Albemarle County Planning Commission
June 8, 2010

The Albemarle County Planning Commission held a public hearing, and meeting on Tuesday, June 8, 2010, at 6:00 p.m., at the County Office Building, Lane Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Russell (Mac) Lafferty, Duane Zobrist, Vice-Chairman; Ed Smith, Thomas Loach, Chairman; Linda Porterfield, Don Franco and Calvin Morris. Julia Monteith, AICP, Senior Land Use Planner for the University of Virginia was absent.

Other officials present were Elizabeth Marotta, Senior Planner; Eryn Brennan, Senior Planner; Summer Frederick, Senior Planner; Bill Fritz, Chief of Current Development; Wayne Cilimberg, Director of Planning; Ron Higgins, Chief of Zoning; and Greg Kamptner, Deputy County Attorney.

Call to Order and Establish Quorum:

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

Committee Reports:

Mr. Loach asked for committee reports from the Commissioners. There being none, the meeting moved to the next agenda item.

Other Matters Not Listed on the Agenda from the Public:

Mr. Loach invited comment from the public on other matters not listed on the agenda. There being none, the meeting moved to the next item.

Consent Agenda:

a. **Approval of Minutes:** July 15, 2009; July 21, 2009; September 22, 2009 and April 20, 2010
b. **Industrial Zoning Text Amendment** – Resolution of Intent (Amelia McCulley)
c. **SUB-2010-00031 Rio Station LLC -** The request is for approval of a final subdivision plat to create two lots in the development area. Associated with this request is a request for private street approval. The property, described as Tax Map 45, Parcel 167 is 0.749 acres is zoned Commercial Office and is located in the Rio Magisterial District on Rio Road West [State Route 631] approximately 0.10 miles from its intersection with Berkmar Drive. The Comprehensive Plan designates this property as Urban Density in Urban Area 1. (Megan Yaniglos)

Mr. Loach asked if there was any member of the public present to speak on an item listed on the consent agenda. There being none, he asked if any Commissioner would like to pull an item from the consent agenda for further review.

Mr. Lafferty asked the intent of the resolution of intent.

Mr. Cilimberg noted one of the things staff indicated at the time the Commission discussed the HI uses in the LI district was that they wanted to get updated performance standards into the ordinance, which this resolution would be addressing. Part of this resolution of intent would be to provide for an update to the performance standards. There are also other amendments regarding industrial districts and uses which they would be undertaking in addition to performance standards that are to reflect part of what the Board had indicated this year they wanted to accomplish in terms of looking at our industrial areas to make sure they have the appropriate uses identified in the industrial areas. In particular, they would look at things like office uses, which sometimes have compromised the intent for true industry in industrial areas. The resolution is really to address those two general areas of interest.

Mr. Lafferty said his concern is it seems so open-ended. He did not understand the term "proactively rezoning" and comments like that and what the criteria was for change.

Mr. Cilimberg replied that proactively rezoning is a potential measure the Board could ultimately take regarding industrial areas that are not currently zoned. But none of that could happen without first going through the amendment process for the wording in the industrial district categories, which is subject to Planning Commission review and public hearing with the Board's ultimate action through public hearing. Any kind of initiative to rezone lands would again go through the process of review and a public hearing by the Planning Commission and Board. So none of it is a given. This essentially is setting up the possibility to do that, but it would come before the Planning Commission before anything would happen.

Mr. Lafferty noted that part of it was being sensitive to their lack of staff and the time they would have to spend. The Commission would also spend a lot of time on it later on. Unless there is a defined need for this, it should not be done.

Mr. Cilimberg said that they have incorporated this into the work program for this year. Because of the adoption of the Economic Development Policy in 2009, staff anticipated that this was an area with which they were going to need to be working. So staff had already identified and incorporated it as a work program item for this year.

Mr. Loach pointed out the Board spent about three hours discussing economic policy and he believed that this was one of the issues that they took up. He asked if there was anything that was in that discussion that would change this substantially.

Mr. Cilimberg replied no, that actually the Board's discussion last week centered more on some initiatives that were beyond the zoning ordinance. They were more about some initiatives that could be undertaken that would be reflective of the policy in some other objectives and strategies that were adopted last year. There was not anything that happened in that meeting that would affect this. This is reflecting some prior interest in moving forward on the amendments in the zoning ordinance for industrial districts.

Ms. Porterfield asked if they were going to put heavy industrial into light industrial property would there at least be a special use permit, which was a follow-up to what Mr. Lafferty asked.

Mr. Cilimberg replied that was passed last week by the Board as the Planning Commission recommended. He noted that was not being changed.

Mr. Lafferty noted that his concern was that this just seemed so open-ended. If he was asked to try to give an executive summary of what they were doing, he was not sure he could.

Mr. Loach asked if he wanted to pull this for further discussion and vote.

Mr. Lafferty said that since all the work will come back before the Planning Commission he did not want to pull it.

Ms. Porterfield requested to ask a question about the next item, SUB-2010-31, Rio Station LLC. The street being talked about is basically through a parking lot.

Mr. Fritz said this is a very odd quirk in our ordinance. Essentially what happened is that a site plan was approved. The site plan had two buildings on it, and they want to be able to sell the two buildings separately. In order to do that, a private street is required. They want to turn the travel way that was shown on the site plan into a street. The only thing that will be changing by approval of this is the ownership of the two buildings. No physical changes will occur whatsoever from what was previously approved.

Ms. Porterfield asked that if by doing this are they creating an unbuildable lot given the huge setback that is on this lot.

Mr. Fritz said that the setbacks are not changing.

Ms. Porterfield noted that the frame one-story house is currently in the setback.

Mr. Fritz said that was an existing structure that was nonconforming.

Ms. Porterfield noted that now they were going to have two lots. She asked what is going to happen if someone wants to tear that building down.

Mr. Fritz replied that they would have to build within the buildable area.

Ms. Porterfield noted that the structure could not be very big.

Mr. Fritz noted that has always been the case and nothing has changed. There is no imposition of any new setbacks because of this. There is an existing non-conforming structure and it can remain. It can be expanded in accordance with the nonconforming provisions of the ordinance. But if it is willfully removed, then it loses its non-conformity and they would have to build back within the buildable area. There is no setback on the side where it says unit 101. They could build a structure at least as big as what is there now.

Ms. Porterfield asked if they could bump it up against the back lot line, and Mr. Fritz replied yes.

Ms. Porterfield asked if they could add onto it within the setback.

Mr. Fritz replied no, because the provisions that allow nonconformities specify how they can do the additions. They can build within the setback, but it has to be behind the front of the existing structure so that the new portion is more conforming. Any construction will require a site plan whether this subdivision is done or not.

Ms. Porterfield then pointed out that she was not at the 9-22-09 meeting and would have to abstain from voting on the minutes. If they take action on all of the consent items at once, she would have to abstain.

Motion: Mr. Morris moved and Mr. Franco seconded for approval of the consent agenda.

The motion carried by a vote of (5:0:2). (Ms. Porterfield and Mr. Lafferty abstained.)

Mr. Loach noted the consent agenda was approved.

Mr. Loach welcomed and recognized the Boy Scout Troop present.

Review of Board of Supervisors Meetings: May 5, 2010, May 12, 2010, and June 2, 2010

Mr. Cilimberg reviewed the actions taken by the Board of Supervisors on May 5, 2010, May 12, 2010, and June 2, 2010.

Regular Item:

SDP-2010-00022 Hollymead Town Center Apartments

The request is for modification of Section 18-4.2 of the Zoning Ordinance in order to allow 0.186 acres (8,102+/- square feet) of critical slope disturbance to allow preliminary site plan approval of a 7-building, 172-unit multi-family residential development on 9.193 acres. The property, described as a portion of Tax Map 32 Parcel 56, is zoned R-15 Residential and is located in the Rio Magisterial District on Towncenter Drive [private] across from its intersection with Augusta Lane [private]. The Comprehensive Plan

designates this property as Urban Density in the Hollymead Community Area, with a secondary land use of Parks and Greenways. (Elizabeth Marotta)

Ms. Marotta presented a PowerPoint presentation and summarized the staff report.

This is a request to disturb 0.186 of man-made critical slopes in association of the development of Hollymead Town Center Apartments. Because the critical slopes are located in the middle of the site, disturbance would be necessary to make a full use of the site. An efficient use of land in the development area is a Comprehensive Plan recommendation.

Favorable factors:
The slopes to be disturbed are clearly man-made and were likely the result of an old stockpile.

The property is located within the development areas, and its Comprehensive Plan recommendation is to be developed as Urban Density. Allowing disturbance of critical slopes furthers County land use objectives.

Unfavorable factors:
None identified.

Recommendation:
Staff opinion is that the favorable factors outweigh the unfavorable factors. Staff recommends approval of this critical slopes waiver provided that sufficient perimeter controls are provided with the Final Grading and Erosion Control Plan.

Mr. Loach opened the public hearing and invited the applicant to address the Planning Commission.

Kirstin Memes, Collins Engineering, concurred with the staff report and offered to answer questions.

Mr. Loach invited questions for the applicant. There being none, he invited public comment. There being none, he closed the public hearing to bring the matter before the Planning Commission for action.

Ms. Porterfield noted that one place where they could speed up an applicant's process would be to change the ordinance as it refers to man-made critical slopes. She asked staff to work on that.

Mr. Fritz replied that staff has held two public round tables dealing with just that. The Board of Supervisors has adopted a resolution of intent to amend the critical slopes regulations. They are in the final stages of working on that and bringing something forward for a public hearing with the Planning Commission on some pretty significant changes to how critical slopes are dealt with.

Motion: Mr. Zobrist moved and Mr. Morris seconded for approval of the critical slopes waiver for SDP-2010-00022, Hollymead Town Center Apartments, subject to the conditions recommended by staff as set forth in the staff report.

1. Sufficient perimeter controls are provided with the Final Grading and Erosion Control Plan.

The motion was passed by a vote of 7:0.

Public Hearing Items:

SPRING 2010 Additions - PC Public Hearing; Virginia Code § 15.2-4307
Jacob's Run Agricultural and Forestal District
Hardware Agricultural and Forestal District
Hatton Agricultural and Forestal
Moorman's River Agricultural and Forestal District
Fox Mountain Agricultural and Forestal District

Kinloch Agricultural and Forestal District

Ms. Brennan presented a PowerPoint presentation and summarized the six staff reports for the above noted Agricultural and Forestal Districts. (See Staff Reports)

Jacob's Run Additions
The Jacob's Run Agricultural Forestal District was created in 1988, and originally included 10 parcels and 624 acres. The District now includes 13 parcels and 772 acres.

The general location of the district is in the northern part of the county, west of 29 North.

Two applications have been submitted requesting to add two parcels to the Jacob's Run District. The proposed addition of these two parcels totaling 156 acres would increase the total number of acres in the Jacob's Run District to 928.

Hardware Additions
The Hardware District was created in 1987, and originally included 52 parcels and 5,947 acres. The District now includes 45 parcels and 3.001 acres.

The general location of the district is south of I-64 West along Route 29 South.

Two applications have been submitted requesting to add four parcels to the District. The proposed additions total 192 acres and would increase the total number of acres in the Hardware District to 3,194.

Hatton Additions

The Hatton District was created in 1983, and originally included 19 parcels and 2,545 acres. The District now includes 17 parcels and 745 acres.

The general location of the district is in the southern portion of the County along the James River.

One application has been submitted requesting to add six parcels to the District. The proposed addition of six parcels totaling 115 acres would increase the total number of acres in the District to 860.

Moorman's River Additions
The District was created in 1986, and originally included 7,096 acres. The District currently includes 231 parcels and 10,980 acres.

The general location of the district is west of Route 29 North and north of 64 West.

One application has been submitted requesting to add one parcel to the District totaling 10.5 acres, which would increase the total number of acres in the Moorman's River District to 10,991.

Fox Mountain Additions
The Fox Mountain District was created in 2009, and currently has one parcel with 283 acres.

The general location of the district is in the far northwest section of the County.

One application requesting to add three parcels to the District has been submitted. The proposed additions totaling 32 acres would increase the total number of acres in the District to 316.

Kinloch Additions
The Kinloch District was created in 1986, and originally included 1,326 acres. The District now includes 33 parcels and 1,682 acres.

The general location of the district is in the northeast corner of the County along Route 231.

One application has been submitted requesting to add one parcel to the District. The proposed addition of one parcel totaling 38 acres would increase the total number of acres in the District to 1,721.

Spring Addition Stats
Staff reviewed the statistics for the spring round of additions to the Agricultural and Forestal Districts. A total of eight applications were received to add 17 parcels constituting 545 acres to six different districts.

Staff Recommendation
On May 10, 2010, the Agricultural and Forestal District Advisory Committee recommended approval of all the additions to the Jacob's Run, Hardware, Hatton, Moorman's River, Fox Mountain, and Kinloch Districts.

Staff recommends that the Planning Commission recommend approval of all the proposed additions to the Agricultural and Forestal Districts.

Mr. Loach opened the public hearing and invited the applicants or other members of the public to address the Commission. There being no public comment, the public hearing was closed and the matter before the Planning Commission for action.

Motion: Mr. Franco moved and Mr. Zobrist seconded to recommend approval of all the proposed additions to the following Agricultural and Forestal Districts:

- Jacob's Run Agricultural and Forestal District,
- Hardware Agricultural and Forestal District,
- Hatton Agricultural and Forestal District,
- Moorman's River Agricultural and Forestal District,
- Fox Mountain Agricultural and Forestal District,
- and the Kinloch Agricultural and Forestal District.

The motion was passed by a vote of 7:0.

Mr. Loach noted that the six Agricultural/Forestal District Reviews will go to the Board of Supervisors on July 7, 2010 with a recommendation for approval.

