. Every decision must be siphoned through a public safety colander. Decisions cannot be made in the interest of helping one individual or business if it poses a threat to so many others. There have been other civic leaders who tried to use the letter of the law to further the interest of individuals while ignoring the needs of the whole community. One such example is that the Governor closed the schools in Albemarle County because he did not want to integrate. The residents of Morgantown Road in 1960 were the direct victims of the Governor's politics. They were citizens who endured a double blow when their voices were stifled and their avenues to education excavated. It is ironic that the children and grandchildren of these victims are once again in the position where government leaders are hiding behind legal jargon in an effort to further the needs of a few while ignoring the basic needs of many. The difference this time is that instead of impacting their education, this decision stands to threaten their health, safety and even their lives. As members of the community, we can make accommodations when our wells are polluted if the County ignores the dangers presented by the toxic solvents. We can make accommodations for the interruptions to learning caused by excessive noise if the County ignores the pollution that this project generates. The County Code requires an engineer's report that clearly stipulates how excessive noise would be abated. But, as demonstrated in the simplicity of a young man's Lego model at the hearing in February of 2003, the mixture of Morgantown Road of bulldozers and buses will be fought with unavoidable danger. VDOT recently stated that it did not want memorials for traffic fatalities littering its highway. We don't want them either, especially if your visionary leadership can prevent them. We are asking for civic leaders tonight who are consistent. If you supported Jack's request in 2002 to eliminate the threat caused by his vehicles to his children, how can you support him tonight without sending a message that his children are more important than ours. We are looking for representatives tonight to understand the distinction between the contractor's office and equipment storage yards with explosive transfers and a construction office and shop. We need leaders who will uphold County Code 27.2.2 and deny this site plan until the applicant has obtained the necessary special use permits. We are asking for civic leaders tonight who vote with foresight to discern that any plan that leaves no room for human error is flawed regardless of where you are in the process. We are asking for civic leaders tonight who vote with integrity and adhere to the County Codes and the fundamental code of our democratic system. It calls you as leaders to do no harm and to protect the general welfare, especially of the youngest members of our community who hold our future.

Adrian Gear thanked the Commission for the opportunity to express some of his concerns about this evening's issue. The Commission has heard a great deal about the facts from many people who are much more knowledgeable to comment on those. But, in one sense he wanted to revisit those facts and

also link them to common sense. You have heard the facts about an area that was approved for light industrial many years ago. Many persons in the audience will really take issue with that definition of light industry with regard to Faulconer Construction. Recently he had the opportunity to walk the length of one of his tractor trailers carrying a simple backhoe. The length was at least 50 feet. These vehicles are substantially long as well as substantially wide. The width is critical, which the Commission has heard a great deal about from Morgantown Road. He stated that they should imagine a school bus meeting one of these tractor trailers carrying both a very long and very wide item. That would definitely not fit on Morgantown Road. The traffic safety issue and the danger factor is certainly a major fact, which is definitely something to be considered on this road. The other fact, which has already been mentioned, is that of the sound. He stated that his family lived quite close to the site up on a hill. Mr. Hutchinson was correct when he stated that sound seems to escalate up hills. The sound question is a major concern for the sound generation from the core of the site. It is an issue that needs to be thought through very, very carefully. A critical issue is simply the definition of light versus heavy industry. There is some excellent light industry already in the business park, which was an admiral use of the land. It would be terrific if Faulconer had his headquarters there, but the shop use was not suitable due to the noise and the tremendous volumes of gasoline products already discussed that create dangerous situations. These gasoline products could potentially get into the Ivy Creek. There is also the dangerous issue concerning the large amount of explosives and detonating caps that would be on the site. All of these come together to emphasis the inappropriate use of this land. Certainly, Faulconer would be most welcomed since it was a beautiful site for a headquarters, but in terms of the heavy industrial uses he felt that was a major issue. The facts speak for themselves. But they need to use common sense that you don't mix oil and water because they simply don't mix. Here they do have a case where there is inappropriate mixing that has been established by facts and common sense says don't do that. He urged the Commission to consider that aspect of the situation before them. He urged the Commission to disapprove this application.

Kim Houchens, resident of 600 Grassmere Road, stated that her family lives across the tracks in sight of the proposed Faulconer planned site. At our last Planning Commission meeting one of you voted in favor for Faulconer Construction reason being that he bought the property in good faith. Well that has really stuck with me. Just because a person buys property in good faith does not mean that the intention or usage of a site is suited for the purpose of that buyer. As for this so called light industry site, the sole purpose and proven intentions of the site is grossly overused of the land. We, the community, have to vision, feel and live with the long term effects of this site that you have already rubber stamped approval of. So what will this construction site look like in a few years down the road? Faulconer Construction is well known in these parts. Therefore, company growth should be expected. With that will come need for more employees, more accumulation of equipment, more broken junk, more parts, more dynamite, more chemicals, more septic issues, more pollution, more run off, more demand of groundwater, more noise, more lighting, more serious safety issues and concerns for our children and traffic. Who is going to periodically police these serious environmental situations? Let me guess. We, the community, who also bought our property in good faith will be the ones. We will now be faced with the daily task of worrying and running this giant out of place Construction Company. Last week she was told by an inspector at the Health Department that at the Dettor Building where the Music Company is located that their septic has failed because of the occupancy overload. Will they have to start having their water tested for E Coli and hazard chemicals? Transportation to and from the site has been proven to be quite challenging for Faulconer employees to just utilize this area. To make a long story short when the accidents start accumulating just remember that this community told you so in advance over and over again. What concerns should we have of the vehicles that have no emission controls due to the fact that they are diesel? Doesn't all of this and what others have expressed to you proven to be true and how long and dangerous the Faulconer site is for this location. Please, please reconsider. It is okay to say no to Faulconer. She thanked the Commission for their time.

Steve Hunter stated that a few months ago he watched a woman die trapped in a crushed minivan that was broad sided by a delivery truck at the intersection of 250 and Tillman Road. This is the very same

intersection that the oversized heavy industrialized trucks of Faulconer Construction will be using if you approve this project. It is not a question of if there will continue to be serious and perhaps fatal traffic accidents, but when if you approve this plan. As our community planning representatives, you have the responsibility to protect our safety, especially the safety of our children. Morgantown Road and its intersections cannot support the heavy industrial trucks of Faulconer. In a meeting before the Board of Supervisors in July, 2002 Jack Sanford, the President of Faulconer Construction, stated, which was quoted from the minutes, "His two daughters were almost killed by a dump truck hauling out of Albemarle County into Orange County. Well, Mr. Sanford, what will you say to the family or families when there is a serious accident on or near Morgantown Road? What will you, our Planning Commission, say to the family or families after there is a serious accident? Vote against this unsafe irresponsible plan and feel proud to have listened to the community and acted in their best interest. Thank you.

Adele Wood stated that she moved to Albemarle County in 1962 and in Ivy in 1978. She stated that she lived on Country Lane. She stated that she would like to quote Thomas Jefferson concerning what he said about the University of Virginia. "For here we shall not be afraid to follow truth no matter where it may lead nor to tolerate any error so long as reason is left free to combat it." I propose that the situation that they are in here of Faulconer Construction Company moving into the heart of the Village of Ivy is an inappropriate and unwholesome use and would disturb the town of Ivy. She stated that she was a guide at Ivy Creek Natural Area and a member of the Virginia Native Plant Society. Most people don't realize that they have a growing problem of non-native invasive plants that are just spreading throughout this County. Most people don't know what they look like. Thos non-native invasive plants begin on disturbed soil. Faulconer Construction Company moving into that site is going to disturb our community that is already a healthy mixed community. She suggested that an alternative site be given to Faulconer Construction perhaps in an established industrial park. She asked the Commission to please not let this injury to our community occur. She asked that the County please to consider everybody's needs here and come up with a contemporary solution.

Christopher Gulla stated that the relocation of Faulconer's heavy road construction facility to a site in a residential area near Virginia Murray Elementary School and a daycare center will endanger the residents of Albemarle County. A concerned group of citizens have made these dangers clear to County staff, but these complaints have been brushed aside so that they could accommodate Faulconer's desire to move its facility to this site. By accommodating Faulconer, staff has failed to act in the interest of its citizens. In particular staff are choosing to ignore the impact of the heavy truck traffic on Faulconer's only exit from its facilities Morgantown Road. Faulconer's trucks will likely be traveling in front of Murray Elementary and a daycare center located on this road. These heavy construction trucks, some carrying over sized loads, will be traveling on that road. This road is so narrow that VDOT has choosen not to paint lines on it. You saw a picture of it. It is already dangerous for school buses to pass by other vehicles, for vehicles to walk to school and for parents to drive their children to school. Adding heavy road construction equipment to this road is an absolutely ludicrous idea given the current condition of this road, especially since it is used to carry so many school children. County staff is apparently choosing to ignore that Faulconer will likely store up to two tons of explosives and 100's of gallons of fuel on this site. To put this into perspective, the Oklahoma City truck bomb was estimated to contain less than two and one-half tons of explosives. Who in their right mind would allow even temporary allowing storing explosives in those amounts so close to the children attending Murray Elementary, daycare center and residences? The noises generated by the body shop, machine shop and the truck engines themselves will also have a significant impact on classroom instruction at Murray and daily life for the residents living in the area. County staff is also choosing to ignore the impact of the truck traffic on the nearby intersections that Faulconer vehicles will use being the intersections at Faulconer and Route 250, Tillman and Route 250, and Morgantown and Tillman are already unsafe. Fatalities have been recorded at least at one of these intersections recently. A new traffic light is in the planning stages at the Tillman/Route 250 intersection. Everyone who travels on Route 250 near Morgantown Road can expect to experience a marked increase in congestion due to Faulconer's heavy truck traffic. Additional traffic accidents at these intersections since they will even now be more dangerous can also be expected.

Andrew Wright, member of Ivy Community and a parent of two students at Murray Elementary School, stated that he would limit his comments to the danger that this development poses to the Ivy Community. Today's Daily Progress quotes Ms. Amarante as saying, "The staff and VDOT always look at public safety issues. All public issues have been addressed by Faulconer both on and off site." He pointed out that this statement is very confusing. In Faulconer Construction's preliminary site plan discussion written by Ms. Amarante on February 4, 2003, she states that current road conditions near the site are not optimal, but that the Zoning Ordinance limits site plan review to safe and convenient access, circulation, parking and pedestrian ways proposed on site only. Her final site plan comments do not address public safety at all. VDOT's Jim Byran has said that Faulconer could only be asked to make voluntary traffic changes with regard to safety on off-site roads. Thus far, they have decided not to drive oversized loads past the schools. Have these off-site public safety issues been addressed by staff, VDOT and Faulconer as was stated in the newspaper today or not? Is this just more of the spin being thrown around about this development and that Faulconer really has considered all of the safety concerns and that Faulconer really is not a heavy industrial operation. Then there would be no more of these issues because Faulconer really believe that he presents no danger to our community. Anyone with common sense can see through these flimsy statements and realize that it makes not sense to have this type of heavy industrial development next door to our schools where our only access is on narrow roads through residential neighborhoods. We reject Faulconer's intentions and we ask you to do the courageous thing and reject this site plan as incompatible with the site under the Rural Areas of our County and within our community.

Rachel Cooke stated that when she drives by a big truck that it scares me.

Leah Ruth stated that she would be very sad if she could not ride her bike safely in front of her house.

Faith Hatter stated that there are horses near Murray Elementary School. The noise might spook the horses and they could break the fence, which could cause the horses to endanger the school buses. The horses could run into the road and get hit, which would make the owners sad. Or the horses could run away, which could worry the owners. Please don't endanger the horses. Please don't approve the Faulconer project.

Simon Harvey, resident of Broomley Road, stated that he had two children with one going to Murray Elementary and the other to Millstone Preschool. He noted that he had not been part of the whole vocal thing concerning this project because he did not realize how bad this project was looking. After sitting and listening to everybody's comments tonight that it was scary to think that this has got has far as it has. He stated that he had been a part of other developments in other cities. He stated that he had seen corporations find ways around laws and then the public officials had a hard time to combat that because they were held by the same rules. He felt that they could use the noise issue as a hammer to stop this. He felt that it would have to be an issue. He felt that kind of machinery would definitely exceed the noise limits of the County. What does happen if this goes forward and the unthinkable does happen? Two years ago and four days the unthinkable happened in this Country in New York. We should think about what happened there and think about maybe things happening like that closer to us. We always think it is going to happen some place else. What is happening here seems to be something that should be happening in a big city where industry is developing. People have moved to Albemarle County to get away from the big cities and yet we seem to be creating something in a small village that does not belong in a small village not along a County elementary school and a preschool. It is just beyond me how anyone can add their name to a list to say that this is okay. He asked if they don't care about our children. He stated that he thought that they actually do. He pointed out that the people who had come to this meeting tonight really care about the children. He felt that if everybody sat down and thought real hard that he would think that they do too. It is just hard for them to find a way to say no. While if noise is the issue, then let's use that as the issue. They need to find the way to say no. He pointed out that this site plan needs to be finished.

Lyle Solla-Yates stated that his parents live in Ivy and he is an urban planning graduate from UVA. He 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." People

have a lot of different ideas in what the public interest is. The plans have named out some basic principles.

1. A planner must have special concern for the long term consequences of present actions. Maybe a big dangerous Faulconer Construction Firm makes economic sense in Ivy right now, but will it in five years? How about in twenty years? Will the tax revenues make such a difference that the long term threat to child safety and environmental quality can be ignored?
2. A planner must pay special attention to the interrelated mix of decisions. Breaking the zoning rules to benefit Faulconer will hurt the community for consequences in every area. Child safety will suffer. Walking will be less safe. People will use their cars more and traffic will be a problem. There will be more accident deaths. Anyone can see where he is going with this. He felt that breaking rules for a company is just bad policy.
3. A planner must have full, clear and accurate information on planning issues to citizens and governmental decision makers. The neighbors were not told for 23 days that there was a meeting, and some were never told.
4. A planner must strive to give citizens the opportunity to have a meaningful impact on the development of plans and programs. Participation should be broad enough to include people who act for formal organizations for influence. They had to hire a lawyer and form Eyes on Ivy. This would be a classic example of planner's telling people instead of asking what should be done, except it was kept secret.
5. A planner must strive to extend choice and opportunity for all persons recognizing a special responsibility to plan for the needs for disadvantaged groups and persons and must observe the operation of policies, institutions, and decisions which oppose such needs, such as children's lives.
6. A planner must strive to maintain the integrity of the natural environment. Critical slopes were a big deal when discussed previously. Also, the EPA recently discovered that diesel emissions are responsible for 80 percent of the added cancer risks in Albemarle County. Those tractors will make the children much more likely to get cancer. He stated that they could see schoolcard.org for more on that.
7. A planner must strive for excellence in environmental design and endeavor to conserve the heritage of the built environment. This product violates the core of principles of urban planning. I am shocked that this plan made it this far, as many other people have mentioned. He pointed out that he felt that he was going to be an old man before this was over. But, the Planning Commission can still do the right thing.

Beryl Solla stated that she hoped that the Commission would pay attention to the spirit of the law and not figure out a way to circumvent the law. She asked that the County represent the people who have attended all of these meetings. She asked who the County lawyer represents, Faulconer or the people? She asked who the Planning Commission represents, Faulconer or the people? She stated that she had one last question. Last time one of the Commissioners referred to the fact that Faulconer bought the property in good faith. She asked if it meant that it was good faith that they could subvert the law and that they could go around zoning restrictions and be allowed to pollute. She asked if they could in good faith be allowed to do whatever they liked. She pointed out that the citizens bought their houses in good faith and their good faith included obeying the law and zoning rules to keep their homes and environment safe. She asked that the County give them the same respect that you gave Faulconer's good faith purchase. She thanked the Commission for the opportunity to speak.

Carolyn O'Neal, resident of Peacock Hill, stated that she also was the manager of Peacock Hill Service Company, which was the water and sewer company in Peacock Hill. The purpose of her speech was just to comment on Shawn's comment that there was going to be 5,000 gallons of petroleum products on this property. She asked what the County has planned in case the water on Morgantown Road is

contaminated. In Peacock Hill they had a situation about six years ago where because of the drought they were running out of water. They petitioned the County and told them that they were in a bad situation and asked if they could help them out by extending the pipe lines to Peacock Hill. The County told them flat out no since the pipe line goes just a little bit beyond Bellair. They were told that it would be a million dollars to extend the water pipes to where they were to Peacock. They were also told that Ivy was a low growth area. Therefore, they felt that was it and they would not try the County anymore. Therefore, they went and raised a lot of money, obtained two loans and then sunk two new wells and they doubled their production. Now Peacock Hill has plenty of water and it is a great place to live. She wondered that since the County has stated that they won't bring County water to Ivy what they will do if the water is contaminated for Murray Elementary and the other houses on Morgantown Road. She pointed out that it will be very expensive to truck water out to that area. In a newspaper article on July 27 regarding when the Authority hears water options, the Rivanna Water and Sewer Authority presented some choices to the County at a cost of over 70 million dollars to deal with your water crisis. According to the paper, if they do nothing the water supply will meet the demand until 2008 if no action is taken. She stated that Peacock Hill could sell them some water, but it sounds like the County is not prepared to bring water to Ivy if something happens to deplete the water. Therefore, she asked the Commission to vote against this site plan.

Michael O'Neal, sixth grader at Henley Middle School, stated that he attended Murray Elementary School from kindergarten to fifth grade. He stated that he was present to read them a speech originally spoken by Mr. George Bailey to the Albemarle County Board of Zoning Appeals hearing on September 11, 2001. Mr. Chairman, I live in that district, and we have heard a lot of lawyer talk here today. But, let's talk some common sense talk. You see a picture of a little car going up the road with probably some three children beside of the road. Let's say here comes one of these great big trucks. It speaks plain to us in these pictures that when the trucks are over there in evidence meets this little car who is going to get over in that side ditch. The children, the mother and the little car will get in the side ditch so that the big truck can come by. It sort of boils down to heavy industry or light industry and common sense speaking. I just feel that nothing there would be light industry. It is heavy industry any time that you have equipment as big as that. You have got a field here that must have 20 great big earth movers in it. That is heavy industry. Common sense will tell you that is heavy industry. That is not light industry. I walked to school on that little road and it has not changed much. I walked it yesterday, in 1934, 1935, and 1936. It is just about the same road, but it might have been resurfaced. It was fine then because they had little '34, '35 and '36 automobiles. We did not have this big earth moving equipment going up and down that road. For a piece of equipment coming out from the Ivy Business Park you have to come upgrade. If you go left or right it is nearly impossible to get on to Route 250. All of those roads going into Route 250 are not safe for heavy equipment. I was a lawman from 1955 to 1987 and I worked many accidents down there at Ivy. I worked more of them up there where you cross Turner Mountain at 676 and 250. There were many, many accidents between cars. The speed limit is 55 miles an hour and he just don't believe that heavy equipment could get out into Route 250 safe at any of those intersections. To get one of those long pieces of equipment out entirely he felt that it was impossible to get it out there safety. So it would jeopardize everybody that travels on Route 250's lives when you travel that road with all of this equipment coming back and forth into Route 250. Let's say this, buses. We know that a lot of buses travel along Morgantown Road and they meet some of this heavy equipment on the road, especially along Murray School where the children are. Who is going to get into the ditch would be what he would ask you? Who is going to get into that ditch when they meet this piece of equipment? I would never take a chance on heading onto that heavy equipment. I would never get into a ditch and let them come by. But that is what you are going to do if you meet that big piece of equipment on that road. You will have to get into the ditch and let it come by. He would guarantee that they would not slow up and let you come by. He stated that he could just not see it and it should not be allowed in this district.