SP-2010-0001 Earlysville Service Center
PROPOSED: Amend SP2008-00025 to increase the building size from a maximum of 5,000 sq. ft. to provide adequate interior space for the service bays; special use permit would be on approx. 2.17 acre portion of an 11.833 acre parcel
ZONING CATEGORY/GENERAL USAGE: RA -- Rural Areas: agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots)
SECTION: 10.2.2 (37) Public Garage
COMPREHENSIVE PLAN LAND USE/DENSITY: Rural Areas - preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/ density **(0.5 unit/ acre in development density)**
ENTRANCE CORRIDOR: No
LOCATION: West side of Earlysville Rd. (Rt. 743) approx. 775 ft. north of Reas Ford Rd. (Rt. 660)
TAX MAP/PARCEL: TMP 03100-00-00-01400
MAGISTERIAL DISTRICT: Rio
(Eryn Brennan)

Ms. Brennan presented a PowerPoint presentation and summarized the staff report.

- This is an application to amend SP-2008-25. The applicant received approval with conditions from the Board of Supervisors for SP-2008-25 on August 5, 2009 to construct a 5,000 square foot vehicle repair garage with a three-sided covered storage shed on the rear of the building and 46 parking spaces on a 2.17 acre portion of the parcel.

- The applicant is currently seeking to amend the special use permit to allow an additional 1,148 square feet to be added to the building for a total building footprint of 6,148 square feet as shown in the revised concept plan for SP-2010-00001.

- Staff has identified the following factors favorable to this application:
  - The proposed expansion would only minimally impact the character of the site and area.
  - There are no anticipated detrimental impacts on adjacent property resulting from the proposed expansion.
  - The proposed expansion would facilitate the efficient operation of a business that performs a vital community service.
  - Staff has identified one factor unfavorable to this application. The proposed expansion does not directly contribute to the goals outlined in the Rural Areas section of the Comprehensive Plan.

- Based on the findings contained in this staff report, staff recommends approval of SP-2010-00001 Earlysville Service Center, subject to the conditions as listed in the staff report.

Mr. Loach invited questions from the Commission.

Ms. Porterfield asked if the current garage will be closed when the other is built, and Ms. Brennan replied that is correct.

Ms. Porterfield noted that even with its closing, there will still be commercial property on that corner. So what they have done is extended the commercial look of this area into rural property.

Ms. Brennan replied that was correct.

Mr. Loach opened the public hearing and invited the applicant to come forward to address the Commission.

Dave Wyant, representative for the owner of the property, pointed out that the existing structure will not be a garage in the future. That was one of the conditions on the previous approval. What happened was the owner thought he could build this building, but when he went to see the fabricator of the structure the footprint was bigger in order to take care of the garage bays. That is the reason they have to come back for the amendment prior to moving forward on the site plan. They have submitted a site plan, but are waiting to see what happens tonight before resubmitting on the first comment. He would be happy to answer questions.

Ms. Porterfield asked if they have no Sunday hours, and Mr. Wyant replied that is correct

Ms. Porterfield asked if they can put the nice side of the fence toward the residents that they are buffering. She asked if there would be a two-sided or one-sided fence.

Mr. Wyant replied that the fence on the west side toward the residence was one of the things he had overlooked in the submittal. He thought it was brought up at the last meeting. There will be a fence along that border to screen the residence.

Ms. Porterfield asked if they could give the resident the nice side of the fence.

Mr. Wyant replied yes, but noted that there was a 20' buffer of existing trees that will have to stay.

Ms. Porterfield reiterated that he said he would give the people being buffered the nice side of the fence, which will be great. She asked if they were still aiming at an August 5, 2016 date for completing this project.

Mr. Wyant replied yes, but that times have gotten tough. In the surrounding area, Mr. Whyte has lost his grocery store. He hoped that the economy would turn around. The applicants want to do this, but things are not falling into place right now. But they are still moving forward with the site plan.

Mr. Lafferty asked if the addition was not only to the back of the building, but also to the side.

Ms. Brennan replied yes that in the staff report it indicated an additional 6' in length along the front of the building and 8' to the rear.

Mr. Lafferty noted that it was a 25 percent increase to the building size.

Mr. Wyant replied that was correct. He noted that staff suggested that they increase the size a little bit in case something else came up. The actual structure is smaller than shown by several feet with 2' or 4' in the different directions. He noted that there is a shed on the back for the air compressors, storage of tires and all of the containers required to be inside an enclosed structure by DEQ, such as oil and grease.

Mr. Lafferty noted that the lighting is addressed in the document. He assumed that included the provision that no lighting will have an adverse effect on the road.

Mr. Wyant replied that was correct. They were only asking to put in two lights, one on each side. Therefore, there is only a minimum amount of lighting.

Mr. Loach invited public comment. There being none, the public hearing was closed and the matter before the Planning Commission.

Motion: Mr. Morris moved and Ms. Porterfield seconded to recommend approval of SP-2010-00001, Earlysville Service Center subject to the conditions as set forth in the staff report, as amended.

Mr. Kamptner suggested a clarification to condition 10 since the applicant has stated that they will not be operating on Sundays. He suggested that a clause be added to the first sentence that says that the public garage shall have no hours of operation on Sunday or that the public garage shall not be open for business on Sunday.

Mr. Lafferty asked that to be put in item 10, and Mr. Kamptner agreed.

Ms. Porterfield asked that in item 4 with regard to the fence that the nice side of the fence goes toward the neighbors unless they want to put up a two-sided fence.

Mr. Franco noted that he preferred not to add that to the condition since he did not necessarily agree.

Ms. Porterfield pointed out that the applicant agreed to that.

Mr. Franco said if the applicant is happy that is fine, but that fence is sitting 25 feet off the property line. Therefore, he was less concerned about it.

Ms. Porterfield asked that it go into the conditions since the applicant is willing and because the Commission needs to protect the residents if they can do it. It would give the neighbors something nice to look at.

Mr. Loach reiterated that there had been a motion with two changes to conditions 10 and 4.

Mr. Morris accepted and Ms. Porterfield seconded the two amendments to the motion.

1. Development of the use shall be in accord with the conceptual plan titled "Amendment to Special Use Permit SP200800025 Earlysville Service Center, 4036 Earlysville Road Earlysville, VA 22936", prepared by DW Enterprises and dated April 2, 2010 (hereafter,

the "Conceptual Plan"), as determined by the Director of Planning and the Zoning Administrator. To be in accord with the Concept Plan, development shall reflect the following major elements within the development essential to the design of the development:

   a. The general area designated for the special use (public garage)
   b. The size, height and location of the proposed building (no more than 6,200 square feet / maximum 35' high)
   c. The location of the perimeter landscaping and limits of clearing, with the exception of minimum clearing possible to install drainfields and utilities
   d. The number of parking spaces (maximum 46 spaces) and general location / arrangement of the parking spaces;

2. A public garage use on the C-1 Commercial district portion of TMP 31-14 shall be permanently terminated upon issuance of a Certificate of Occupancy for the garage constructed with SP-2008-25;
3. Additional landscape materials, either replanted from the area to be cleared for the garage site or new landscape materials, shall be installed in the undisturbed buffer area inside the boundary of the special use permit as may be necessary to achieve very little visibility between the garage site and the public right-of-way and adjacent properties, as depicted on Attachment B;
4. A minimum six (6) feet high fence shall be constructed in the location shown on Attachment B (twenty [20] feet inside the special use permit boundary and outside the seventy-five [75] foot front setback) with the finished side of the fence towards the neighbors, unless the applicant chooses to put up a two-sided fence, to provide an additional buffer for the adjacent property (TMP 31-14H). Note: The final language will be worked out prior to it going to the Board of Supervisors and acknowledging that the fencing adjacent to residential areas is at the discretion of staff (Fritz);
5. The sale or rental of vehicles or other motorized equipment is prohibited;
6. Gasoline sales are prohibited;
7. The outdoor storage of parts, equipment, machinery and junk is prohibited. All storage shall take place inside the storage shed and/or inside the building;
8. All repairing or equipping of vehicles shall take place inside the existing garage;
9. Parking of vehicles associated with the public garage shall take place only in the parking spaces depicted on the Concept Plan;
10. The hours of operation shall be no earlier than 7:00 A.M. nor later than 10:00 P.M., Monday through Friday and no earlier than 8:00 A.M. nor later than 1:00 P.M. on Saturdays and the public garage shall not be open for business on Sunday. These hours do not prohibit customers from dropping off vehicles before or after the permitted hours of operation;
11. A maximum of twelve (12) employees shall be permitted on-site at any one time;
12. All outdoor lighting shall be only full cut-off fixtures and shielded to reflect light away from all abutting properties. A lighting plan limiting light levels at the north, west, and south property lines and the east boundary of the area designated to the special use permit to no greater than 0.3 foot candles shall be submitted to the Zoning Administrator or their designee for approval;
13. Approval from the Department of Environmental Quality shall be required prior to issuance of the Certificate of Occupancy;
14. Approval from the Health Department shall be required prior to issuance of a building permit; and
15. If the use, structure, or activity for which this special use permit is issued is not commenced by August 5, 2016, the permit shall be deemed abandoned and the authority granted thereunder shall thereupon terminate.

The motion was passed by a vote of 7:0.

Mr. Cilimberg noted that it included the change to condition 4 that Ms. Porterfield requested. Staff will need to make sure they get the right language there to make that clear. The nice side of the fence is subjective and staff wants to make sure to get that wording correct before the Board meeting.

Mr. Loach noted that SP-2010-00001, Earlysville Service Center would go before the Board of Supervisors on a date to be determined with a recommendation for approval.

Deferred Items:

SP-2009-00034 Re Store N Station
PROPOSED: Use of more than 400 gallons of groundwater per site-acre per day for convenience store.
ZONING CATEGORY/GENERAL USAGE: HC, Highway Commercial - retail sales and service uses; and residential use by special use permit (15 units/ acre); EC Entrance Corridor - Overlay to protect properties of historic, architectural or cultural significance from visual impacts of development along routes of tourist access
SECTION: 24.2.2.13, Uses permitted by right, not served by public water, involving water consumption exceeding four hundred (400) gallons per site acre per day. Uses permitted by right, not served by public sewer, involving anticipated discharge of sewage other than domestic wastes.
COMPREHENSIVE PLAN LAND USE/DENSITY: Rural Areas - preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/ density (.5 unit/ acre in development lots)
ENTRANCE CORRIDOR: Yes
LOCATION: US 250 (Rockfish Gap Turnpike) approximately 1,600 feet (0.3 miles) west of Western Albemarle High School
TAX MAP/PARCEL: Tax Map 55B Parcel 1
MAGISTERIAL DISTRICT: Whitehall
(Summer Frederick)
DEFERRED FROM THE APRIL 20, 2010 PLANNING COMMISSION MEETING

AND

SDP-2008-00154 Re-Store N Station
The request is for preliminary site plan approval to construct a 5,750 square foot, two (2) story commercial building with gas pumps and associated parking on 4.06 acres. The property is zoned HC (Highway Commercial) and is described as Tax Map 55B, Parcel 1. The site is located on the south side of Rockfish Gap Turnpike (SR250), approximately 0.78 miles west of its intersection with Miller School Road/Crozet Avenue (SR240). This site is located in the White Hall Magisterial District and is recommended for Rural Area uses in Rural Area 3 by the Comprehensive Plan.

Mr. Loach said that the next item was Re-Store N Station. He noted that Mr. Zobrist wanted to make a statement.

Mr. Zobrist asked to make a bit of a clarification.

- His name was Duane Zobrist and he had served on the Planning Commission since January 1st. He personally has been involved as counsel for the owners of some of the adjoining property and the principals. Since he has been involved with that he would like to disqualify himself from participating in the transaction and request that this fact be recorded in the public record for a period of five years.
- He would also like to clarify a little bit for the public and for his fellow Commissioners so they can understand what the rules are as they affect Duane Zobrist who does a lot of work in the land use area. When he was reappointed to the Planning Commission at this particular time he had a conversation with county counsel and asked for a clarification on what he was able to do and not able to do because lawyers have a broader ethical obligation when they serve on public bodies than just members of the public. Any member of this committee certainly has the right to be involved and have an interest in transactions, but they are required to disclose it. They can even vote on it and stay if they feel they can be unbiased about it. Our legal ethic opinions require that

when a lawyer serves on a public board he is not allowed to appear before that board nor any member of his firm can appear before that board. That lawyer must also refrain from any contact with respect to the public or staff with respect to that item.

- Now in our county we have a little bit of a strange thing because the Board of Zoning Appeals, Board of Supervisors and the Planning Commission all use the same staff. So he was permitted to appear before the Board of Zoning Appeals on behalf of this property owner in this particular matter and he has so appeared and continued to appear. He has spoken to several members of the Board of Supervisors with respect to this and he expects to be present at the Board of Supervisors hearing as counsel for this applicant or property owner at that period of time. With respect to the Planning Commission he had not spoken with his fellow Commissioners about this item. He has not spoken with members of the community with respect to this item, and he was not here nor has he or will he be counsel for this particular property owner with respect to items before this Commission. So he would request permission to recuse himself and leave the room.

(Attachment: State and Local Government Conflict of Interests Act – Transactional Disclosure Statement For Officers and Employees of Local Government [Section 2.2-3115(E)] for SP-2009-34 and SDP-2008-154 Re-Store N Station, which noted that he had represented and provided services to HE & J, Inc and Chris and Anne Suh on issues related to the transaction. The statement declared that he was disqualifying himself from participating in this transaction and requests that this fact be recorded in the appropriate public records for a period of five years.)

Mr. Zobrist left the meeting at 6:42 p.m.

Mr. Loach noted that there were two separate requests with one being a special use permit for the more than 400 gallons of water per site per acre per day. The second item is the preliminary site plan approval. The Planning Commission will take the items separately. The Commission has received a lot of emails with a number of good points of concerns, but the Commission would first be considering the water usage. He asked the public to tailor their remarks to the water usage, which would be helpful to the Commissioners.

Ms. Frederick presented a PowerPoint presentation and summarized the staff report.