Diane Behrens, with the Albemarle County Schools, stated that Doctor Castnor, the Superintendent and she, have been talking about the final site plan. She offered the following comments on behalf of the school division. The school division recognizes the limitations of the planning review for this by right site

plan, but the school division retains its concerns. The concerns include how the proposed Faulconer use will affect the school use with oversized traffic conflicts on Morgantown Road, increased noise levels, provision of adequate water quality and fire protection, and the generation of toxic fumes. Effects on school use will be monitored and school staff will follow through with requests to Faulconer to make voluntary restrictions or changes in use and/or with legal zoning enforcement as the case may dictate. An example of a request that she makes if the request does go through would be to ask that their truck traffic on Morgantown Road could be eliminated during the drop off and pick up times of school. If you allow this to go through, then they will monitor, try to be cooperative and try to work out a solution to ensure that the safety of our children on that road come first. She thanked the Commission for the opportunity to speak.

Kate Hunter, a resident of Ivy, expressed her concern for the Planning Commissioners who like all of the Ivy residents here like to sleep well at night. If an accident occurs as a result of explosive material being store temporary at the site proposed by Faulconer, then everyone will be asking who approved this. Who allowed these materials to be stored next to a pre-school and to an elementary school in the midst of a residential neighborhood? Heaven forbid if these questions were ever to be asked you would not be sleeping well. You along with all of the affected families would probably not sleep well again. This plan should not be approved because there are other options that make much more sense. She stated that she certainly hoped that they agreed.

Buzz Gagnebin stated that he was a recent purchaser of a residence in Ivy with his wife, Constance. Perhaps the term recent may limit my qualifications to speak before you this evening. However, perhaps a fresh common sense outlook from this humble attorney from Boston who has fought many land use battles in New England might be of some use. First, he knew that the speed limit on the Morgantown Road from the Ivy corner up past the Murray School is 25 miles per hour. Assuming that the County knew what they were doing when they established that speed limit, he felt that it says to him that road needs to be driven with special care. He finds it hard to shed the title of irresponsible to permit perhaps the largest physically and heaviest vehicles that could travel any of the roads of the County to travel Morgantown Road repeatedly by scores each day, which the County itself has labeled as requiring special care to travel. Secondly, he noted that the property under review this evening slopes significantly downward from Morgantown Road. He asked that they envision with him the scene of some morning when the heaviest land use moving equipment known to man has to be transported to a new site. There will be maybe one-half dozen of trailers lined up to receive this heavy land moving equipment. It grinds its way onto the trailers at high pitch traveling to the center of the beds where it will be tied down for safe transport. At that point the trailers themselves with the engines straining at high revs will grind their way up the slope to Morgantown Road. Now he finds that hard to believe that will be less than 60 decibels for less than five minutes. They have heard statements from the representatives of Faulconer this evening saying that it will. You and I know that once the permit is issued the operator of the site will do what it darn well pleases and then the residents are set upon to hire an attorney and an engineer in order to fight the battle at great expense. He urged the Planning Commission to deny this permit. He stated that he finds it, as many others have, surprising to have ever gotten this far. He thanked the Commission for their attention.

Andy Grider, Principal of Murray Elementary School, stated that he was here tonight to express some of his concerns related to the final site plan for the Faulconer Construction Shop. As the Principal of Murray Elementary one of his primary concerns is establishing and maintaining a safe and positive instructional environment. After all a safe school environment is one of the correlatives of an effective school. At Murray Elementary they are committed to providing the best educational atmosphere possible for our students. And so it is in this light that he asks of this body to consider some of his concerns. It is still not clear how the proposed Faulconer Construction site will affect the school with oversized traffic conflicts on Morgantown Road. Specifically, how will this oversized increased traffic on Morgantown Road affect the arrival and departure of buses during school hours? There is also concern related to increased noise generation as well as potential fumes emanating from machinery and vehicles. Finally, because Murray Elementary School derives its water supply from an underground well there is concern regarding the

provision of adequate water quality. It is our hope that Faulconer Construction would share our concerns and make every effort to work with us on providing a safe educational environmental for the students, staff and volunteers who work in our school. We at Murray are committed to providing the best educational environment possible. But, in a larger sense we are all responsible for the safety and security of students and staff who work in our schools. So he asks the Commission tonight to please consider his concerns as you make your decision.

Mr. Ramazani stated that his grandchildren got tired and hungry and had to leave the meeting. He stated that he wanted to say a few words. As being one of the oldest residents of Charlottesville, he immigrated to this blessed land 52 years ago. He has been as a professor of law and government at the University since 1954 and was so called retired at the moment. He stated that he was struck by one thing in terms of his 50 plus years of dealing with law and the interpretation of law, which was the key. The ordinance interpretation which he has looked at as closely as possible that is dated June 26 as a memorandum to the Director of Planning and Community Development by the Zoning Administrator. The careful reading of this document states in the last sentence of this that the "key issue" is the use of the contractor and not where the use takes place. It is the use of the contractor and not whether or where the use takes place. All of the remarks that the Commission has had is about the where of the use. In terms of environment and in terms of threat to life, which was Jefferson's first right. Jefferson's first right was for the right to life and for property, and after liberty only comes the pursuit of happiness, which is interpreted to be that of property. He urged the honorable Commission to look at not the letter of the law and the strict construction of it, but to the spirit of it and the objectives of those people who have come here to speak before you and that you do have the power to think whether this would be in the public's interest in the best sense of the term. As he said, he has been here for 52 years and 4 of his children that have been born here went to these schools that you are talking about tonight. My oldest is 50 years old and is a professor of French literature. My youngest is sitting here and is the professor of English literature at the University of Virginia. I now have 6 grandchildren and these are children of Albemarle County. He urged the Commission for their welfare and for all the children as well as his own grandchildren to consider this in terms of not only the use of the contractor, but where in fact his use is going to take place. He thanked the Commission for their time.

David Carr, as a fellow resident of Glenaire on Tillman Road across from Route 250 and a member of the 250 West Advisory Committee, that he was concerned about the impact of this project on public safety and the surrounding area. He was concerned for the schools which his children attended. The Tillman Road and Route 250 intersection as well as the Route 250 and Morgantown Road intersection were both going to be impacted. Planning staff said last week that they could not look at off site impacts. As an attorney, he disagreed with that legally. Furthermore, as a policy matter it would be irresponsible to ignore off site impacts. If the use will harm existing residents and users, then these impacts must be considered. While a property owner has the right to develop his property, it must be done in a way that it does not harm the public good. An office building at this site may be acceptable. There are some that are there now. However, having a heavy equipment repair facility and moving this equipment in and out of the area does present adverse impacts on local residents, schools and school traffic. The Tillman/Route 250 intersection is a busy and dangerous intersection. Adding heavy equipment to that intersection with existing school buses is clearly a problem, not to mention the addition of 70 trucks a day. The western end of Morgantown Road at the intersection of Route 250 is an even worse intersection and school buses are not even allowed to exit at that point. He asked that the Commission look at the larger picture on this project and deny the application for the site plan and its heavy equipment repair yard. Most of the people in Ivy do not want our roads rebuilt or expanded to accommodate heavy equipment and growing traffic. They would prefer that these industrial uses and growing traffic use Interstate 64, which was built to accommodate them and leave the Ivy Community to continue as a residential community.

Mr. Thomas stated that there were two people who did not answer his call. The first was James Yates and the second one was George Sampson. He asked if there was anyone else in the audience who would like to speak on this application.

Greg Faust, resident of Ivy, stated that from the years 1992 to 2000 he lived in a rural county near Seattle. During the first several years of the eight year span Seattle was rated the number one place in the country to live. But, unfortunately Kent County was out of terms in terms of being able to bridle the development that was taking place there, as well as the adjoining counties. Within a five year period, Seattle went from the number one place in the country to live to the number three worse traffic city in the country behind only L.A. and New York. Is this because Kent County had things on their website like we love development? No, they had the same kind of verbiage about maintaining the rural quality of life as is contained in the Albemarle County website. Is it because their staff, administrators and elected officials were bribed by developers? Not, to his knowledge. He felt that it was because they had a lot of hard working overworked county employees, staff and administrators that were under siege by developers. Let's face it that for developers their job in life is to get plans approved to get permits approved. They have lawyers that do that. But, how often do you see the public. Normally you don't see them at all. Normally the developers meet with the staff for 20 to 30 hours per week. Therefore, they know actually what is going on in the county. This situation is very weird to have gotten this type of public response from the public time and time again concerning the Faulconer site that you rarely see in such matters. Now that Charlottesville is rated number one in the nation as the best place to live and Albemarle County surrounding it, do you want in five years to be the worse county in the country or to be headed down that direction as Kent County and the other counties surrounding Seattle? He felt that this was going to be a potentially precedent setting case. It is time to say no to this project so that they could get back to actually doing what that nice verbiage on the web site means. It can only happen if the people maintain the intent of that verbiage under the assault that the developers are putting you under.