The request is for special use permit application, SP-2009-34, Re-Store N Station. The property is tax map 55B, Parcel 1 located on Route 250 West, otherwise known as Rockfish Gap Turnpike approximately a third of a mile west of its intersection of Old Trail Drive. The character of the area includes other commercial uses, a Moose Lodge and single-family residential properties. The comprehensive plan designates the property as Rural Area in Rural Area 3. The parcel is located in both Highway Commercial and Entrance Corridor zoning districts.

The Albemarle County Service Authority jurisdiction designation for this parcel is classified as water to existing structures only. The project is before the Planning Commission because the Zoning Administrator has determined that it is possible the proposed project will consume an amount of water in excess of 400 gallons per site acre per day. The special use permit request is only for water usage. The store, office, and gas sale proposed usages are all by right in the Highway Commercial zoning district. The proposed project is a 4,750 square foot convenience store with a thousand square feet of office above and associated gas pumps. Staff reviewed the proposed plan noting the gas pump locations proposed.

Section 18 - 31.6.1 of the Code of Albemarle requires that Special Use Permits be assessed with the following standards:

31.6.1: Special use permits for uses as provided in this ordinance may be issued upon a finding by the Board of Supervisors that such use will not be of substantial detriment to adjacent properties.

After reviewing data submitted by the applicant, the County Engineer states the proposed or projected water use on this parcel is acceptable from an engineering standpoint. Additionally, the area in which the

parcel is located is not known for groundwater well failure. However, it should be pointed out there is not sufficient data to ensure future groundwater well failure will not occur in the area.

That the character of the district (zoning) will not be changed thereby, and
The character in terms of the established by right usage of the area will not change as this property has been zoned HC-Highway Commercial since the adoption of the current zoning ordinance.

That such use will be in harmony with the purpose and intent of this ordinance,
The purpose of the HC-Highway Commercial zoning district, as stated in the ordinance, is to permit development of commercial establishments, other than shopping centers, primarily oriented to highway locations rather than to central business concentrations. The intent of this district is stated as the purpose of limiting sprawling strip commercial development by providing sites with adequate frontage and depth to permit controlled access to public streets.

The purposed use, water consumption, does not directly promote the purpose of the HC-Highway Commercial zoning district; however, water consumption in excess of 400 gallons per site-acre per day is allowed by special use permit in the district. Given that allowing such water consumption would support a use that directly promotes the purpose and intent of the assigned zoning district, the special use permit is consistent with the purpose and intent of the ordinance.

With the uses permitted by right in the district,
Water withdraw in excess of 400 gallons per site-acre per day would not adversely affect the by right uses in the HC-Highway Commercial district.

With additional regulations provided in section 5, and
Section 5.0 contains no additional regulations regarding water usage.

With the public health, safety and general welfare.
The public health, safety, and general welfare of the community are protected through the special use permit process which assures that the proposed use is appropriate in the location requested.

The applicant has submitted information from a state certified geologist indicating adequate water supply is available. It should be noted a separate study has been submitted by a member of the public. It was also done by a state certified geologist and it raises some questions regarding the adequacy of water supply. The applicant states water usage will not exceed 1,625 gallons per day. Staff proposes a condition capping water consumption at 1,625 gallons per day, which translates to 400.25 gallons per site acre per day. By right water consumptions for this parcel is 400 gallons per site acre per day Based on the analysis of available information it is staff's opinion that the minor increase in water consumption is not inconsistent with public health, safety, and general welfare.

SUMMARY:
Staff has identified the following factors favorable to this application:

1. Character of the zoning district will not be changed by the proposed use.
2. Granting the special use permit will allow a proposed development that directly promotes the purpose and intent of the HC-Highway Commercial zoning district.
3. The proposed water consumption will not adversely affect uses permitted by right in the HC-Highway Commercial zoning district.

Staff has identified the following factor unfavorable to this application:

1. There is not enough data to determine if the existing water supply will be adversely affected in the future and is adequate to support water consumption in excess of 400 gallons per site-acre per day on this parcel.

RECOMMENDED ACTION:

Based on the findings contained in this staff report, staff recommends approval of SP-2009-34 Re-Store 'N Station, with the following conditions:

1. The applicant will install a meter on the wellhead to monitor water consumption. Prior to installation, the model of said meter will be approved by the Zoning Administrator. Results of daily water consumption monitoring results will be made available within forty-eight (48) hours of a request from the Zoning Administrator; and,
2. Water consumption shall be restricted to 1,625 gallons per day.

Points for Discussions:
The section specific for this special use permit application is uses permitted by right not served by public water involving water consumption exceeding 400 gallons per site acre per day. At its last meeting, the Board of Zoning Appeals affirmed the Deputy Zoning Administrator's determination that the proposed project is not a truck stop nor will it discharge waste other than domestic waste.

Mr. Loach invited questions for staff. There being none, the public hearing was opened and the applicant invited to address the Commission.

Jo Higgins, representative for the applicant, presented a PowerPoint presentation. She thanked the Commission for the opportunity to speak.

- As staff explained this property is Highway Commercial and it has been commercial since the Comprehensive Plan was adopted in 1980. The prior use at this particular site was small engine repair, at least in recent memory, with mowers that covered part of the site. There was an old building, which has since been removed. The property has rolling topography. It is a rectangular parcel with a little over four acres. At this point, the right-of-way is 120 feet. She wanted to give them some reassurance about the history of this. The applicant actually sought very eagerly to avoid this process because their contention is that this business owner will not exceed or use the allowable water. They had five different concept layouts they started with. They selected the best after taking input from the ARB, neighbors, Chief of Zoning, and other Entrance Corridor folks. They actually did a totally new concept and reduced the size of the store, which originally was around 6,000 square feet down to 4,750 square feet. This was actually an effort to give some reassurance to the folks involved about the water usage. This was then engineered, and it has been through site plan approval. There have been a lot of issues about how the site is designed and what the perception is, but she would not go into that until they are in the site plan.
- In comparison modern day convenience stores, such as Sheetz and WAWA are very unpopular. The Liberty Café and other all typically have two or three entrances, corner locations, and high traffic volume on primary roads. Some have full restaurants, but this does not. It will be less than 15 seats, which falls under the Department of Agriculture, which is a completely different internal operational use that affects water. The Re Store N' Station will have the six fuel dispensers as noted on the site plan under the main canopy and a diesel dispenser in the rear. It will have food sales inside. Again, it is not a restaurant use. Although with a smaller footprint and less fuel dispensers, it is probably as close to WAWA as can be on a smaller scale.
- She wanted to talk just a second to give an idea of what Re-store N' Station is about. The focus of this station makes it different. It is recycling, renewing, and eco-friendly. Refuel, replenish, and refresh are part of the goals. The logo has earthy colors and a farm motif, which is very specific. The goals are to buy and stock products such as grocery, fresh baked items, recycled containers, drug store, hardware, feed, pets and livestock, and more local farm produce. This includes the food sales. It will stock Virginia wines and Virginia products. It will be a welcome to visitors to Crozet. They also will have an educational exhibit on rain tanks, and rain water harvesting site design to be an example to others. It may be a future franchise that might be available in other areas of the way to do it correctly with conservation in mind. Independent fuel sales is part of this, which will bring lower prices to the Crozet community and also diesel for agricultural and construction equipment, which is 38 cents cheaper with no road tax.
- The owner in this case is a fifth generation Albemarle County resident, a graduate of Western Albemarle with strong roots in the community with previous and current business ownership, and three kids in the school system. Mr. and Mrs. Sprouse are here. They have 18 years, with 16 years in Albemarle in operating a convenience store just like this. So that experience is not to be

taken lightly. They have a proven record of supporting Girl Scouts, Boy Scouts and other community efforts.

- The logo is specific to the special use permit. There are a couple of points. The 1624 gallon limit is basically calculated on the size. The request is for one gallon more. This is to serve as a mechanism for the special use permit to limit, monitor, and enforce that limit. So really the issues pertain to that one gallon. They will not exceed the water limit, which was demonstrated by studying other operations such as WAWA data. WAWA has about 1,000 more square feet, more pumps, more fixtures, exterior spigots, and higher traffic locations. They are still within the bounds of the allowable water usage. The fixture analysis using modern fixtures with heavy use shows about 1,189 gallons per day. That is all the fixtures that will be inside the building that adds up a high frequency, a flush every five minutes, washing hands anytime anyone flushes and all the other fixtures to come up with that.
- After talking to the Albemarle County Building Code Official, she determined what the number of required fixtures is for this operation, as shown in the shaded area. The shaded area showing the calculation for those fixtures is about 651 gallons per day. The Code Official also advised that there is no requirement after you open to make water use fixtures available to the public. That's actually just part of the convenience. So operationally the water use can be controlled. If the threshold at this point is actually the septic permit for 1,600 gallons, as they approach the 1,600 gallons they have to amend that permit. There are other actions that can be taken so that the limit is not exceeded. Operationally, no high-wash water fixtures will be installed-- no automatic dishwashers, icemakers, spigots, or yard hydrants, which they have found contribute to higher water usage at other locations.
- She would like to basically refute some of the issues raised on the Tier III Groundwater Study that was reviewed and deemed excellent by a water resource manager. Although the position is not filled at this time, it was filled at the time the request was submitted and was found to comply with the county requirements. Although others contend that it lacks information, it meets the level required by Albemarle County. There has been a lot of discussion about recharge. She has a letter from the PE who also signed off on the Tier III Groundwater Study which noted the water withdrawal will actually go back into the septic system with the exception of what leaves inside people and there is a net effect of the people that will actually go there and redeposit and that will all go into the groundwater. He's very concise. The concern was about all groundwater. But in this case they are talking about one gallon. The condition to monitor is appropriate to confirm compliance. If ever exceeded it becomes a zoning violation and there are remedies in the ordinance for zoning violations. The 1,624 gallons cannot be taken away. It would be an effected down zoning action specific to this property as this allocation applies to all Highway Commercial and C-1 uses in the county not served by public water. She believed it included the previous application, which would be another example. Any conditions intended to limit the by right use because it is not desired by neighbors generally being unpopular with its stale zoning will limit the water usage and take away from that allowed amount. That is basically a legal issue that maybe the county attorney can advise on.
- The most important concern is really about groundwater as a resource. If that is the case and you want to protect wells and this will be one of those wells, the board has the power to allow a public water connection by the Albemarle County Services Authority, which would relieve staff totally of the burden to monitor this including the staff time that entails.
- The Commission was shown the fixture analysis. Other submitted data was emailed to the Commission because the data submitted in their packet was the January amount, which did not include the WAWA analysis. This analysis even has a fixture count. There were pictures of all the sinks and fixtures within that particular store. All of the stores in Albemarle County and the ones outside Albemarle County that were analyzed at about 1,000 gallons were found to have different interior fixtures. One of the stores makes and bags their own ice to sell, which is a high-volume water use. Some of the stores have automatic dishwashers, which again are operational features. That was pointed out so they are aware it can operationally be controlled. None of these other localities or stores has any kind of limit on their water, except in a drought condition where they are sent notice not to water their plants. The only times their water usage has exceeded or gets close to this limit is in the summer months where they have yard hydrants and

soaker things in their landscape area, and they use them. There have been a couple of leaks that happened, but that was not consumption.

- She would like to rebut a few things. She talked about the Tier III Groundwater Study. This is not an auto/bus service station. It was not treated that way by the health department or the county. There has been an issue raised about 10 wells missing, which is not the case. The relationship between 10 gallons per vehicle per service station and convenience store is inappropriate. The discharge issue has been raised. The intent behind this in the commercial zoning is that this property has remained commercial and it has been commercial since before the ordinance was adopted. So historically this is not creating any new commercial districts. If there are any questions about the submitted information, she would be happy to answer any operational details.

Mr. Loach invited questions from the Planning Commission.

Mr. Lafferty noted that he was trying to get a handle on the water usage. If they start with ten cars per hour per day coming in and going out, it seems like a minimum figure to use to try to get to water usage. Using the design standard of 10 gallons per car it comes up with 2,400 gallons right there.

Ms. Higgins replied that she did not get into that completely, but has the health department table that reference comes from, which was created in the 1970s. This is not a service station, which would imply that people come, put their cars in a bay for service, and wait for their car. That term has not been used and it is not a use by definition. Clearly the data supports this because when you look at all the locations analyzed there really isn't a relationship between the cars and the water because you have to have that use in the table. It also says in the table that deviations are allowed. She would like to give them the reference.

Mr. Lafferty said that there has to be a relationship between the number of cars and the water usage. He did not believe that any table she had would convince him that isn't the case.

Ms. Higgins replied that the cars bring the people. But if the fixtures are not available for them to use or there are a certain number of fixtures, then the frequency of the use of those fixtures is about the water. They could study the different convenience stores potentially. The use that is defined in the table at 10 gallons would mean that for some of these convenience stores, such as WAWAs, one would have to take the amount of water and divide by 10. The numbers do not check back.

Mr. Lafferty noted one of his concerns is that they could be in violation right after opening in using too much water. He also had some concerns about what happens to the water afterwards with the septic system. He did not think any good construction practices would allow paving over a septic system. He was not sure how it could be handled after it is being used.

Ms. Higgins replied that they could address that. The health department permit has already been issued. The site plan would be submitted; there would have to be a testing of those fields; and they would look at the improvements that will be on that site. Actually there is an argument that paving or putting concrete over a septic field gives it better protection because it has been relieved basically of the storm water load and protected for its use as a drain field. It is an allowable practice. The most recent one she recalled was the Shadwell store. There are many septic fields around the area that are under parking lots, and it is allowed by the health department.

Mr. Lafferty said that it is allowed, but it is not a good construction practice particularly when there are no auxiliary fields not paved over.

Ms. Higgins noted that they do at the site. Looking at the site plan, it shows they have the primary fields and 100 percent reserve. One half of the field at the front is outside the limits. It is up in the 110' green strip at the front. The designer of this is Mike Craun who is a PE who does health department and commercial facilities a lot in Albemarle County and other counties. The health department has approved the system design as per the site plan. Part of the fields is under the pavement, but others are not. They are actually using the ones under the pavement as the primary because they would install the lines and

then protect the reserve outside predominantly. She was not sure if the technology has changed, but that is what is allowed and is already covered under an issued health department permit.

Mr. Lafferty pointed out that she mentioned storm water of which he has some questions. He assumed the paving is impervious surface. If they get one inch of rain on that lot in an hour assuming it is an acre, they are talking about 27,000 gallons that has to be handled. He could not see where they could handle that at the end of the lot where it goes down to the water control because of being paved over.

Ms. Higgins said there was a narrative in the site plan analysis provided by the design engineer, Nat Perkins. It goes into a description of the rain tanks and the treatment. The actual tanks have not been sized but they are required to take the pre- versus post-development flows and handle a critical storm, a 10-year storm for example, and also they are going to meet and exceed that. They can adequately do that in the two rain tanks that will be under the surface. The intention is to have one that is lined so they can reuse the water just to water plants back on site so the water will stay there. If it over flows it would go to the one that is unlined, which will infiltrate into the soils. No credit is taken for that infiltration in the storm water calculation. So the size of that container cannot be downsized to assume infiltration. But it will occur. That is part of the detailed description on the final site plan. Nat has designed many systems and they have the narrative in the next section to go through. It is not necessarily pertinent to the one gallon they are asking for, but the recharge issue is. That is part of the recharge. The recharge of the groundwater that is pumped out of the well will be put back on the site plus the calculation that was done in the Tier III tells you 2,115 gallons are the estimate of recharge. Staff says there is not enough information to determine impact on wells, which she agrees. Two or three groundwater studies were decided by the county. There was a lot of discussion about testing wells. There was a lot of back and forth. But that was what was adopted in the ordinance and is a general premise.

Mr. Lafferty said he was trying to get an estimate on it for himself in using accepted standards like the 10 gallons per car. Given the size of the water holding tanks that she was talking about, he calculated roughly that they would need almost 300 of those to handle the volume of water for one inch of rain.

Ms. Higgins replied that it was about pre- and post-development flow. One cannot release that at any greater rate than before the development occurred. There are a lot of basins around the county that one can see above ground, which would provide an idea on size. There are very many available on single sites to look at. The only thing they are doing would be underground, which is more efficient.

Mr. Lafferty asked if they are paving an acre.

Ms. Higgins replied approximately it is a four acre site with underground storage tanks. One underground storage tank would be up front just outside the pavement. The one at the back is in the south west corner of the site. It has been conceptually approved for use of underground storage all over Albemarle County. It is done most in urban areas.

Mr. Lafferty said he noticed that it didn't appear to have any easement on the plans for water discharge and they are going from a coefficient runoff of something like .4 to .9.

Ms. Higgins said in Albemarle County for MS 19 it was required to have a downstream easement for a point discharge. But for a sheet flow discharge it was not required. Crozet Elementary School is an example of this. They would actually have the discharge, which was about rate or how fast the water leaves the site. But they will meet and exceed it. They intend to make this a very low flow situation. Many times someone uses a level spreader to take their point discharge and spread it out in sheet flow. In this particular case there will be a concrete curb so there will not be any erosion. There is one at Jefferson Bank on 250 where it is invisible since it is in the landscaping. It is on the south side of Crozet Elementary School, which has been there since 1989. So there are a bunch of them around. It is accepted in the Albemarle County Engineering Manual as a way to handle this.

Mr. Loach asked if there are any other questions.

Mrs. Porterfield asked Ms. Higgins to talk a little bit about what type of food they are going to sell in the store.

Ms. Higgins replied that Brownsville Market, which Jeff Sprouse operated for 16 years, would be a good example. It's not a restaurant and does not fall under the Department of Health. It is under the Department of Agriculture. It is simple foods: ones that are sandwiches that are sliced or chicken that is fried and those sorts of things. It is common in a lot of convenience stores. It's really a lot of big lunch traffic. It is probably some dinner traffic. But it is part of the convenience store culture basically almost anywhere that you go. She did not know that there was anything unusual about it. It is usually done with disposable plates, knives, forks; and there is nothing that gets washed. The only thing that is washed would be what they cook in, and even those sometimes can be recyclable type of containers that might not be washed. But as far as the types of food it would include hamburgers, biscuits in the morning, chicken, potato salad, and other salads sold in small containers, which typically leave the site.

Ms. Porterfield asked if this food will be prepared on site

Ms. Higgins replied that there will be a kitchen. All the convenience stores they have looked at had kitchens.

Ms. Porterfield asked how they avoid having a dishwasher.

Ms. Higgins replied that it is not a requirement. There are very few convenience stores that have automatic dishwashers. Of the ones analyzed she thought that the top three did have automatic dishwashers. What they do have is a triple sink, which is five gallons per sink, where they wash, wash again, and then rinse just for pots and pans. There is nothing else to wash. There are no plates, dishes and cups. That is all done with recycled materials that are disposable.

Ms. Porterfield questioned if that is because they are under the Department of Agriculture and not under the Department of Health.

Ms. Higgins replied no.

Ms. Porterfield asked if it is not required to have a dishwasher for cleanliness.

Ms. Higgins replied no, that Mr. Sprouse has operated a convenience store with Brownsville being one and they don't have a dishwasher there. Only the top three convenience stores have automatic dishwashers. Sheetz has a dish sanitizer, but they also have more dishes.

Mr. Morris asked from a practical standpoint if having a meter on the well site with a possible cut off and being required to provide data to the county within 48 hours is really doable.

Ms. Higgins replied yes, that this was not a new subject. Over the past year they submitted a pulse meter, which is an electronic device that Mike Craun, the PE who designed the sewer system, will be putting on the well regardless of whether it is monitored or not. It is part of the monitoring for the septic system. We have a 1,600 gallon permit for the septic system. He has one on Jeff's store in Buckingham County and will be putting one in place here. So it is reasonable to do. They have become very technical. She did not think Jeff can even read it. He has someone read it for him. But the pulse meters are very accurate. As far as cutting it off for example if they say they got to the limit on the Health Department or within 10 gallons of this, they could be routinely submitted. They offered to do a monitoring agreement similar to the storm water management agreement that would be a recorded document to go with the land that they would submit on whatever frequency the county requests. But basically they are in this process because there is not a comfort level with doing that.

Mr. Morris thanked her for the response.

Ms. Higgins asked to address one question regarding the table people keep referring to. The Water Works regulation that people keep referring to is 12VAC5-590-690, Capacity of Waterworks, which says it has service stations per vehicle served. At the top it says "if deviations are made" which is in this case "they shall be based on sound engineering knowledge, substantiated in a designer report and approved by the division." That is what was done in this case because this table came from a 1970's manual, and it has never been updated. So the health department frequently takes actual data as more careful information than this. This is a guide and a design manual. Anyone has the opportunity to use a professional engineer and submit the data. The division reviewed it and has signed off on it, and issued the permit. She believed the county has been in touch with that individual about the domestic waste. If anyone was interested in reading it, she had that information.

Mr. Lafferty asked the average number of vehicles they would expect in an hour.

Ms. Higgins replied the traffic study will be done as part of the final site plan, which is required.

Mr. Lafferty said obviously some economic analysis has gone into this so they have some idea of how many vehicles will come by and how much fuel they will sell. He just wondered what it was based on and how many vehicles.

Ms. Higgins replied that she did not know.

Mr. Lafferty noted that way he could come up with some kind of realistic approach to water consumption.

Ms. Higgins replied that she would say in today's day and age when someone has a credit card where basically he/she can drive in, refuel the car, and never go in the store that the disparity has increased over time. Many people don't go into the store.

Mr. Lafferty asked for an estimate on how many vehicles per hour.

Ms. Higgins replied that she knew at peak hour such as lunch time.

Mr. Lafferty asked for an estimate over a 24-hour period so he could get some idea.

Ms. Higgins replied that she did have a number of about 120 cars at peak hour in an hour's time frame. Peak hours are usually the worst and the number comes down from there. There is an a.m. and p.m. peak. The p.m. is usually twice as much as a.m. That's just a general figure. But again the Health Department draws no relationship between the two. She included statistical data on traffic that shows in the table the traffic on the road where the facilities are located. The water use goes up when you get to 40,000 and 50,000 vehicle trips per day. They are assuming that the people that pass by are the one's stopping in. Pass-by traffic is one of the highest volume draws that convenience stores have. People don't drive from Charlottesville to go to a convenience store. It's the people that actually pass by. So there is a possible correlation that way. But there is not a way to count cars or people using the bathroom. It hasn't been done nor was it required by the Health Department. But they are only talking about the one gallon difference in the actual groundwater that is allowed by right, which is what they have to live with. And with Jeff's years of experience, he has operated two stores very successfully and never come anywhere near this. At Brownsville, he was around 700 to 750 gallons.

Mr. Lafferty said if they go by some of the design parameters of the 10 gallons per vehicle, then it is more than one gallon that they are talking about.

Ms. Higgins noted that it is not a service station by the Zoning Administrator's use determination or the Health Department's.

Mr. Loach noted that brings up another question. In this type of business, what is the ratio of the profits made for gas versus made in the convenience store. He asked did they make most of their money from

the sales inside the convenience store. Therefore, do those sales bring most of the traffic versus sales of gas?

Ms. Higgins said the only way that they can measure that is by dollars. At Brownsville for the year, it was probably about 1.1 million dollars. They did a little under the 700 gallons a day. They are on a public meter, and that data is available from the Service Authority. When they say inside sales, she believed it's about a million dollars.

Mr. Loach asked if they make 75% of their money from gasoline sales and 25% from the convenience sales. Or, is it vice versa and they make most of their money from the inside sales of the food which generates the need for water versus what she said before is gas, which doesn't generate that much need for water.

Ms. Higgins replied that Mr. Sprouse can probably answer that question, but inside sales excludes gas sales. At Brownsville Market, it was around a million. She did not have the ratio of sales for gas sales because that fluctuates per gallon price based on the market. Over time it has been very linear. It could not be compared to three years ago because gas might have been $1.69 a gallon where now it's $2.39 a gallon. Dollars are a way to equate to that. They have not done that analysis because there are enough stores on public meters that they can actually look at their operation, have the meter readings, and look at the consumption. That has been the key issue with the Health Department. And again, the one gallon more is just to enforce that. They are willing to live with cut it off at that amount. If that is what it has to be, they are not asking for anything more.

Mr. Loach asked if there are any other questions from the Planning Commission.

Mr. Franco asked if she said that the septic permit that has been issued is for 1,600 gallons even.

Ms. Higgins replied yes. The reason it is 1,600 is the Health Department does not go in odd increments. It is in their packet.

Mr. Loach noted that he had a question for staff. Ms. Higgins brought the Tier III Study and said it was reviewed by the Water Resource Manager.

Ms. Frederick replied that was correct.

Mr. Loach noted that there was also a second report in the packet from Hydro Environmental Consultants. He asked if this report was reviewed by the water resource manager.

Ms. Frederick replied that the water resource manager no longer works with the county.

Mr. Loach asked if it was reviewed by engineering.

Ms. Frederick replied yes that she believed it was.

Mr. Loach said that he had a question on the report itself. He was not asking if she feels the conclusions are valid, but asking if in her determination was the methodology used in the report consistent with good engineering practices.

Glenn Brooks, County Engineer, said that it was not so much a report as a commentary on the first report. He didn't find that it generated any data on its own. So when asked that question, he would have to say yes, but on the other hand it's not so much an engineering study as it is a critique on the first report.

Mr. Loach asked if the critique they used was based on good engineering practices or their analysis.

Mr. Brooks replied yes, and he agreed with their points on the recharge.

Mr. Loach asked if there were any other questions. There being none, he opened the public hearing for public comment and invited the first speaker to come forward and address the Planning Commission.

Marcia Joseph reminded the Planning Commission that when they are looking at a special use permit, section 31.6.1 the Albemarle County Code states that special use permits for uses as provided in this ordinance may be issued upon a finding by the Board of Supervisors that such use will not be of substantial detriment to adjacent properties. She did not think that has happened. When she read through the staff report, it does not compare the groundwater report that was submitted by the applicant and the analysis of the groundwater report by Doug Frazer, the geologist. There are no conclusions made by staff in the staff report concerning that. She was happy to see that staff did at least discuss the fact that the chief of zoning required a special use permit because he said it was likely that more than 1,624 gallons of water per day would be consumed. The staff report apparently agrees that only one more gallon will be consumed. She did not think that is necessarily true. She thought there was a lot of information that the Commission was given in the 147 pages that sort of leads to the conclusion that maybe that is not the case. The Chief of Zoning determined that capturing of storm water and use of it prior to allowing it to recharge into the ground is a form of consumption. That has not been addressed in the staff report nor has it been included in the report in their packet. This calculation has not been included in the information concerning water consumption at all. All they are looking at right now is the water that is coming out of the ground. They are supposed to also be looking at some of the surface water and seeing what happens to it. There is no indication of the effect groundwater withdrawal may have on the adjacent properties. All they have said is that they don't think anything will happen to the adjacent properties, but they don't know that for sure. VDOT does indicate that a traffic impact analysis would be required. That's going to tell you how many people are coming to this site. It's going to tell you how much water will be used on this site. The staff report indicates that the county will shoulder responsibility for monitoring the water use. With the reduction of staff, it is difficult to imagine how this is going to occur. It is also not fair to make the community shoulder this fiscal responsibility or allow the applicant to monitor it. She would love it if Virginia Power allowed her to send in whatever she thought her reading was. The staff report does not provide a remedy if the water exceeds the special use permit. It indicates no plans to construct a gate at the entrance, or lock it when the water use exceeds 1,625 gallons during the day. There is also no indication on how staff calculates the hours of the day. Is it from midnight to midnight? Please consider these issues when you review the requirement to over extend the use of our precious groundwater in the rural areas.

Doug Frazer**,** owner of Hydro Environmental Consultants, said he was a registered Virginia Professional Geologist. He was hired to review the general site development plans and specifically the Tier 3 Groundwater Assessment Report for this project. He would like to focus his comments on two issues.