Kathy Butler, resident of Ivy, stated that she lived about a mile from Morgantown Road. She thanked the Commission for the opportunity to speak. She stated that she had been listening to a tape which said to seek first to understand, then to be understood. She felt that really applies here tonight because it appears that the Commission is really listening to the public. She stated that she has been a trauma nurse for over 20 years and manages the Trauma Center at the University of Virginia. She stated that she knew what it is like to look into the eyes of family and friends and listen to them say why did this happen and couldn't it have been prevented. Someone mentioned earlier the term accident. That is no longer a term that is used in the inter-prevention literature because most injuries can be prevented. They are not accidents. They have an opportunity to prevent injuries and deaths in this particular situation. I am going to offer my services as Trauma Program Manager to the individuals in this audience should there be an injury that survives to make it to the Trauma Center because of this Faulconer situation or any situation for that matter. One of the things that she does when going in on serious injuries is work with the families to help notify anyone that they wish to be notified so that they can come to the hospital and help support them or help them understand what has happened to their family. She stated that she offers that assistance even if it includes notifying anyone that is here tonight if this Faulconer project goes through. This is a road where on a weekly basis adolescents walk horses across it. How many roads in Albemarle County does that occur on? This occurs within a mile of the entrance to this site. She asked the Commission to continue to listen and try to understand so that they could also understand when they make their decision.

David Strait, resident of the Ivy community, stated that he moved to this area six years ago and it was stressed to him that this was an honor code based society. In taking that into consideration, the deception that they had all been plagued with just does not seem honorable.

John Tranero, a resident of Glenaire, stated that staff should make a staff specific consideration and consider the context of the proposed use rather than just considering the minute details of the zoning laws. Thus the staff should approach the suspect in the sense that the health, safety and welfare of the public have not been considered outside of the narrow interpretation of the zoning ordinance. The number of vehicles per day is not consistent with the road bearing capacity or the horizontal or vertical alignment of Morgantown, Tillman and Route 250. Furthermore, the weight of the vehicles exceeds the thickness of that asphalt. An excavation contractor of this size is not consistent with the idea of light industrial use. The sound levels are not well documented. Heavy equipment operators tend to turn the

machinery on and leave it on. The decibel remarks made earlier are probably inaccurate. The office function is truly the accessory use because it is meant to support the operation of the business itself and not the other way around. The business is heavy excavation. The accounting and managerial functions of the office should be seen as subsidiary to that. Where does the liability lay for the inevitable vehicular accident with all of these roads? He asked if was with the County officials or the contractors? The environmental issues of the site don't seem to be very well addressed. There does not seem to be any protection of the stream from the pollution generated from the site. There does not seem to be an enclosure for oil spills and so forth. There does not seem to be blast protection for the explosive sites. There is too much development with too much water run off. He asked that the site plan not be approved and that Faulconer find another location.

Patty Cornell, new resident of Glenaire, stated that she was a former employee of Albemarle County and worked for a builder. She agreed with the points made by everybody else. She asked that the Commission look into their heart and do what they think is right. Mr. Faulconer has a right to put his business in, but she did not think this was the appropriate place. This is one opinion of one person and one taxpayer. She stated that her children go to Murray Elementary and she did not want the explosives to be kept on this site. She pointed out that Mr. Faulconer was not going to be able to guard his site all the time and some child might end up causing an explosion that would hurt everyone. She stated that if you think her going BANG is loud, just imagine it if it blows those explosives up. She pointed out that today she drove down the road in her Geo-Tracker and the other car she met had to almost stop in order for both vehicles to pass. She asked that the Commission vote against this because it was the right thing to do. There are other areas in the County that would be suitable for this heavy industrial use.

Carolyn Barnes, an eighth grader of Henley Middle School, stated that her two younger siblings go to Murray. She stated that after listening to the voices of her community, she realized that she could not leave without adding something. She felt that the construction site would ruin the cozy family atmosphere that currently existing at Murray. She stated that she did not want to see that happen. She stated that she did not want her sister to grow up with noisy machines and explosives near where she is trying to learn and build an education that she will need in her future. She stated that they must say no to Faulconer. Again, please say no because you have the right.

Jim Willis stated that my wife and I own the property to the east of Dettor Road on Morgantown Road. She operates Millstone Preschool at that location. He pointed out that his wife had asked him to come and express her views. Fifteen years ago when they were looking for property to build Millstone Preschool you could only do it on commercially zoned property. They looked to the west of town where there was really not much commercially zoned property. Therefore, they searched for a piece of land that seemed reasonable that they could get a special use permit on. They tried on four different pieces before they finally found the place on Morgantown Road next to an elementary school surrounded by a business park that had a clock company, a mail service and things that seems to be consistent with a business park. One of the pieces of property that they looked at was in Crozet next to a veterinary clinic. At the night meeting when they made their presentation, the doctor got up and just said that they were idiots to build a daycare center next to a veterinary center and they were going to have 30 little faces look out at you each day. This went on and on about why this was a bad idea. The members of the Board of Supervisors looked at him to see what he was going to say. He stated that his wife was sitting next to him just looking at him. He pointed out that he said nothing. He stated that he asked his wife why they would want to build something next to somebody who does not want us there. The public has said over and over again to Mr. Faulconer that they don't want this use on this site due to the safety concerns associated with the road. He pointed out that at the last meeting he heard that they thought this was stale zoning. He felt that really sums it up. Do you really believe that this zoning would be approved today if somebody brought this in to put it in the middle of Ivy? He stated that he did not think so. Let's turn this down and let Faulconer find somewhere else that is more appropriate for what they are trying to do. Please, let's say no.

Roger Ruth, resident of Albemarle County for 27 years and a professor at the University of Virginia in Otolarynogology, stated that he shared the concerns of the community in regards to the noise levels that would be produced and the inability of Faulconer to diminish that noise level. He stated that his specialty was Otolarynogology and hearing science. He has been a member of the Acoustical Society of America and the American National Standards Institute for about 30 years. He stated that he had previously served on committees having to do with sound measurements and things. He stated that the average noise level would probably be about 90 dBA for that. That means that houses or schools within about 2,000 or 2,500 feet of that may receive sound levels that would exceed those permitted by the County ordinance.

Jack Sanford, President of Faulconer Construction Company, stated that he was here to speak on behalf of the issue at hand tonight. They have worked very hard for the past three years to provide a safe environment under the current zoning levels that they heard the principal at the school speak about. He pointed out that it was his belief that the zoning laws were written for all citizens. That includes those that are applying for a request and those who might be in opposition to an issue. He felt that the staff report cites that over the past 2½ years that they have applied and complied with every condition and every request, every alternation, and every amendment that has been put forth to us under the law. He asked to point out to the principal concerning his remark that the traffic was not clear that over the last 30 years they have cohabitated on Woodburn Road, which is a much smaller county road than Morgantown Road. It has a neighborhood, apartment buildings and Agnor Hurt School. He pointed out that the school bus turns around in their driveway every day. Also, he pointed out that the children walk to the SPCA to feed the animals several times a year. That is not to say that an accident could not happen, but he could tell them that it had not happened. As far as noise complaints, they have never had any. To my knowledge in the 35 years of business at this location, they have never had a complaint from the County about noise of any sort. There was mention tonight about the fuel storage. He stated that you would not be able to find any storage facilities on their site plan. There was mention several times about dynamite. He stated that they were not planning to propose any kind of storage of dynamite. He stated that they had hired professional engineers to design more than adequate BMP facilities to catch the run off. The critical slopes had been reduced. The landscaping has been increased. The shop and office facility are using about 21 percent of the total 27 acres. This facility will be completely buried in the trees to the back of the site against the railroad tracks. He pointed out that he could not speak to the decibel level of the railroad, but that he could tell them that it passes his office several times a day currently and it was much higher than anything that they would be utilizing at that site. He pointed out that he just received the email this morning concerning the decibel levels. Therefore, he was sorry that he could not respond. For full use high RPM in the field decibel recording was not something that would be done at this site. He asked that they take these concerns under consideration and grant Faulconer the approval for the site plan.

Jim Heilm, long time resident of Albemarle County, stated that he was the CEO and President for Worldstrides, which was one of the largest employers here in Albemarle County. Every year they bring tens of thousands of young travelers to the State of Virginia. Many of them come to Albemarle County to learn our history of Thomas Jefferson and the University of Virginia. Our job is very easy because Albemarle County is an easy sale. Part of why it is an easy sale because of the pastoral and natural beauty of our community. Placing heavy industry in the rural parts of our county are very inconsistent with our mission and as your mission as planners. He asked the Commission to take what they have been given tonight as very solid reasons for turning this request down for this site plan. He felt that the Commission had the legal means to do that. Therefore, he asked that they turn this request down.

(Note: Attachment 10 – Submission by Andrey I. Nikiforov, Ph.D. entitled, “Health Hazards Associated with Diesel Exhaust”)

Mr. Thomas asked if there was any one else in the audience who wants to speak on this request. He asked Mr. Carter if he had a rebuttal.