- The first issue would be the hydrologic balance for the site and specifically the groundwater recharge area discussion. The groundwater assessment estimated pre-development recharge at about 2,100 gallons per day. First of all, he generally concurs with their approach and conclusions. In fact, he thought the groundwater recharge estimate may be a little bit low given the flat topography and the lack of trees on the site. So recharge may actually be higher pre-development than they estimated.
- Second of all, they fail to estimate post-development recharge. Due to the change in slopes on the site, post-development groundwater recharge will probably decrease by approximately 75% based on the impervious area. The net effect of all this is that they are going to have a change in the hydrologic balance for this site. Even if all the groundwater that they withdraw from the subsurface is put back through the drain field, they are going to still end up with a net deficit in terms of groundwater volume. The recharge will be cut by approximately 1,500 gallons per day with a cut in natural recharge. They are going to end up transferring the water from a groundwater recharge standpoint to surface water that is going to exit the site via the level spreader at the south end.
- The last item is in regard to potential impacts to existing groundwater users. He concurs with the staff's conclusion that there is insufficient data to determine future impacts to groundwater users. In particular, one of the well locations is at the south end of the development planned. That location is within a few hundred feet of 10 to 20 existing private wells, which were inadequately documented in the report. Groundwater draw downs may occur particularly to bored wells, which

are very susceptible with the changes in water table. That effect could be to adversely affect those wells leaving those residents without some recourse for correcting that issue.

Tom Goeke, a Crozet resident, said he lived in Yancey Mills and would like to speak about water usage. He presented a PowerPoint presentation and made the following comments.

- He chose the topic because the claim was 725 gallons for phase 1; phase 2 for 185 gallons, which is 910 gallons per day; and the most used comparison, was Brownsville Market. What they know on top is the claim. They also know that the Institute of Transportation and Engineers trip generation data is the standard for determining trip count. They also know that water is not a square foot measurement, it is a trip measurement. They also know the traffic on 250 is increasing. They know that Brownsville Market uses 650 gallons per day. He looked at ITE, VDOT, the county and all the resources for data. He compared Brownsville Market data to other facilities in the county of the same scale and basically they had the same transaction. The actual data for Brownsville is known. There are 1,385 transactions a day, 525 for gas, 860 for convenience and if you use ITE data and extrapolate it to 48%, which is the actual for Brownsville, and then correspond it to Re-Store N Station you come up with 2,620 transactions per day.
- All the other institutions in the county determine water usage not by square footage but by fuel transactions. Tiger Fuel, for example, with all their facilities uses 1.2 gallons per fuel transaction and Brownsville Market coincidentally uses 1.24. If you use the same average data and extrapolate ITE data, it comes to 1,281 gallons per day. For Re-Store N Station on a like square foot basis, the verification of the data was shown on the slide. But that is ITE data for convenience market and for fueling position, which comes right out of the book. VDOT uses 136 trips. For gas it is 846 trips for convenience per fueling position. It is not per pump or station, but per fueling position. It checks out to 48% on fueling with Brownsville and 38% on convenience. So what does it mean? Base line water use is 1,300 gallons on a comparable basis to other stations. That is for a 17-hour operation. The 24-hour operation is 250 to 384 gallons more. An interstate rest stop, which none of the others are, is more trips and truck trips with higher water consumption, excellent parking and access, more trips, off-road diesel only show in town, more trips, additional 2,000 square feet of retail convenience store by data says there are 700 more trips per day, more water usage. Phase II is a claim of 185 gallons per day. So every trip is more water.
- The conclusion is that based on standard industry data for usage and standard industry data for transactions, the claim of 725 gallons per day is ludicrous for a state-of-the-art maximum huge convenience market gas station facility. If they take into account all of the other additional amenities in comparison to Brownsville or other stations, 1,625 gallons per day is also seriously in question.

Richard Brown, resident of Freetown, said he had lived there all his life and wanted to talk about the water runoff. They have nine bored wells, four dug wells, and three springs. At one time everybody used the springs in Freetown. The springs are still there. If they put this construction right on top the hill from these springs, where is the runoff going to go? It would be right to those wetlands. The average well in Freetown is about 70 to 100 feet deep. The construction site is about 30 feet higher than their properties. So they are going to have to go at least 400 to 500 feet in the ground and will have to build below them. So if he drilled in one spot and he did get enough water, he's going to drill in another spot and all at the same time that is going to put stress on the wells in Freetown. They are going to have bacteria and sediment in their water, and they may not get any water at all. Mrs. Higgins stated that the water was going to be used so much per day, but she didn't mention the time that they might get a hurricane. They are going to get water down that hill because no one will be able to hold water up the hill. With Route 250 and I-64, if they get a bus load of kids or a tour bus, people are going to run off the bus to use the bathroom. He asked if they are going to control that by telling them only five persons can go in. That is not going to happen. The people in Freetown want to be assured that their wells are not hurt. He did not see how they were going to do that. When they start drilling and digging in mud, they are going to blow their wells and they are going to have a problem. He did ask them one time and Ms. Higgins said that if that happens the county would have to step in. He did not know what she meant by stepping in, but that question was asked. He asked how far that would go. The basic thing he wanted to talk about was how

to protect the community of Freetown to be like it was when he was a kid growing up. Freetown has been there since the 1800s. He did not think they need to put this huge building right on top of these people.

Frank Calhoun said that he was a new resident of the Crozet / Route 250 area. He moved his residence and horse breeding farm here just a few months ago only to find that he was going to have a truck stop as a neighbor. He was a little qualified to give advice to Albemarle officials since he worked for the U.S. Congress when he was in law school and for several years after becoming a member of the bar. He worked for the Executive Branch handling legislation and regulations for 33 years. He has been reviewing some of the Albemarle Ordinances and he would ask if they were planning a long trip would they take a 30-year-old car and start it up, get in it and get on the road. They are dealing with from what he had seen here ordinances, rules, and regulations that date back to the 1980s. He thought that it's not fair to the residents of Albemarle County to have boards like the BZA and Planning Commission making decisions on outmoded laws and regulations. He acknowledged that they have budget constraints and drafting new laws and legislation and going through the process takes a long time. But he thought that it has to be done. He asked permission of the Commission to speak as a representative of statewide organizations in Virginia and boards of trustees on which he serves.

Mr. Loach replied that he still had time.

Frank Calhoun noted that the Board of Scenic Virginia in their last bi-monthly meeting adopted a resolution. They are very involved in protecting scenic byways and scenic view sheds and are in the process of helping to establish a scenic view-shed registry. They were instrumental in getting the four federal parkways all put on the All American Parkway System at one time. That is the first time that has ever happened in the United States. They have an advisory board member who is a retired VMI geology professor and he thinks and hopes that the Commission has a letter from Dr. Helen Mazano who now does private consulting.

Mr. Loach asked that he finish up since his time was up.

Mr. Calhoun noted that Dr. Mazano briefly reviewed the documents that had been forwarded to her and she thinks that an environmental impact assessment should be done prior to any permit issuance. In light of the fact that the site lies within the Chesapeake Bay watershed, it should be mandatory that all efforts be made to protect any pollution from entering the watershed/waterways. A formal assessment would require that a comprehensive well canvas be carried out with a minimum radius of one and a half and up to two miles surrounding the site. It is essential to establish a database of existing conditions before development with monitoring of those conditions after the development. He thought that the existing situation clearly demands further assessment.

Jeff Werner, representative for the Piedmont Environmental Council, said it is PEC's opinion that the special use permit request for the Re-Store N Station does not meet the necessary requirements for its approval.

- The very nature of the special use permit process is based on the assumption that some uses are potentially more harmful than uses by right. This is supported by the courts which in 1982 stated the legislature may require certain uses that it considers to have potentially greater impact upon neighboring properties or the public than those uses permitted in the district by right to undergo the special exception process. The Albemarle County Code recognizes this and it states the Board of Supervisors hereby reserves unto itself the right to issue all special use permits permitted here under. Special use permits for uses as provided in this ordinance may be issued upon a finding by the Board of Supervisors that such use will not be of substantial detriment to adjacent properties. In the issuance of a special use permit it is predicated on the finding that the proposed use will not be a substantial detriment to the adjacent property. If the applicant cannot overcome this presumption, then application must be denied.
- In their request before the Commission, a finding must be made that the water consumption in excess of 1,625 gallons per day will not adversely affect adjacent users. To make this finding, the application must contain adequate information about existing water resources and proposed consumption. As stated very specifically in the staff report conclusion and he quotes, "There is

not enough data to determine if the existing water supply is adequate to supply water consumption in excess of 400 gallons per site acre per day on this parcel." The applicant has provided insufficient information as to proposed consumption relying primarily on how much water is used at comparably sized convenience stores in three jurisdictions. Consumption can be estimated by vehicular traffic, but no traffic study has been completed. Until a traffic study establishes estimated traffic, the water use cannot be determined. Therefore, the application does not provide sufficient information to make this determination. So in reviewing the special use permit, the county must use and follow the standards enacted into law that without sufficient data on use or impact the county cannot make a finding that such use will not be of substantial determent to the adjacent property. He apologized for that sounding more legal than he usually speaks. He had some help today.

Marco Rol, resident in Greenwood, said that his home was very close to the proposed site. He maybe should have studied more than before he signed up, but he was not coming here as an expert. He came as a concerned resident who doesn't understand why any chances would be taken with groundwater or any of the other possibly detrimental effects when they have a number of service stations there. So short and sweet, he was against it. His friends and neighbors he knew were also against it.

Stacy Hunt, resident at Freetown Lane, asked to bring up the fact that there are nine residences on Freetown Lane and two on the other adjoining lane on the other side of the parcel. All of those residences are on wells. When the well was drilled at her house the neighbor below them lost their water. So this is a large concern for them because if that just happened with one single house redrilling a well that is just a little bit deeper and another neighbor loses their water then what do you think will happen when you put a gas station in with the proposed traffic amounts and their water usage. They all are going to lose their water. She pointed out that in the report it says if they go over their allotted amount, then they are just going to close down the restrooms or close off fixtures that aren't required. They all know that is not a viable solution to this. She asked who would regulate this. If the county staff is already shorthanded regarding personnel to verify the ground water studies then who is going to regulate their water usage. This is a major concern and it will completely devalue their properties if they have no water.

Jonathan Hunt, resident of Freetown Lane, said that his wife Stacy and he had lived there for the last 5 ½ years. He would also like to speak to the part of the special use permit dealing with the detriment to the community particularly to their health and welfare. He made the following comments.

- They have been talking with Jo and Jeff since November 2008. At that point when they proposed this facility, it was the second largest gas station in the county. A year and half later it is still the second largest gas station in the county. So they have met a lot but the end result is still the same--the second largest gas station in the county. It will be the largest gas station that is in front of a residential neighborhood. They are really worried about the scale. When you look at the slope of that property, it is going to generate an incredible amount of water runoff. The diesel pumps will be in the back of the property. So the nosiest, dirtiest part of the station will be closest to their neighborhood. There will be a 20-foot grade off the back. On the back where the diesel pumps are there will be a 17-foot canopy. The property then continues to slope about another 10 feet. So they will be looking at the top of that canopy being almost 40 feet over the neighborhood. This is the type of scale that they are looking at.
- When they talk about the safety and welfare of the neighborhood, water becomes the central issue. They are all on wells. Anyone that has been watching the news over the last two months realizes that bad things can happen. When looking at the oil spill that has been going on, they realize that the chance for contamination is real. They can sit here and talk about all the wonderful things that are going to be done to prevent that, but they all know that when a gas station is put in of that scale they are looking at runoff, which will include transmission fluid, antifreeze, gas, and diesel--not even counting the particulate matter that will come from the diesel trucks as they idle as they fuel. This is all in front of a neighborhood, which has been here for over 170 years. It is one of the oldest neighborhoods in Crozet. He did not think that as a neighborhood they have to justify the reason that they have a right to clean water and clean air. He believed that the special use permits were put into place so that our elected officials have the ability to protect our health, well being, and safety.

- Another point he would like to make is there would be an incredible increase in traffic. In talking with Joel DeNunzio of VDOT regarding some of the preliminary studies, he was mentioning numbers such as 2,500 trips a day with 250 during peak hours. When they start looking at those numbers, it becomes very difficult to believe that they are going to only need an additional one gallon a day. He thought that was an insult to the community and this Commission for them to believe that there is just a potential of that kind of use. When they look at the possible threats to the neighborhood, to their wells, and our safety, this special use permit should be denied.

David Fisher, resident of Freetown, said that he had been sitting and listening to this meeting and he just concludes that if they have good supervisors and good people that they put in office, and then they put other people in to help us do jobs and see that they are done correct, that he felt that from what they have heard this evening that there is no way they can issue this permit. He puts the good judgment in their hands.

Gardy Bloemers was present to speak on behalf of the Scenic 250 Steering Committee as well as a resident of Hillsboro Lane in Yancey Mills.

- They believe that the size and scale of the project is inappropriate and this is evident by the fact that it requires a special use permit to operate as proposed. It is clear that the Planning Commission must take into consideration the grounds they have to deny a special use permit. The proposed use will have an adverse impact on the character of the neighborhood. This is not just another Brownsville Market or similar gas station. They have heard it from the applicant's representative. This is a much larger "modern day convenience store" located right in the middle of a number of established residential communities notably Freetown, Yancey Mills, and more communities in Old Trail and greater Crozet.
- The proposed use will have adverse impact on the roads and create hazardous traffic situations. Interstate traffic, residential traffic, and school traffic with bus drivers and young drivers will create a deadly mix. According to VDOT, the daily trips are expected to increase by at least 25% from 10,000 to 12,500. The proposed use would have an adverse impact on the abutting property. This development will be detrimental to the quality of life of many abutting property owners. The impact on their ground-water supply is likely to be devastating. They question whether they will continue to have a clean and reliable ground-water supply. The proposed use is inconsistent with the Comprehensive Plan. Open sprawl outside the growth area boundaries is not the intent.
- She would like to emphasize that Re-Store N Station is proposed to be located in a residential rural community on a Scenic Byway. It is important to protect our heritage and historic character and not destroy them for short-term and short-sighted economic benefit. What is the purpose of ruining our community to bring in money from truckers and other non-resident traffic from I-64? Based on all this evidence before you, there is more than an ample reason for you to reject this proposal. You are well within your authority to reject this and require a more appropriate proposal that will have less of an impact on the property and citizens around it.