Richard Carter, Attorney for Faulconer, stated that he thought that what Mr. Sanford alluded to as the best evidence on the noise is their track record. Their track record is that they have been on Woodland

Road for over 30 years on a site one-third of the size of this site with neighbors consisting of single-family residences, multi-family residences, Agnor Hurt School. They have never had one complaint from the residents or the school about the noise. He felt that the noise was not something that needs to be boiled down into decibels for approval of this. Their track record shows what their noise is on a smaller more residential site than what is here tonight. There are a couple of things. He stated that his brother at the bar from Boston that he welcomed him to Albemarle County, but when he says that you all know that as soon as the developer gets the permit then they don't care anymore. But, not in Albemarle County they don't. In Albemarle County they do care and they will enforce anything that has gone wrong. As far as Ambassador Eagleburger and Professor Ramazani, who has great respect for, is that the problem is and the fact is that they are just plain wrong because what they are doing is legal. It is legal. It has been through the zoning administrator, the Board of Zoning Appeals, the Circuit Court, the County Attorney and the staff. He stated that he did not know of anything that has ever come before this Commission that has been scrutinized for legality more and in depth than this project. Now they have tried to be and will continue to be agreeable to disagree without being disagreeable. But, when we sit here and hear people say that what you are doing is legal, that is disingenuous and that is not right. When people say that there is not democracy here, that is absolutely not right. He stated that they have had three or four of these hearings and if this is not democracy, then he does not know what is. It is also disingenuous to say that this Commission and the staff and the County Attorney are not listening. My goodness, look at all of the requirements, conditions, hearings and the scrutiny that this has had. The Commission and staff are certainly listening. That is why they have done all of this. Somebody said that they are deceiving. They have not deceived anybody about anything. All they want to do is put in a use in a place that they have a right to use it. Now you placed conditions on it. The staff report came out last week and it said one, two, and three and so on and that the applicant has done everything that staff has asked. At 2:47 p.m. on Friday on a three day weekend the engineer says well I am a little concerned about this. He stated that he felt that they have met and exceeded everything that this Commission has asked and everything that staff has asked. Therefore, they ask the Commission to approve this final site plan.

Mr. Thomas asked if any Commissioner had any questions for staff. He asked Mr. Sanford to come back up and address a question.

Ms. Joseph stated that she would like to ask Mr. Sanford a question. She stated that Mr. Sanford had said that there would be no fuel on the site.

Jack Sanford stated that they did not propose any fuel storage facility such as was mentioned tonight, which someone mentioned as a 5,000 gallon tank.

Ms. Joseph asked if they were heating with heating oil and that there would be a heating oil tank on the site.

Mr. Sanford stated that there could possibly be a heating oil tank located on the site. He pointed out that he had one at his home as well.

Ms. Joseph stated that there was a whole list on the certified engineer's report that the project site contains an area for construction and vehicle maintenance and provides storage of vehicle fuels including the following: engine oil, hydraulic oil, drive training oil, transmission oil, and diesel fuel.

Mr. Sanford stated that was correct. He pointed out that they have on site a double row of storage tanks that are OSHA approved against spillage. It includes hydraulic oil, transmission oil, and engine oil, which was typically a 250 to 500 gallon individual tank. He pointed out that he misunderstood her question.

Ms. Joseph stated that the oil tank for heating the building was shown outside of the building, but they don't show where the storage is for this other stuff. She asked if the storage was in the building.

Mr. Sanford stated that it was not in the building, but would be outside the building in the gravel area.

Mr. Craddock stated that on the drawings it talks about phasing. How does this occur now? It states that in spring of 2003 the first phase occurs and then in the spring of 2007 for the second phase.

Mr. Sanford stated that the second phase was one in which they contemplate their second office building, but there is actually no plans yet and they needed to show what their future intentions were on the site plan.

Mr. Craddock stated that he had one other question about cutting into the right-of-way in front of the Evans property for the tapered turn lane. He asked if there was enough land in the industrial park to put in that lane without cutting that right-of-way in front of their home.

Brent Nelson, with Roudabush and Gale, stated that turn lane was required. That right-of-way turn lane was designed and approved by VDOT along with the dedication plat for the land to go to it. Therefore, that has been reviewed by both the Engineering Department and VDOT. The plat dedicating that land has been approved and recorded.

Mr. Craddock asked if they would have to cut that right-of-way in front of their property, and Mr. Nelson stated yes because that was a requirement.

Ms. Joseph asked Mr. Nelson when he looked at the entrance there were a bunch of pine trees. She asked where the area would be cut out to make that taper lane. She asked if he had looked at what the impact might be on those existing trees.

Mr. Nelson stated that they were just fulfilling the requirement and had not looked at specific trees. He pointed out that they had been told that it was a requirement and that VDOT does not take into account the impact on trees when it was a matter of safety. The turn lane was considered a matter of safety.

Ms. Joseph asked if the turn lane would have a shoulder and ditch line going across the entrance.

Mr. Sanford stated that there would be a ditch line and a shoulder.

Ms. Joseph asked if it would be located where the existing entrance to the residence is located, and Mr. Nelson stated that was correct.

Mr. Morris stated that he drove down Morgantown Road for the first time last week. He asked if that road was safe for your drivers to go down knowing that they are going to be catching other traffic coming the other way. He pointed out that it was a terribly narrow road. He stated that he was concerned about the bus drivers and the people who lived in the area. He stated that he was also concerned about Faulconer's drivers.

Mr. Sanford stated that he could only answer Mr. Morris as he stated before that they have cohabitated on Woodburn Road, which he felt was a much narrower road with absolutely no shoulder and a drop off ditch that was located in back of a school. There were athletic facilities used every day at that school and the school bus does travel the road that they traveled on. Their trucks intermingled with the school buses and other traffic on Woodburn Road without any problems. They have not had an incident on that road or anywhere else in the State of Virginia with their drivers. He pointed out that there were no guarantees to anything.

Mr. Morris stated that he was very concerned with the narrowness of the road along with the curve and nature of the road.

Mr. Thomas asked Mr. Carter to come forward to answer his question. He stated that there was a lot of discussion about 140 trucks or day trips per day. He pointed out that he had received emails that had it in there for three times during the last week.

Mr. Carter stated that the exact number of trips should be listed on the front of the site plan. It states that for less than a 10,000 pound vehicle there are 22 trips in and 22 trips out and 40 trips in and 40 trips out along the west. For the large vehicles on the east is for 2 trips in and 2 trips out and on the west is for 6 trips in and 6 trips out or 16 trips. This does not necessarily mean that there are going to be 16 trips every, but they have to give approximate numbers. He stated that most of the vehicles are crew vehicles

that are going to work at the office. That is the main number. There are over 30 employees in both facilities. That in itself is going to take over 60 vehicles per day.

Mr. Thomas asked if these employees would be coming to the site every day.

Mr. Carter stated that if and when this is built they would be coming to the office and the pole barns. The employees would be driving to the site and parking their vehicle.

Mr. Thomas asked if they would be taking a pick up truck and driving to whatever site they would be located.

Mr. Carter stated that was correct.

Mr. Thomas asked if there were any other questions for Mr. Carter.

Ms. Joseph stated that the cover sheet of the site plan talks about traffic generation and it says 22 and 40, but it does not say whether that is per day.

Mr. Carter stated that it was per day, but the 22 was heading in one direction and the 40 in another direction. This is an office that has vendors coming to sell goods. There are visitors and clients that come to the site. It is not a steady stream of people, but again when staff asked for a number they have to give a number that they think is reasonable and if any thing is on the high side. They don't want to give a number and then they get in there and somebody says that you said it was 40 or you said it was 30 and we counted 38.

Mr. Thomas closed the public hearing to bring the request back before the Commission for discussion and possible action.

Mr. Thomas stated that the first issue the Commission should discuss is the noise level that was brought up earlier.

Mr. Rieley stated that before they get into that, he had a couple of questions that Mr. Kamptner could possibly address. This issue has not been discussed much tonight, but there was a lingering question in regard to the disappearance of the 200 foot buffer twenty years or so ago. They all understand the sequence of the minutes. The one thing that he did want to have clarified is that whether or not there was any specific notification of the neighbors relative to the impact of that use of that land going from special use permit use to by right use and its effective impact on the disappearance of the 200 foot buffer. In other words, was the notification simply the County wide notification that went out to everybody or was there some specific notification that would have alerted the residents of that area to the disappearance of that buffer?

Mr. Kamptner stated that given the nature of that rezoning in 1980, which was comprehensive, the notice was probably broadcast or advertised to the public. The effect of the rezoning would not have illuminated that 200 foot buffer because it was a special use permit condition that was no longer going to be required. It is very unlikely that any notice was ever given. There are a number of special use permits that are referred to as conditional use permits in place at that time. For all of those uses that were allowed by permits that became by right uses, all of those conditions disappeared when the use became by right.

Mr. Rieley thanked Mr. Kamptner. He pointed out that was his understanding, but he wanted to clarify it. He stated that he had a two part question that was relative to the procedure. If they deny this site plan tonight or do not vote in favor of it, does the applicant have a right of appeal to the Board of Supervisors?

Mr. Kamptner stated that the applicant has the right of appeal to the Board of Supervisors or the option of going directly to Circuit Court.

Mr. Rieley stated that the second part of that question is if we approve the request, do the neighbors have the right to appeal.

Mr. Kamptner stated that the neighbors don't have a statutory right to challenge the decision in Court, but whether or not they have a common law right that he would leave that to their counsel to determine.

Mr. Rieley thanked Mr. Kamptner for his comments.

Mr. Thomas stated that he had two questions for Ms. Amarante. Does this application meet all of the requirements that we originally put on it as a Commission?

Ms. Amarante stated that it is staff's opinion as a whole that this site plan does meet all of the conditions of preliminary site plan approval.

Mr. Thomas asked if she could tell him what the requirements are for a water supply for a light industrial parcel like this being used as light industrial in terms of storage or a requirement for a storage area for a fire or something like that. He asked if there were any requirements.