Mary Rice, a member of the Crozet community, asked to bring up two issues tonight.

- One has been addressed already, and it's the monitoring aspect. The question before you is who will monitor this. As they have read in the staff report, there is currently insufficient staff to provide data for analysis of the water impact of this project. Knowing that and knowing how many unfilled positions there are right now in Community Development, she can't imagine who would monitor this water usage.
- The second issue is what the consequences of that monitoring would be. The applicant has suggested that they would shut down fixtures that aren't required by code. In their packet is the fixture approach. Included are the fixtures that they project to put in the facility and then over on the right-hand side are the ones that are required by code. What the applicant has said is that they simply will shut down the fixtures that aren't required by code. This doesn't really make sense. They would not cut down on the water usage simply by shutting off of a fixture. Water is based on how many people are using the fixture. It is not how many fixtures there are. It depends on how many customers they have and how much a kitchen is used for washing and cleaning. It is not on how many fixtures are in a facility. For the fixture approach, the right-hand side of the sheet shows the code-required fixtures. The sheet shows the gallons per day for each

of the fixtures. For example, they are projecting three toilets for customers, but the code only requires two toilets for customers. The applicant says that if their water usage is excessive they will simply shut off one of the toilets and the water usage for the toilets will be cut down by a third. But this doesn't make any sense because if they are predicting a certain amount of people will be using three toilets and you shut one of the toilets down there will still be the same amount of people using the toilets. There will just be one less toilet. So if you are predicting that a certain amount of people will be coming to your facility, they are going to use the same amount of water regardless of how many fixtures are at the facility. Customers will just wait in line for the next fixture.

Bruce Kirtley**,** resident of an adjacent property, asked those present in opposition to stand. Today the Commission has heard some very passionate presentations dealing with issues such as size and scope, the nature of Scenic 250, traffic and safety. As most are aware, there are three schools within a half mile of this particular gas station. There are issues that the neighbors up and down 250 have right now with the traffic that will be attracted to this particular site. It is a little bit baffling to them that no traffic study has been ordered or been done at this point. He would think that would be requisite to coming to a final conclusion. But the real reason why they are here today is to discuss the issue of water usage. The Hunts have told us that they had actually dug a well in the Freetown neighborhood with the result being that one of their neighbors did lose water. He thought that is not just antidotal but it's factual and has to be considered. He felt sympathy for Tom Goeke because he was trying to compress in three minutes a study of 150 pages of research. The general tone of what Tom was getting to was that using industry standards and state standards, there are certain standards that equate to per-car gas usage in a gallon basis. Tom's research indicates that this particular site will exceed that amount. Through research they found that Bellair Exxon used 1,366 gallons of water a day. They have three pumps. The proposed Re-Store N Station would have eight pumps. The Bellair Exxon has retail square footage of 2,365 square feet. Re-Store N Station will be nearly double that at 4,750 square feet. Bellair Exxon is open from six in the morning until nine at night, and it is not adjacent to an interstate. This proposed site will be a 24-hour gas operation presumably with a 24-hour food operation and be double the size. It's not a stretch to think that they can actually double the water use compared to Bellair, which would be 2,755 gallons a day. He thought they were not just right on the edge, but had exceeded that 1,600 amount. He would strongly encourage the Commission to take these facts into consideration when making their determination. Finally and briefly, they have not tried to stop this because we recognize that the owner has the right to develop something on the site. They have met with them three or four times. They are suggesting to possibly modify it in terms of hours of operation, the number of pumps could be reduced, and there are other things that can be done to make this a practical and viable commercial operation. Just the scale doesn't satisfy them at this point.

Barbara Westbrook, a native of Crozet, noted that a map is being passed out that she drew up showing the different mileages. Within three tenths of a mile from the proposed Re-Store N Station are Henley Middle School, Brownsville Elementary, and Western Albemarle High School. She was going to use a word that could be considered a four letter word, teenage drivers. There are going to be a lot of teenage drivers that leave Western in the afternoon and go up to the convenience store. That is only going to get worse. She did not want to be redundant, but her notes are the same that everyone has already said. She had a concern about the slope of the land itself downhill toward Freetown. There is going to be gas spillage on the pavement; and when it rains, it is going to wash down the hill. It seems that would be very detrimental to the residents. Pulling out onto Route 250 from any place from within nine tenths of a mile was very dangerous. Sometimes you are taking your own life in your hands, especially if you are trying to make a left-hand turn. She could only imagine what it is going to be like if there are semi-trucks trying to pull out onto Route 250.

Fred Williamson, a local resident, said from briefly listening to the prior comments, Ms. Higgins was taking issue with 10 gallons per car and she also mentioned possibly 120 cars per hour during peak time. If that was six hours of peak, it would be 720 cars and half that many cars the rest of the day. That would be around 2,000 cars a day. If they only went two gallons per car, it would be 4,000 gallons. If they scale it back to only four peak hours a day and only 30 cars the rest of the time, they would still be over 1,000 cars a day. Again, at just two gallons a car it would be over 2,000 gallons a day.

Mike Marshall, Chairman of the Crozet Community Advisory Council, said that the Commission has a copy of two resolutions that were passed by the Advisory Council at its meeting in May. Obviously the council tried to keep the pulse of this project. He did think anyone on the council is a supporter at this point. To summarize the resolutions, one is about why isn't there a traffic study. Looking into the question, it seems like the most obvious pertinent piece of data comes from the answer to the question of how many cars are going to come in to the facility. The applicant says they will do that later; and if they are that confident in their water numbers, why not do it now. The first resolution says they really don't think the applicant can answer this accurately or with sufficient knowledge unless they have the traffic study. The second thing that they talk about is they are distressed and alarmed to see that the staff report says that the staff does not have the manpower to investigate the validity and accuracy of the applicant's data, which they therefore seem to accept and seem to present to the Commission to accept. They are alarmed to think that the people who are suppose to be the gate keepers on these ordinances are going to accept the applicant's numbers as sufficient. In this case, they have the applicant's engineer's information. If this is not going to be challenged, they think the applicant should be obliged to pay for a study from an engineer who is impartial and judged to be impartial by the staff, so that they can have confidence that it is basically not massaged, cherry-picked information designed to make sure that the applicant's application is suitable. He was so proud of the Crozet people who have come out tonight and talked, particularly Tom Goeke. These are volunteer citizen efforts looking into this question. He was so impressed with the accuracy, insight, and cogency. This is great. The applicant has a financial motive and money to pay people to come up with the information. He just wanted to say kudos to the folks from Crozet.

Mary Gallo, a new member of the Crozet Community Advisory Council, urged the Commission to deny this application. A traffic study and an independent analysis of water usage should be minimum requirements prior to the consideration of the special use permit. If there is not enough data to determine if there is an adequate water supply for the project, as county staff has stated, then you must deny this application. The county has an obligation to the community to verify information provided by the applicant and not just blindly accept it. Anything less would be irresponsible. The applicant is looking after his own interest. The county must look after the interest of everybody else in the community. That is their charge. There is an opportunity right now to get this right. The repercussions of getting it wrong are just too serious. And will have lasting and devastating effects on Crozet, Freetown, local businesses, the school communities, and the water shed. She asked that they do the studies, get it right, and scale this thing back. One final point that is not about the water is as other people have said--a truck stop fueling station of this size is a really bad idea so close to the schools. The existing traffic there is already a nightmare. She did not think anybody wants to see another tragedy like they saw in the northern part of the county a few years ago when an inexperienced high school driver was killed when her car was struck by a sleepy trucker. They don't want to relive that out here in the western end of the county. She urged the Commission to deny the request.

Morgan Butler, representative for the Southern Environmental Law Center, asked to add a few things tonight.

- Number one, the county zoning ordinance plainly sets forth the findings that must be made before a special use permit can be granted. Two of those findings are worth highlighting. One, the special use permit will not be of substantial detriment to adjacent property. Two, the special use will be in harmony with the purpose and intent of the zoning ordinance. Case law establishes another important consideration worth mentioning, which is that the use must be consistent with the Comprehensive Plan. A lot of information about this use and its potential impacts has been presented to you tonight. Boiled down to its essence, the applicant is asserting that the extra water usage and resulting impacts will be minimal. And they have provided documents and studies that will attempt to support that claim. On the other side they have a large set of concerned neighbors and county residents who presented a second set of studies which indicate that the water use and resulting impacts could be a great deal more severe than the applicant suggests. The conflicting information should cast a serious doubt of whether it is even possible to make all the findings that are required before the special use permit can be granted. At the very

least, the conflicting information suggests there are more than adequate grounds to recommend a denial.

- For example, one of the illuminated purposes of the zoning ordinance is to protect ground water. Another purpose is to protect against encroachment upon historic areas. As such it is certainly debatable whether granting this special use permit would be in harmony with the purpose and intent of the zoning ordinance. And it is even harder to assert that granting this permit to allow extra ground water withdrawal for a gas station of this scale is consistent with the Comprehensive Plan. The Crozet Master Plan, which is part of the Comprehensive Plan, specifically calls for limiting the amount of development along this stretch of 250. Also, this site is located in the rural areas and one of the overall themes of the Comprehensive Plan is to discourage development in the rural areas and to promote instead the preservation of natural resources such as ground water. Perhaps most important in light of the information is that this use could measurably affect water levels of nearby wells. It may not even be possible to make the finding that the use will not be of substantial detriment to adjacent property. The staff report suggests these concerns can be side-stepped by capping the water use at a level that more or less matches the amount allowed by right. But as folks have pointed out tonight, the staff report does not offer any recommendations on how this might be realistically enforced. He has heard nothing else tonight that inspires him with confidence that it can be enforced effectively. Since it is clear that the Commission is well within their authority to recommend denial, he asked them to please take a step back and consider the larger question of whether or not granting this permit is really in the best interest of the county residents. For many reasons that have been elegantly articulated tonight, he urges them to recommend denial of this permit and to require a more appropriate proposal that will clearly use less water and has less of an impact on the surrounding area.

There being no further public comment, Mr. Loach closed the public hearing to bring the matter before the Planning Commission for discussion. First, the Commission would take a seven-minute break.

The Planning Commission took a break at 8:17 p.m.

The meeting reconvened at 8:26 p.m.

Mr. Loach called the meeting back to order at 8:26 p.m. He invited the applicant to come forward for a rebuttal.

Ms. Jo Higgins pointed out that a lot of good points have been brought up tonight. It's a very difficult decision for the Planning Commission and they respect that. There are a couple of things she wanted to clarify.

- The subject is really about ground water. It is about the extra gallon and not about the base amount. The study that keeps being referred to was carefully reviewed and approved, which was submitted when the county had staff to handle such a review. The approval actually says excellent Tier III Groundwater Assessment and to please show primary well sites, etc. The comments to record: a geologist and a PE signed off on the amendment on this. There seems to be some confusion that this is about pre-development. The assessment actually acknowledges that the development plan was reviewed as well as the storm-water containment and that sort of thing. So that's a little bit misleading. She actually has an email from the PE who signed the amendment and is responsible for the report. She did not want to get into criticizing consultants for the reviewing of another consultant's work, but would give this information to the secretary. The PE says the Tier III Groundwater Assessment was performed according to the Albemarle County ordinances and was approved by Albemarle County.
- The onsite waste-water treatment and dispersal system was designed according to Virginia Department of Health standards and Albemarle County ordinances and was approved by the Health Department. The groundwater recharge analysis in the Tier III did not include recharge by the drain field. The drain field was designed for approximately 1,600 gallons per day. The only water that will not go to the drain field will be water that is consumed on premises - soda machine, water fountain - this water is technically consumed and deposited via urine into another

location and will not recharge the aquifer. They cannot account for the segment of site users that have consumed water elsewhere and deposit in the Re-Store N Station bathroom. In either case, they are not dealing with large quantities of water; and all the effluent that enters the drain field will recharge the aquifer.

- There is a statement about HCC's letter not aiding an understanding and misleading and wrong in many instances. Again, there is an ethical issue between consultants. But the opinion of the study that was done is not just about pre-recharge. It's post recharge. It acknowledges the storm-water system. Now in a case where you would pump from a well, it would go in a public sanitary system and be carried away from the site. That recharge would not be included. But basically what comes on site will go back into the groundwater. The applicant also has a well, and it will be important that well be protected. Mr. Goeke did do a lot of calculations and she believed, since she read it very quickly up on the screen, that he came up with 1,284 gallons per day for Re-Store N Station or around about 1,300 gallons a day based on his analysis. That could be a very good correlation; but he excluded some other things that actually she would argue are included. They know that the operation can be done successfully within the limits, and those limits are not what the special use permit is about. It is about the extra 0.25 gallons per day. So the advice about considering all these aspects about impact really has got to be defined that way. Our surface water runoff will be done and designed according to Albemarle County standards, which will not allow the runoff that is oily discharge to leave the site. It will actually be filtered in the fill-terra system.
- There were many concerns brought up about the age of the neighborhood, and they very much respect that. They have tried to consider that and have redesigned the site to do that. There is no expectation of semi-trucks being invited. It is not friendly to that kind of thing. That will be apparent in the site plan part of it. The fixture frequency too was again just an effort to give a reasonable assumption. But it takes fixtures for people to use the water. The assumptions in there were very conservative, such as a flush every five minutes over 24 hours. If it meant a flush every 30 minutes in six hours, it is still about providing a reasonable assumption. Again, it came very close to the number that Tom Goeke expressed. She thought that they were all coming back to that same number, which is well under 1,624 gallons a day. Staff enforcement, zoning, and those sorts of things are really not something that she believed can be considered in a special use permit. In any decision the Commission made, they can't say they can make a rule but someone is going to break it. So they can't do anything about it making a rule. If the standards need to be changed fine, but there is not missing information. The information submitted was approved according to Albemarle County standards. If they are asking for a different level of standards, then the rules need to be changed but not applied differently to this application. If there are any other questions, she would be happy to answer them. She thanked the Commission for their time and for listening to all the public input.