Ms. Amarante stated that there were no requirements that she was aware of. The Building Official did comment on a similar question that was posed last Thursday. The Building Official said that it would be hinged on the design and the size of the building. Right now all they were looking at is a footprint of the building. Staff does not know what the ultimate size of the building will be. It could come in at a smaller size in terms of the building permit. Also, they don't know what materials the building will be made of, which is what determines the fire safety regulations and whether or not on site water will have to be stored for fire protection.

Mr. Thomas stated that regarding the repair shop, is there anything in the Comp Plan that requires a special use permit for that use.

Ms. Amarante stated no, there was nothing that staff was aware of.

Mr. Thomas asked if there were any other questions by any of the Commissioners.

Ms. Joseph stated that she had a question for Mr. Kamptner. There has been a lot of talk about why they can't use Section 26.12.1, vehicular access, as a means of review for the site plan. She asked if he could speak to why it is that they can't. It talks about vehicular access points shall be designed to encourage smooth traffic flow with controlling turning movements and minimum hazards to vehicular and pedestrian traffic. Pavement widths and strengths of both internal and external roads shall be adequate to accommodate projected traffic generated from the district.

Mr. Kamptner stated that he assumed that her comment was directed at the outside road improvements. The simple answer is that the General Assembly has now given us the authority to require off site road improvements for site plan approvals. The absent of this authority has been bolstered by a number of Supreme Court and Circuit Court decisions around the State. Localities who have attempted in the site plan process to get land dedicated to require off-site road improvements and off-site cash contributions for off-site improvements that all of their attempts have been rejected by the Courts because the localities simply don't have the authority to require that. It is a feature that is almost unique to Virginia Law, but we only have authority to act when the General Assembly says we have the authority. He stated that they don't have the general welfare power that would allow us to exercise beyond the specific statutory enabling authority.

Ms. Joseph asked if he was saying that the Commission cannot ask for an improvement.

Mr. Kamptner stated that the Commission could not require improvements as a condition of site plan approval off site. One limited exception would be as recognized in some cases where it has been identified that the need for those improvements was substantially generated by that project. Staff might be able to address it more, but Morgantown Road is already identified as being in state of needing some upgrading before this project can move on.

Ms. Joseph asked if he was saying that their denial could never be based on the fact that the roads are inadequate for this particular use.

Mr. Kamptner stated that was right because beyond simply the land use cases that he had discussed already the Courts have repeatedly said that the responsibility of State roads is the State's. It is the State's decision as to when public roads are upgraded and what the level of improvement is.

Ms. Joseph stated that she had another question about the sound. Mr. Carter mentioned something about five continuous minutes, and she thought that would just deal with the procedure for measuring the sound. She asked if that means that they are not going to consider it a noise or sound if it is not running for five minutes. It seems that this particular section only deals with how it is measured and the calibration technique, etc.

Mr. Kamptner stated that the County actually has two noise ordinances. One deals with land use and the five minute rated average test is the test that is applied for land use related noise impacts. That is where the decibel level standard is applied. The County Code also has a nuisance Noise Ordinance, which allows any citizen or the police to determine whether a particular noise is unusually loud and obnoxious or disturbing. It allows noise problems to be addressed in that way. It is separated from the Zoning Ordinance.

Ms. Joseph stated that she had some questions for Ms. Amarante. She asked why on the landscape plan that there are no screening requirements for the parking areas since within the landscape ordinance it talks about screening the parking areas from residential or rural areas and this is all adjacent to that. She also was wondering why there was no requirement for ground cover along the 2:1 slopes; why there were no street trees along Morgantown Road, which was required; why the buffer mitigation plan showing where there is going to be trees planted along where the streams are is not shown on the landscape plan; why these storage facilities for oil and fuel, etc. are not shown on the site plan; why the buffer zone note on the cover page says that no construction, clearing or grading closer than 30 feet from the RA zoning district and why it says 30 and not 50 feet. She also wondered about the explosives. If they put the note on the cover sheet that talks about the storage of dynamite, etc. does that mean that the County assumes the enforcement responsibility? She wondered why they were building 70 parking spaces if they only need 60 parking spaces. She wondered about the size of the sidewalk because the cover sheet says that it was going to be 4 feet and the plan shows that it was 6 feet. She wondered why the buffer on one of these pages for the stream does not come up along the whole stream buffer and it just sort of stops. What she was saying here was that she did not feel that this plan was in a final form at this point. She wondered why they did not get comments about the fact that there are 12½ foot high retaining walls around one of the office buildings that go down into the 2:1 slope. There is another tandem wall of 6 feet and 7 feet going towards the buffer area. She wondered why these things were not addressed and that at least they would have let the Commission and the public be made aware that was happening. She wondered why there was a dropped lens on one of the light fixtures that was in the pole sheds. She asked if this was something that they would not be able to see. She noted those drop lenses normally are not allowed. She was wondering why in the Certified Engineer's Report that we don't have any diesel emission levels. It just talks about the trucks will just be idling for some short period of time, but there are no numbers in there. She asked who is it that is going to make sure that happens. There are a lot of questions that she still feel are not answered. They have this storm water pollution prevention plan that talks about all sanitary waste shall be collected from portable units. She asked where the portable units are because that is not mentioned on the site plan. When you look at page 11, it is talking about the visual testing. She asked who would do the visual testing for the water quality, which involved looking into the streams and seeing what kinds of things are there. The examination must document observations of color, odor, clarity, floating salient, settled salient, suspended salient, form, oil sheen and other obvious items. No analytical tests are required to be performed on the samples, which is kind of interesting. She asked who does all of this stuff and who is considered a qualified personnel to do the storm water. There are things that are in the storm water that make her feel a little bit uncomfortable. It says that products where possible will be kept in their original containers. She stated that she did not know who regulates this. She stated that it was unclear where all of this was going and who is going to be responsible for some of these issues.

Ms. Amarante asked if she wanted staff to address each issue separately.

Ms. Joseph stated that she was really very concerned that the site plan does not feel as though it is completed at this phase. There is a containment area that shows a concrete apron around a building surrounded by a gravel parking area. No one is being shown where any of these other petroleum products are going to be stored and how they are going to be contained. The Certified Engineer's Report talks about how these things are going to be contained. But, for ground water they are only concerned about, for instance, the septic field. Ground water contamination could also occur from some of those other petroleum products that are going to be stored on the site. If they are going to be stored in that gravel area, then she was a little concerned. This is the headwaters for Ivy Creek and is going into the drinking water for Albemarle County and the City.

Mr. Thomas stated that he thought that the applicant said that the oil was stored in OSHA type containers.

Ms. Joseph stated that was fine if they were going to be stored in the building. But, they do show the oil tank for the heating supply on the site plan. She questioned why the other stuff is not shown on the site plan.

Ms. Amarante stated that they were shown on the plan. She pointed out that on sheet 4 of the site plan those things were shown.

Mr. Thomas asked Ms. Joseph if she wanted staff to address each of her questions individually.

Ms. Joseph stated that she would really like information about the landscaping and why the parking area is not being screened.

Ms. Amarante stated that screening is a requirement of the landscape plan ordinance, and as far as she was concerned that the applicant has satisfied the screening requirements. Screening can either happen through introduced plants that the applicant will plant on the site to screen parking or they can use existing vegetation. The applicant has done a combination of both to her satisfaction.

Ms. Joseph asked if she felt that there is enough evergreen plants or pine trees.

Ms. Amarante stated that she believed that the combination of the deciduous and the evergreens that are within the existing buffer and also the new plantings that they were showing was sufficient.

Ms. Joseph pointed out that the ordinance requires evergreen screening 15 feet on center.

Ms. Amarante stated that was true, but it also says that you can vary that in terms of allowing for existing materials to be used for screening.

Ms. Joseph asked about the drop lens lighting inside the pole barn. She asked if the pole barn had walls.

Ms. Amarante stated that she was not sure how many walls the pole barn would have. She suggested that they have the applicant answer that question.

Mr. Sanford stated that typically a pole barn has three sides.

Mr. Morris stated that he still had some questions concerning the Certified Engineer's Report in relation to the things that a lot of people have been addressing tonight dealing with the health, safety and welfare of the people around the site as well as the people who will be working on the site. He stated that he was particularly concerned about the noise levels, which had been addressed. He stated that regarding pollution that he was concerned that the diesel fumes were going to be blown right into the school area. He pointed out that issue has not been addressed very well in the engineering report.

Mr. Thomas asked that Glen Brooks address that issue.

Glen Brooks, Senior Civil Engineer, stated that the first thing to realize is that much of what the County reviews in the Certified Engineer's Report, especially in regards to air quality and water quality, is really

the purview of the Virginia Department of Environmental Quality. They are basically redundant. The Virginia Department of Environmental Quality has issued a general permit for industrial activity. Most of the stuff that Ms. Joseph mentioned, such as the testing for the discharge, has been addressed in the fact that the diesel emissions are less than the limits set by the State. These are all set forth in that permit from the Department of Environmental Quality. He pointed out that he had a copy of that general permit if anyone wants to look at it. It describes all of those things in more detail.

Mr. Thomas asked if the applicant receives a copy of that.

Mr. Brooks stated that this was faxed to staff by the applicant. He stated that he got the general permit off of the Department of Environmental Quality's website. He pointed out that they have a letter from the Department of Environmental Quality stating that they would obtain the permit at the requirements.

Mr. Thomas asked if any other Commissioner had any questions or comments for staff or the applicant. If there is no more discussion, then they are ready for an action or whatever the Commission's preference would be.