Mr. Loach asked if there were any other questions. The matter was brought back to the Planning Commission for discussion and action.

Mr. Morris said his primary concern was really summed up by Stacy Hunt. Number one, he had no reason to doubt any of the data that the applicant has brought forth. However, Ms. Hunt brought up the fact that supposedly a well was dug on a property which substantially deteriorated the well on an adjacent property. That is data that bothers him in that they have requested other applicants to do some real work to try to avoid degradation of the property of other people. This is one well for one house that supposedly did this. He would really like to have staff look into that since this is good hard data that talks to whether this area is fit for a well or wells that will draw up to 1,624 gallons per day. That is his concern.

Mr. Lafferty noted that he expressed some concerns earlier. Part of the concern was that they don't have a good handle on the usage of the water. There are a number of figures that were thrown out. He tried to guess at it regarding vehicle trips per 24-hour period, and he came up with more usage for the well. If they are going to consider the recycling of water, groundwater, and the septic system, he still has some major reservations about covering a majority of the drain fields with blacktop. He has never seen that considered a good construction practice. He was concerned with the runoff given the topography of the site. Just estimating a one-inch rain, there would be 27,000 gallons coming down the hill. With a six-inch

curb, he saw no way right now that the water is not going to go over the curb and bring oil, gas and antifreeze into the neighbors' yards and their springs and wells. If there is something he was missing, he would like to hear that.

Mr. Loach pointed out that he received an email from the county attorney, as everyone else did; reminding the Planning Commission that what they were dealing with tonight was going to be an issue of water. Remindful of that email, his response would be one of taking into consideration the water. The proposal, as stated in the documents received, was to use more than 400 gallons of groundwater per site acre per day for a convenience store. However, the factors unfavorable to this from the county said there was not enough data to determine if the existing water supply is adequate to support water consumption in excess of 400 gallons per site acre per day. Additionally from the county engineer, there is a statement that goes on to say regarding well failure there is not sufficient data to ensure future groundwater failure will not occur in the area. Additionally, the report done and spoken about by Mr. Frazer from HEC Consultants also makes a conclusion that in effect there may be a negative consequence of the water usage. He thought that Mr. Hunt said it best that it should not be up to the adjacent residents to justify their need for water. Staff did a good job in making the justification for denial for this special use permit application based on two factors. One, there is a detriment to adjacent residents, which he believed was evident. Two, would be the public health and safety concerns. Obviously if someone's well goes out, there is a public health and safety concern. He could probably extrapolate that to also include that if they shut down the bathrooms in the place and the cars are still coming there may well be another public health emergency. With all that said, he cannot support the special use permit.

Mr. Smith noted that he had two points. He assumed that the owner is a gambler because he doesn't know whether he is going to have water or not to start off with. Secondly, he worried about the solution for adjacent property owners if they have well failure.

Ms. Porterfield said that her problem has been the same since she read the application. When she moved to this county and built their house in 2002, her family was coming from Arizona. Therefore, she has had a lot of background with water. She had no idea that she was moving to a place that within the last eight years would have had two major water crises that certainly affected her family. They actually live in a development area. If in sitting on the Commission she has to make a decision as to what she perceives in this county to be a precious resource--water, she would have to make a decision as to whether or not she thinks this is where they should be giving the water. When she stood out on 250 and looked and drove around she realized that there are at least two gas stations within spitting distance of this property. There also is a place where someone can purchase food and some other supplies. However, she has never been in that particular facility. If she was going to look at this and decide whether she can allocate a precious resource, she really did not think she can. There are probably other things that the people who live in that area need. At this point she did not think they necessarily need another gas station.

Mr. Franco said that everybody has raised a lot of good points tonight. But where he really got stuck with reading the staff report and all the emails has been that 1,624 is the limit that they could withdraw now. The extra gallon, as he understands it, has been put in place in order to create a monitoring and enforcement mechanism for ensuring that they stay within that range. In his mind, it is less about the gallon so much as about creating some sort of enforcement mechanism to make sure they stay within that range. Mr. Smith said before that the owner must really be a gambler. The owner is also gambling that the analysis they have done on the fixtures is going to allow them to operate within the hours that they expect to because they will have to be cut off when they exceed that. So if that occurs and if indeed they really need to run 3,000 gallons a day to operate 24 hours a day, they are not going to be able to do that. Because the limit is in place, we now are creating a mechanism to monitor and enforce that limit. So it's really not about how much they could use, it is the matter of how much they are allowing them to use and whether they have a mechanism to create an enforcement of that limit. He gets a little bit disturbed about how they are going to enact the reduction of the moratorium. He was not sure and assumed there are ways that could be dealt with to keep it so that maybe there are two staff bathrooms and the things that are shut off are open to the public. So indeed it's not related to trips per day. It is really about the number of employees that they have instead. He had concerns about how they are going

to enforce that and how it is going to be implemented. He feels good about the extra gallon from the sense that it is giving us a means to monitor and enforce. As he understands it if they don't have the special use permit and go to that limit of 1,624, they would not have a mechanism.

Mr. Kamptner noted that is correct. The quirk of this special use permit is that the difference of a gallon changes the ability of the county to have conditions in place if they require ongoing monitoring of the water consumption.

Mr. Franco said Ms. Higgins noted in her presentation some kind of covenants that would run with the land. He asked if none of those mechanisms were as good a mechanism as the special use permit. If the one gallon is the big concern, is there another way to attack this without adding an extra gallon.

Mr. Kamptner replied that there is another way. They have used in a couple of situations covenants that ran with the land where the county was a third party beneficiary and had enforcement rights. But he thought that in this case putting it directly in front of the Planning Commission and the board for their policy considerations regarding this special use and enforcing the use as a purely zoning matter where there is ongoing monitoring under the conditions of the special use is probably the best most direct way to deal with this.

Mr. Franco asked what the resolution of the consumption of surface waters is. He heard that raised a couple of times. Ms. Joseph mentioned and there was talk about the capturing and reuse of the surface waters being also consumption.

Mr. Loach noted that he wanted Ron Higgins to answer that because he is the one that did all the research regarding the water consumption, rain tanks, reuse and things like that.

Ron Higgins pointed out this came up during the special use permit review. The question was asked whether or not capturing rain water and using it on the site was a form of consumption. In his research, he went back to the discussions that occurred when this ordinance was created. It was initially created and then added to other districts. Anytime they talked about groundwater and surface water, the intent was to protect groundwater but it included surface waters. His conclusion based on the record was that it is a form of consumption. But the Commission and the Board of Supervisors have the ability to determine what impact that consumption has on the other form of consumption, draw down from the well. It depends on how you use it. It depends on what you do with it after you use it. If you capture rain water and pipe it into a device in the building that filters and bottles it and you put it on the shelf and sell it that is a different form of consumption. He was using that as an example other than capturing rain water, holding it in a tank, letting it seep back into the ground, or using it and spreading it on the ground. That is two very different forms of consumption. So they have to consider what kind of consumption it is. But it is a form of consumption.

Mr. Lafferty pointed out that there is a remedy for the applicant in reducing the size of the plans so it wouldn't be drawing anywhere near 1,600 gallons.

Mr. Franco suggested they say the applicant reduces it and takes one of the islands away and two years from now they have got two years' worth of data that says that they have been using half as much water and that island is now supportable so to speak. That is where his concern comes in because they will have monitoring information but there is no way for the county to have that data and to enforce it without granting the special use permit. They don't have the ability to go over it because it is a legal requirement. He suggested that maybe the penalties need to be more severe than just shutting down the bathrooms or that the hours are to be amended or some kind of solution that resolves this better so that there is not a question of 50 people trying to use one toilet or one fixture.

Mr. Lafferty said he did not consider it that one-gallon difference. He considers that they are including the surface water, the rain water, and the runoff as part of the calculations. If any members of the Commission lived downhill from this installation, would they vote to put it in?

Mr. Franco replied given the standards that he is trusting staff is going to enforce, they shouldn't have problems with runoff, the quality of the water, or the rate of the water. That's where he gets really confused on consumption, too. If they are talking about consumption being gathered in the tank and infiltrating into the ground because of storm water detention, is that really consumption at that point or is it really if they pump it out and use it for irrigation. He felt that could be consumption, but he thought that was a good thing and what they are trying to encourage in places. He felt like all of a sudden he was creating penalties for doing the right thing.

Mr. Lafferty said one of his concerns is that he thinks that the applicant has come up with extensive plans but they haven't answered some of the critical questions that have been brought up tonight. The applicant has had ample time to address these. He has not seen the concerns addressed. His inclination would be to deny the special use permit. As a matter of fact, he would make that motion if there was no further discussion.

Mr. Franco said he was just trying to figure out how they gain from this if the Health Department has looked at it and determined the water usage and the septic at 1,600 gallons. There is a permit for that, which would be enforceable by the Health Department. If they monitor this usage and records are created and given to the county, then he was having a problem seeing where they are really going to be exceeding the by right use. He knew they were by a gallon, but they have done that gallon to create an enforcement mechanism. He asked if that was a tenth of a gallon instead would that make people more comfortable. He did not think they could create a special use permit that is below the by right use.

Mr. Lafferty said the gallon is a trigger mechanism to indicate that they need a special use permit. Since the plans say "to be determined" in the drain fields and things like that, his common sense says it will exceed that and therefore the need of a special use permit comes into effect. Since he did not have sufficient information, they should go back and either provide sufficient information or reduce the size of it.

Mr. Loach said he did not think that it is what they would gain but what the neighbors might lose. He agreed with Ms. Porterfield that this was a shared resource and that one element of the special use permit is that it not be detrimental to the adjacent property owners. The neighbors have come up with a consultant who says there is the potential for well failure. There are other things such as bacteria and other elements that might be detrimental to the public health.

Mr. Franco agreed with that statement, but where he struggled is they have a by-right ability to use the 1,624 gallons. He was concerned about the neighbors without a doubt and what the impact could be. The 1,600 gallons is probably equivalent to four houses going in on that property. He thought that the potential was there that it could impact things. He noted that Ms. Higgins noted that it previously was on public water. He asked if that still is an option. Could public water be pursued?

Mr. Cilimberg noted that there was a request for a jurisdictional area change over a year ago, which was denied by the Board of Supervisors. The reasoning really has to do with what the Comprehensive Plan says about granting public water and sewer outside of development areas. It is a pretty specific set of circumstances that they were not able to meet.

Mr. Franco said that this is where he really struggles. He thought if this were a request that needed that extra gallon to exist, he would probably not be in favor of it because it is not rural area even though it has the by-right zoning. As he sees it and the way it has been shaped, it has been created as a trigger to create enforcement and a monitoring system. So given that he really feels that the by-right use is to be allowed at this point and they are just putting an extra safeguard on it versus what you would have if it just used 1,624 gallons.

Mr. Loach agreed. But it seemed that if they were willing to do this in the rural area and if they were going to do this on well water, then the mechanism that they have is one that is adequate in reality terms to measure what the potential impact is. That is what they have and what he is judging it on.

Mr. Kamptner asked to catch on that theme that he just said and then add a couple of other things that he thinks the Commission needs to consider. The first is that a couple of people during the presentation and staff in the staff report noted the role the Comprehensive Plan plays. Bear in mind that this is a special use in the Highway Commercial district. The Comp Plan designation for this property is Rural Areas. Staff has noted at the top of page three the general goals of the Comp Plan within the rural areas as far as preserving agricultural, forestal, historic, and scenic spaces. It is almost away from the whole water-consumption issue; it is a special use or a more intensive use in an area that is zoned Highway Commercial, but it is planned for Rural Areas. There is another thing he wanted to clarify in the staff report, which Ms. Frederick mentioned at the beginning of her presentation. It has come up a couple of times. It is on page four of the staff report where the staff notes the factor that is unfavorable to this application stating that "there is not enough data to determine if the existing water supply is adequate to support water consumption in excess of 400 gallons per site acre per day on this parcel." On page three is a statement that should be repeated in place of the statement that he just quoted. That is "there is not sufficient data to ensure future groundwater well failure will not occur in the area." That is a distinction they need to be aware of as they are considering this.

Mr. Loach noted interestingly enough that he just mentioned the emphasis that it is in the Rural Areas. He found looking back at another staff report for the Earlysville proposal the factor unfavorable was the proposed expansion does not directly contribute to the goals outlined in the Rural Area section of the Comp Plan. He thought that could be applied here as well. Although going on what they were talking about earlier about staying with the water consumption that was basically what his focus was on. But again, it was in another report that this would be an unfavorable factor.

Mr. Franco asked if the Commission would mind if they heard from Ms. Higgins.

Ms. Higgins suggested that he ask her a question.

Mr. Franco asked given the discussions what was her position, and Ms. Higgins replied compromise.

Mr. Franco pointed out that all he was trying to do was to give Ms. Higgins an opportunity to defer or does the Planning Commission want to push the vote.

Mr. Loach pointed out that Mr. Lafferty is ready to make a motion.

Mr. Lafferty said he would like to make a motion.

Ms. Porterfield suggested that if they are going to have a negative motion that the Commission give the applicant the ability to defer if she wishes to.

Mr. Franco said what he heard a Commissioner say was that there is more information that he would like to see and an opportunity to either scale it down or provide information to substantiate applicant arguments better. He would like to give her that opportunity if it is going the other way. That's all.

Mr. Lafferty said that he would hope that they would not have to go through the whole procedure again. He did not a problem with Ms. Higgins making some comments that might change his mind.