Mr. Rieley stated that he would like to make a couple of observations to get their discussion started. To begin he stated that at the previous hearing he had sympathies for the rights of the applicant, and he would still adhere to that. He felt that the applicant bought the property in good faith, and he bought property that had the requisite zoning in place for what he wanted to do. He stated that he thought that both Mr. Carter and Mr. Sanford are speaking truthfully when they say that they have provided everything that they were asked to provide. As Ms. Joseph's questions have pointed out, he felt that the question of whether they were asked for the right things is another matter. He liked Mr. Carter's opening at the last meeting that we could disagree without being disagreeable so much that he has stolen it and used it on numerous occasions. He felt that was the right spirit to look at all of these proposals. We do not and can not deny site plans because the general traffic level will increase and convenience is impacted. He felt that Mr. Kamptner's remarks have underlined that. We have often in the past held our noses and voted for projects that we did not like because they met the zoning and site plan requirements. He stated that he believed that they did the right thing in those cases. However, there are times when our general responsibility for the public health, safety and welfare must take precedence over the more narrow requirements of the ordinance. Mr. Ramazani alluded to the issue of looking at the forest or the trees and where the trees are the specific site plan requirements, and the forest is the general issue of the broader health, safety and welfare, which may not be addressed by a sum of the specific requirements. There were lingering questions on both fronts of the trees and the forest. He said that it was really unfortunate that all of this is being reviewed within a really troubling history that goes back to broken promises of over a quarter century ago**,** and about the disappearance of the 200 foot buffer 20 years or so ago. He felt that the kindest interpretation that can be put on it was that it was a major mistake. He thought that on the broader issue, the issue of whether they have the legal authority to look at this globally, that is to look at the forest rather than the trees, is one that they have to grapple with. Clearly, they cannot require off-site improvements. But, he did think that they had not only a right but a responsibility to take into account the more general impacts, some of which are off-site. In fact, they have a requirement to make an assessment of off-site impacts. He stated that he could not believe that they would be required to do an assessment if that could not be a basis for our action. In the final analysis, he felt that Sheriff Bailey was right. When he looked at this proposal with the kind of scale of traffic that it will generate adjacent to schools with pavement too narrow to carry the traffic safely and the hazardous entrances at both ends is in my view along with any other factors so egregious a threat to the public, health, safety and welfare he said that he can not support it.

Mr. Thomas asked if any other Commissioner would like to weigh in on that.

Mr. Morris supported Mr. Rieley because it was so important an issue that they can not afford to overlook it.

Ms. Joseph agreed with them. She stated that there were things that should have been asked of the applicant that are not on this site plan. It is an incredibly intense use to have to put in 12 ½ foot retaining

walls. They are intensely using this site. This is not our urban ring where we expect the land to be intensely used. This is in our Rural Areas where they are supposed to be a little bit gentler when they design our plans. There are too many discrepancies on the front page with the rest of the site plan. Therefore, she could not support the plan at this point.

Mr. Craddock stated that it was a different situation where he lived. His wife teaches at Stone Robinson. There is heavy truck traffic at Stone Robinson, but of course it is a mineral overlay district and there is mining going on. There is intense truck use there. Just about every two weeks there is usually an accident tying up traffic there, which forces everyone to go across Monticello Mountain that is not the best place to go either. Route 250 is a lot more passable than Morgantown Road. He pointed out that they have to put up with a lot of trucks. He stated that trucks don't sit, especially diesel trucks, unless they are idling. If they are not idling they are not making money. That school catches a lot of diesel drift and a lot of gravel dust from the truck traffic. Both sides tonight had great arguments for and against. It appears that Mr. Sanford did what they asked of him last time. But, there is something about this that just does not feel right. Therefore, he would not support it.

Mr. Thomas stated that the applicant has done everything that they could possibly do to meet the requirements of the Commission. He stated that he was also concerned about the health, safety and welfare. He stated that he finds it hard to go against what the applicant has set up the level for and met all of the requirements and bought the light industrial land with the intentions of using it. The applicant did look for other property in the County. Therefore, he would support this and ask the Commission for a motion.

Mr. Kamptner stated that before a motion is made that because this is a site plan that there are certain legal requirements having heard what four of the Commissioners have said to survey a motion to deny. The Commission needs to identify the Code sections that the site plan does not satisfy, and why it does not satisfy it, and then identify for the applicant what he needs to do to satisfy that requirement. He asked to take a little time to flush this out. That is what needs to be done if the motion is to deny the site plan. Another option available for the Commission is to defer action and identify what needs to be done and have those corrections made before the site plan comes back to the Commission for a final action.

Mr. Thomas stated that might be the best way. He asked what the Commission wants to do. He pointed out that he could not state the Code sections.

Mr. Edgerton stated that he had a concern that if they defer the site plan with additional conditions added that then the applicant does exactly what they request, which he has done with this application, and then at that point we will be presented with a whole new list of concerns. He felt that some of the concerns that were brought up tonight were not brought up at the previous public hearings. He felt that it was awful hard to respond on a Friday afternoon before a Labor Day weekend in a reasonable way. Therefore, if they do ask for a deferral, with the additional conditions added he would like to have it delivered so that there was enough time to be sure that they really do ask for everything that is necessary. It has been suggested that they did not ask enough last time. He felt that the Commission listened hard last time and they also have listened hard tonight. He stated that the concerns that have been expressed are very sincere and the concerns are real. But, he for one felt that the applicant has done what they asked him to do and he believed that they have an obligation to acknowledge that. He stated that he would have a hard time voting for denial on a project where the applicant has done exactly what they have asked him to do. That leaves him in a minority here, but that is how he feels.

Mr. Thomas asked if it was possible that the Commission could defer until they could get our conditions together or can they craft the conditions tonight.

Mr. Kamptner stated that they could do either depending on how many conditions there are. These would not be new conditions. Really what the Commission is looking at are the technical requirements of the Zoning Ordinance that you find have not been addressed in this final site plan.

Mr. Thomas stated that would include the ones that Ms. Joseph brought up. He asked if they could identify those tonight.

Mr. Morris stated that the ones that he had looked at, if he was following Mr. Kamptner correctly here, was Albemarle County Code Section 4.14.4, air pollution. He stated that he needed to get a handle on what would be the levels and what effect that will have primarily on the schools in the area, which is his main concern. Another concern is covered in Section 4.14.5, water pollution, which was brought up by Mr. Joseph. The next concern was the decibel level, which was found in Section 4.18 of the Code.

Mr. Rieley stated that once again he was speaking for the forest rather than the trees. Section 26.12 requires that a site plan within the district shall provide for protection of individual sites from surrounding adverse influences and also for the protection of surrounding area adverse influences recognized in 26.12.2.1 which relates to vehicular access.

Mr. Morris stated that it was very possible that these were questions that staff could address rather than the applicant.

Mr. Rieley asked to point out on Section 26.12.1, pavement widths and strengths of both internal and external roads shall be adequate to accommodate projected traffic generated both internal and external to the site.

Mr. Kamptner stated that he would follow up on Mr. Morris' comments. Section 4.14.8 regards the certified engineer's report. He asked Mr. Morris if he was asking that report to be more detailed to more specifically address those three concerns that he identified.

Mr. Morris stated that he believed that was where that information should come from as well as the noise level.

Mr. Kamptner stated that for everyone's information there is a companion section that ties Section 4.14 to the site plan that is Section 32.7.4.2, which requires among other things that the issues in Section 4.14 be addressed. He noted that some of these issues may be answered by staff, but he was not sure at this point.

Mr. Thomas asked Mr. Brooks if he could answer any of the things that they were currently discussing.

Mr. Brooks stated not beyond what he has said already.

Mr. Rieley stated that relative to Section 26.12.1 relative to the pavement widths for both internal and external roads shall be adequate to accommodate the traffic generated in the district from the site. Having done this for almost seven years he has seen a lot of graphic representations. He noted that he would have to say that the most impressive one that he has seen since he has been on the Planning Commission is one that has come back into his mind with the Lego truck and Lego school bus on a scale model of Morgantown Road that the youngster put before us. That issue is paramount.

Mr. Thomas asked Mr. Kamptner if they were legislatively able to require improvements outside of the site.

Mr. Rieley stated that was not what he was suggesting. He stated that he was suggesting that the use on the site shall be limited to what can be accommodated by the existing roads.

Mr. Thomas asked Mr. Kamptner if that could be crafted into a condition that they could work with.

Mr. Kamptner stated that this might be one that staff will need to provide further analysis to more expressly address 26.12 and 26.12.1 as they deal with the on-site issues and how they relate to the remainder of the area.

Mr. Thomas asked if that was something that they could take care of tonight.

Mr. Kamptner stated that it might be. Looking at 26.12 what it is asking for there seems to overlap a lot of what is required in the site plan ordinance, but that he needed to defer to staff on that.

Mr. Thomas asked Mr. Fritz if he felt comfortable with the staff getting the proper words into ordinance and engineering department requirements.

Mr. Kamptner stated that staff is asking for a recess so that they can discuss those questions.

Mr. Thomas stated that there would be a ten minute break to allow that discussion among staff.

The Commission took a ten minutes break at 9:20 p.m.

The meeting convened at 9:40 p.m.

Mr. Thomas called the meeting back to order. At this time he asked Mr. Fritz to read the language and explain actually what they were doing.

Bill Fritz stated that staff understands that the Commission is considering a motion for denial. Staff has been asked to develop some conditions that would address the issues. Staff has two conditions prepared. One is in reference to Section 32.7.4.2. The proposed condition would be, "Submission of a revised Certified Engineer's Report to address each provision of Section 4.14 explaining methodology including measurements of actual equipment where appropriate. The second condition addresses Section 26.12.1, which reads, "Submission of as-built plans and structural analysis to verify adequacy of pavement and strength of Dettor Road from Morgantown Road." Staff was also asked to develop a condition that would address the provisions of Section 26.12 which are external relationships. It is staff's opinion that they cannot develop a condition which would address the external relationships which would be defensible. Therefore, staff is unable to provide the Commission with any language.

Mr. Thomas thanked Mr. Fritz. He asked if any Commissioner has any questions for Mr. Fritz or if there is now a motion.

Ms. Joseph stated that she would like to add some landscape requirements in there that conform to the ordinance requirements for screening. Since she was concerned about the parking areas that if screening is not required, then she would really like to have some photographs and some information on what kind of vegetation exists out there. She asked staff to designate what kind of ground cover is going on those 2:1 slopes.

Mr. Fritz if she was talking about the street trees across the Morgantown Road entrance.

Ms. Joseph stated that street trees were covered in Section 32.7.9.6. Screening is covered in Section 32.7.9.8.c.2.

Mr. Fritz asked on the screening that section allows for the installation of a variety of screening techniques, which include but are not limited to planting double staggered rows of street trees or street shrubs at different dimensions or fencing or for the retention of existing landscaping which provides equivalent screening. He asked if it was her desire to have new plantings installed just flat out 15 feet or how did she want to handle the equivalent. He pointed out that he was trying to craft the language.

Ms. Joseph stated that she was very worried that they were looking at a lot of deciduous stuff and she wanted to make sure because the ordinance is very specific about vegetative screening shall consist of double staggered row of evergreen trees planted 15 feet on center.

Mr. Rieley agreed with Ms. Joseph. He felt that it was not necessary to waive that. He suggested that they stipulate that they be shade tolerant evergreen species like Hollies and Bayberries.

Mr. Thomas asked if any Commissioner had anything else to add.

Mr. Rieley stated that he did have something to add. With all due respect to our staff's reluctance to include it, that he felt that it was important that they do address the external and internal roads because it was very specifically spelled out in the Code. He felt that they should stipulate relative to 26.12.1 that certification that any vehicle that utilizes Morgantown Road is of a scale that can safely navigate a two way road like Morgantown Road.

Mr. Thomas asked Mr. Kamptner if they could be that specific on that.

Mr. Kamptner stated that the concern would be that this being a public road, absent weight limits, that he was not sure of any authority that the County has to restrict traffic on a public road.

Mr. Rieley stated that they would be restricting the traffic that uses the site that comes onto that roadway.

Mr. Kamptner stated that the problem with it being a by right use that becomes difficult.

Mr. Rieley stated that it does not sound difficult when you read what it says in Section 26.12.1. It says that pavement width's strengths of both internal and external roads shall be adequate to accommodate projected traffic generated from the district. It seems perfectly clear to me that as it is now it cannot accommodate this projected traffic. Why can't they limit site development and constraints on the site development in such a way that it will be consistent with the ordinance?

Mr. Kamptner stated that because it is a by right use and we cannot restrict a by right use based on external factors that the owner cannot control and which the County has not authority to require improvement.

Mr. Rieley stated that he would like to include that language and let's see where it goes.

Mr. Thomas asked if any other Commissioner would like to weigh in on that.

Mr. Morris agreed to include the language noting that it could be thrown out.

Mr. Fritz stated that there was one other condition that Ms. Joseph had talked about with the ground cover on the 2:1 slopes. He asked if Ms. Joseph had a section number for that. Staff could not find a section number because there was no provision in the landscape provisions for ground cover. The erosion and sediment control plan would require it to be stabilized with various ground covers. He pointed out that it was policy within the Design Manual, but not an ordinance requirement. He pointed out that they could request the applicant to do it, but could not include it as a condition of approval if it was not an ordinance requirement.

Ms. Joseph thanked staff for their information.

Mr. Rieley asked if Ms. Joseph's concern about the lighting being shielded had been addressed.

Ms. Joseph stated that it was just not allowed by the ordinance and she was just concerned because it was shown on the plan. She stated that the Commission was being asked to approve the site plan with that showing on the plan. Therefore, she was confused and concerned.

Mr. Rieley asked if the pole barn was opened on three sides and if the light would be visible.

Mr. Fritz stated that he would like an interpretation by the Zoning Administrator, but he believed that if the lighting was inside the pole barn, whether it had solid walls or not, that it was not going to be deemed to be an outdoor lighting fixture.

Ms. Joseph pointed out that the confusion was that it was shown on the photometric plan and shown to have specific light levels.

Mr. Fritz pointed out that it may be deemed to be an indoor fixture.

Mr. Thomas asked that staff make it a requirement and then check it out to verify the condition.

Ms. Joseph stated that there is a note on the site plan that talks about the explosives. If that note is on the site plan is Albemarle County then going to be responsible.

Mr. Rieley asked about the sidewalk width discrepancies of 4 and 6 feet.

Mr. Thomas asked what the sidewalk requirement was.

Ms. Joseph stated that it was 5 feet.

Mr. Fritz pointed out that there were 2 different sidewalks that they were talking about. Adjacent to parking the sidewalks need to be 6 feet. In other locations sidewalks can be 4 feet. He noted that could have caused the confusion in this case.

Ms. Joseph pointed out that it was the discrepancy on the note and within the site plan itself. There is also the note concerning the buffer zone. She asked if the buffer zone was 30 feet or 50 feet. The note says no construction or grading closer than 30 feet, but the plan shows 50 feet. She asked who is responsible for the explosives. Is it Albemarle County because of the note on the site plan?

Mr. Thomas asked Mr. Kamptner about the explosives.

Mr. Kamptner stated that it was to the extent that the four-hour limitation is a condition of site plan approval and the County would be enforcing that. That would be the extent of the County, at least from the Zoning Department's scope of enforcement. The Fire Marshall would regulate within his scope of authority and the State and Federal governments would also have overlapping jurisdiction.

Ms. Joseph stated that she was wondering what would happen if it stayed there for more than four hours. Who would inspect it? Then, would the County then be liable for that.

Mr. Kamptner stated no, because with the approval as with all of the Zoning enforcement it is usually dealt with on a complaint basis. They would have to rely on the citizens to report that. It is just the nature of the beast.

Mr. Thomas asked if there was anything else. He asked Mr. Fritz to summarize the list of conditions to make sure that the Commission is in agreement on that.

Mr. Fritz summarized the conditions:

1. Submission of a revised Certified Engineer's Report to address each provision of Section 4.14 explaining the methodology including measurements of actual equipment where appropriate.
2. Submission of as-built plans and structural analysis to verify adequacy of pavement width and strength of Dettor Road from Morgantown Road to the Faulconer entrance.
3. Provision of street trees across Morgantown Road frontage as required by Section 32.7.9.6.
4. Provision of a double staggered row of shade tolerant screening trees such as Hollies or Bayberries adjacent to rural area property as required by Section 32.7.9.8.c.2.
5. The lighting plan shall be revised to comply with Section 4.17.4.
6. Sidewalks and dimensions to be corrected.
7. Revise all buffer notes to indicate a 50 foot buffer.

Mr. Thomas asked if he left out the condition concerning Section 26.12.

Mr. Fritz stated that he did not have the specific language for that. He pointed out that he would have to get that from the record.

Mr. Rieley stated that pursuant to Section 26.12.1 those vehicles that come to the site shall be verified to be of a scale that can be safely accommodated on Morgantown Road with other traffic as well.

Mr. Thomas asked Mr. Fritz to read the condition back to the Commission.

Mr. Fritz stated that the vehicles coming to the site shall be verified to be of a scale that may be safely accommodated by Morgantown Road.

Mr. Rieley (inaudible) expressed concern about the wording but stated that we could fine tune the condition. He pointed out that this is the general intent.

Mr. Thomas asked if there was anything else to add.

Mr. Rieley moved for denial of SDP-04-23, Faulconer Construction Office and Shop Final Site Plan for the reasons they just listed, which is the same list as things that need to be addressed for approval.

1. Submission of a revised Certified Engineers Report as required by Section 32.7.4.2, to address each provision of Section 4.14, explaining methodology and including measurements of actual equipment where appropriate.
2. Submission of as-built plans and structural analysis to verify adequacy of pavement width and strength of Dettor Road from Morgantown Road to the Faulconer entrance as provided by Section 26.12.1.
3. Provision of street trees across Morgantown Road frontage as required by Section 32.7.9.6.
4. Provision of a double staggered row of shade tolerant screening trees such as holly or bayberry, planted 15 feet on center adjacent to Rural Area property to provide screening as required by Section 32.7.9.8.c.2
5. The lighting plan shall be revised to comply with Section 4.17.4.
6. Sidewalk notes and dimensions must be corrected.
7. Revise all buffer notes to indicate a 50 foot buffer.
8. Vehicles coming to the site shall be verified to be of a scale that may be safely accommodated by Morgantown Road as provided by Section 26.12.1.

Mr. Morris seconded the motion.

The motion carried by a vote of (4:2). (Joseph, Morris, Rieley, Craddock – Aye) (Edgerton, Thomas – No) (Higgins – Absent)

Old Business:

Mr. Thomas asked if there was any old business.

Mr. Cilimberg stated that in the Commission's package there is the approval of one set of minutes for the June 29 meeting. The final minutes themselves, which the Commission has seen in the draft stage, were not in the package. Staff will email and send the Commission a copy of those minutes this week.

There being no further old business, the meeting proceeded.

New Business:

Mr. Thomas asked if there was any new business. There being none, the meeting proceeded.

Adjournment:

With no further items, the meeting adjourned at 10:00 p.m. to the September 14, 2004 meeting.

V. Wayne Cilimberg, Secretary

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