Ms. Higgins suggested that sometimes in cases where the Planning Commission was making a recommendation to the board that they would have some conditions that would say the Commission was recommending against it but should the board consider it differently that there be certain conditions imposed. She was going to offer as a compromise a potential condition that would make them more comfortable with this particular chicken-and-egg situation because they can't prove what they can use. She suggested a condition that basically says that there would only be four gas dispensers allowed until some period of time, six months or a year, of water data being submitted on a monthly basis such that the full site development could occur. They have asked staff members several times what is the threshold that they are comfortable with, which is why they have downsized the store, the gas dispensers and the parking. She suggested a potential second motion would be if the board were to consider it that you

would recommend a staged type of development, which would affect scale. In that way it would make them more comfortable with what the water usage is. She was going to suggest a limit on four gas dispensers when there is now six and one diesel dispenser. In addition, the period would be six months or a year; and the facility is not targeted to open until January, 2012. But that year or six months, whichever the Commission would prefer, would allow absolute data would be in staff hands. That can be done by an independent professional monitoring person to make everybody more comfortable. She was just going to offer that as a compromise to satisfy the scale and monitoring issues.

Mr. Loach said that to be very honest he did not want to make a motion on the fly with conditions especially since the community has no recourse to respond to the conditions that she suggested.

Motion: Mr. Lafferty moved and Mr. Morris seconded to recommend denial for SP-2009-000034, Re-Store N Station as presented.

Mr. Lafferty said that the existing proposal already has plans for expansion. The applicant has had time to reduce it; and if they want to reduce it, then they can come back with better information.

Mr. Kamptner noted for the benefit of the Board it would be helpful to articulate the reasons for the motion.

Mr. Lafferty said the reason for the motion is that he has insufficient information to believe that they will not exceed the allowable usage of water and that the neighbors will be adversely affected.

The motion for denial passed by a vote of 4:2. (Mr. Smith and Mr. Franco voted nay.) (Mr. Zobrist had disqualified himself and left the meeting.)

Mr. Franco noted for the record for the board he would like to say that he understands everybody's concern about exceeding the number, but he felt what they have done is established a number that is just outside the by-right use in order to enable the county to do the enforcement and the monitoring. As such he voted no on the motion.

Mr. Loach noted that the motion for denial had been passed. His understanding is that the denial of the special use permit did not affect Commission consideration of the preliminary site plan.

Mr. Fritz noted that the Commission still needs to take action on the preliminary site plan. What has historically been done by the Planning Commission is that there is a condition that presumes approval of the special use permit by the Board of Supervisors. That condition says that the site plan must be in compliance with SP-2009-00034. If the special use permit is then denied by the Board of Supervisors, the approval of the site plan would fail because it can't possibly be in compliance.

Mr. Loach noted that the Commission would move on to the site development plan.

Ms. Porterfield asked why they would want to approve a site plan that requires the amount of water requested. She would assume in order for the applicant to get down to a level that would be by-right, the applicant would have to reduce the site plan. She did not see how she could vote "yes" for the site plan if it does not meet what was in the staff report. She asked if that was correct.

Mr. Fritz said the Commission could make a finding that the site plan because it does not have the special use permit will exceed the water limit and could make another a finding to deny the site plan because it does not have the proper zoning and the use is a not a use permitted. The site plan would fail on that count.

Mr. Kamptner replied yes that was correct. It saves some procedural steps. This is just a preliminary site plan, so the Commission's action on this is approval for the preliminary with a condition tied to obtaining the special use permit. That is one condition among many others that go with an approved preliminary site plan. The Commission's action today was merely a recommendation to the Board of Supervisors on

the special use permit. The board has the ultimate decision on the special use permit. Procedurally, it is simpler if the Planning Commission goes ahead and takes action on the preliminary site plan recognizing that the final site plan won't come in until after there has been a final action on the special use permit.

Ms. Porterfield asked based on that will the final site plan come back to the Commission for review.

Mr. Kamptner replied it can since the Commission's action can direct that the final site plan come back for review.

Ms. Porterfield assumed that is where the community input would come into play again. She asked if that was correct. If it comes back here, it would be an open hearing as opposed to being taken care of by staff.

Mr. Fritz replied yes if the Planning Commission directed the final site plan come back. But remember that the preliminary site plan, which is before the Commission tonight, and the final site plan, which will come before them in the future, are ministerial acts and not discretionary acts. What they would be doing then is simply determining if the plan meets the minimum requirements of the ordinance. If the site plan meets the requirements, the Commission would have to approve it. If the site plan does not meet the requirements, the Commission would have to deny.

Mr. Franco noted if the final site plan was before the Commission, it would have been reviewed by staff.

Mr. Fritz replied yes that staff will review the final site plan and advise the Commission if it meets or does not meet the requirements of the ordinance.

Ms. Porterfield asked why the request was before the Commission.

Mr. Fritz replied that it was before the Commission for two reasons. It was appealed by an abutting property owner, and there was a request for disturbance of the undisturbed buffer. There is a waiver the Planning Commission is considering and it has been appealed. The reason it is before the Commission has nothing to do with the special use permit. The site plan is not before them because of the special use permit.

Ms. Porterfield noted that staff was not looking at the size of the facility in comparison to the amount of water or traffic.

Mr. Loach said that if it had not been called up the Commission would still be hearing the waiver. He questioned if it was that narrow, and they were really looking at the waiver.

Mr. Fritz pointed out that it had been appealed and the Commission has both the site plan and the waiver before them tonight. They would be determining if the site plan meets the minimum requirements of the ordinance.

Mr. Loach noted that if it meets that, the only threshold they are deciding is the waiver.

Mr. Fritz replied that was correct for the site plan.

Ms. Porterfield asked if in order to construct this particular site plan the applicant has been told that they are going to use more water than they can and need a special use permit, how can the site plan be a ministerial decision if they don't have any water.

Mr. Kamptner said assuming that some kind of special use permit is approved at that point there are no more discretionary or legislative decisions left to be taken. So at that point it does become a ministerial act. When the final site plan comes back it would be a ministerial act. He did not know if there was anything on the site plan itself that is a function of the amount of groundwater consumed. He would defer that question to staff. There may be some notes and things like that. If they were talking about the

difference between 1,624 gallons or 1,625 gallons he questioned if there would be any changes to the site plan.

Mr. Fritz replied that there could be a change or a reduction in the size or scope of the development such as a removal of an island or a reduction in the size of the building.

Mr. Lafferty said if they consider the handling of groundwater as consumption, it will have a definite effect. If they reduce the size of the paved area, then they will have less handling of any groundwater.

Mr. Kamptner replied yes, because they could have a site plan as shown here and if the business is open six hours a day and was only going to consume 600 gallons of water and all the food was brought in and there was no food preparation on site the physical construction at the site could stay the same whether they operate that way or if they are consuming much more water. That is probably just complicating the issue at this point.

Mr. Loach asked if the Commission has the ability to defer this until after the board's decision is made. He thought that Ms. Porterfield had a valid point.

Mr. Fritz replied that he believed they were up on the time limit. The applicant could request a deferral. The Commission's option would be to deny the preliminary site plan or the applicant could request a deferral. The applicant is proposing a use right now that the zoning administrator has determined needs a site plan. So the Commission could deny the site plan because it is not a use currently permitted. The special use permit is not in place right now. Mr. Kamptner is exactly correct for the purpose of keeping things moving forward and tying them together they have acted on the site plan under the presumption that the special use permit would be approved with a condition so that if the special use permit is not approved the site plan automatically dies and the approval is no longer valid.

Mr. Loach invited the applicant to come forward to address the question regarding whether they were interested in a deferral of the site plan.

Ms. Higgins thanked the Commission for the opportunity of making that decision. She replied no because of the timeframe it is important for them to understand all of the implications of the input that would be received from the Commission on the site plan. Otherwise, they would be on different tracks. At this point they would like to proceed and get Commission input. The request has been through staff review and meets the site plan requirements, and now they would like to receive the Commission's comments. This has been done on several occasions.

Mr. Loach noted that the hearing would proceed and asked staff to present the staff report.

Ms. Frederick presented a PowerPoint presentation and summarized the staff report for SDP-2008-00154, Re-Store N Station.

The request is for preliminary site plan approval to construct a 5,750 square foot, two (2) story commercial building with gas pumps and associated parking on 4.06 acres. The application includes a request to waive restrictions found In Sec. 18-21.7(c) in order to allow for land disturbance in a required twenty (20) foot buffer area.

<u>Waiver of Section 18-21.7(c)</u>
Sec. 18-21.7(c) states: No construction activity including grading or clearing of vegetation shall occur closer than twenty (20) feet to any residential or rural areas district. Screening shall be provided as required in section 32.7.9.

Sec. 18-21.7(c)1 allows the Planning Commission to waive these standards as follows:
In a particular case where the developer or subdivider demonstrates that grading or clearing is necessary or would result in an improved site design, provided that: (i) minimum screening requirements are met and (ii) existing landscaping in excess of minimum requirements is substantially restored.

Minimum standards for screening are identified by the following sections:

Sec. 18-32.7.9.8(c) states:
Screening shall be required in the following instances:
Commercial and industrial uses shall be screened from adjacent residential and rural area districts.

Sec. 18-32.7.9.8(a) provides the following applicable requirements for screening:
When required, screening shall consist of a planting strip, existing vegetation, a slightly opaque wall or fence, or combination thereof, to the reasonable satisfaction of the agent. When only vegetative screening is provided, such screening strip shall not be less than twenty (20) feet in depth. Vegetative screening shall consist of a double staggered row of evergreen trees planted fifteen (15) feet on center, or a double staggered row of evergreen shrubs planted ten (10) feet on center. Alternate methods of vegetative screening may be approved by the agent.

Staff reviewed the proposed landscaping plan. The applicant proposes to locate required screening plantings along the southern parcel boundary within an area designated as a required twenty (20) foot undisturbed buffer. In reviewing the Landscape Plan submitted with the Preliminary Site Plan (Page 10, Attachment B staff report), staff believes there is sufficient space in the southern portion of the site to allow for the required screening plantings to be planted outside the required twenty (20) foot undisturbed buffer. Therefore staff does not believe the developer has "demonstrate[ed] that grading or clearing is necessary, or would result in an improved site design." That is the staff analysis as was submitted for this staff report. However, today the applicant proposed and submitted supplemental information that would change their application and the information found in their waiver request. This has been included in the presentation.

Mr. Fritz noted that staff gave the presentation this way because that is what is before the Commission. Today he received this information, and he would work with the applicant. The applicant provided a sight line that shows Rte. 250 through the property down to the residential property. The applicant is proposing a slightly different layout to maintain the buffer along the side with plantings within the current open area with supplement plantings in other areas of the buffer. In addition to the plantings a fence would be installed just outside of the buffer at the top of the slope near the parking area and canopy. This is a substantially different proposal than was presented before. Staff did not analyze the proposal completely, but it is possible had this been the original proposal that staff might have been able to approve this disturbance of the buffer administratively because it does provide for additional landscaping in excess of what currently exists within the buffer in certain places and it maintains the buffer in other places. It installs screening since six-foot fencing is considered screening. This is the applicant's current proposal. Staff wanted to give both presentations to the Commission so all options were available for discussion. This alternative was presented to staff today.

Mr. Franco said that from what he said it was his understanding, without commitment because it only came in today, that there is a potential that this would not require a waiver and could be granted administratively.

Mr. Fritz replied that staff was not granting it administratively because at the time they felt it would be completely inappropriate to take it off the agenda and approve it administratively. Staff felt that would be wrong. In looking at this, he could say that staff would probably have approved this type of waiver administratively. Staff can support this sort of disturbance of the buffer.

Mr. Kamptner noted that the Commission's consideration of the waiver is discretionary under the criteria in the ordinance. The Commission could act to approve the waiver and still proceed to deny the site plan because it does not comply with the requirements of having a special use permit.

Ms. Frederick presented staff's current recommendations in the staff report with an asterisk noting the additional recommendation that if the Planning Commission chooses to approve the revised waiver application that there is a condition that approval be tied to the drawings submitted today.

- Staff recommends denial of the requested Buffer Disturbance Waiver found in Sec. 18-21.7(c).*

- Staff recommends approval of SDP2009-154 Re-Store N Station – Preliminary site plan with the following conditions:
    1. The Final Site Plan must meet all requirements of Sec. 18-32.6;
    2. The Final Site Plan must be in compliance with SP2000-34 Re-Store N Station;
    3. The Final Site Plan receives VDOT approval;
    4. The Final Site Plan receives Virginia Department of Health approval;
    5. A Certificate of Appropriateness is granted by the ARB; and,
    6. If the Final Site Plan reflects changes significantly different from the Preliminary Site Plan, the Final Site Plan will be subject to an additional Site Review Committee review.

*If the Planning Commission chooses to approve the revised waiver application, staff recommends the following condition:

1. Disturbance of the required undisturbed buffer shall be limited to that shown on plan titled "Proposed Buffer Plan if waiver is granted" initialed WDF 06.08.10. Landscaping and fencing shall be installed as shown on plan titled "Proposed Buffer Plan if waiver is granted" initialed WDF 06.08.10. Minor variations of landscaping required by members of the Site Review Committee or Architectural Review Board are permitted.

Mr. Loach asked if there was is no finite point for submittal of new information so that everyone has an expectation of what is coming.

Mr. Fritz replied no, there is no standard to say that. They do have a mechanism for projects not associated with a special use permit that are on a very strict time line. There is no rule that says 48 hours or one week. The Commission could very easily say this is a discretionary act as pointed out by Mr. Kamptner. That is why they were giving two presentations. Staff gave both the current and additional information. Staff has looked at it to the best of their ability, but if the Commission believes it is a discretionary act and they have not had sufficient time to evaluate it, it can be denied.

Mr. Loach pointed out that it was more in the equity with the people in the community versus what Mr. Fritz had just explained.

Mr. Fritz said there is no answer that they have this hard and fast cut-off time period.

Mr. Loach invited questions from the Commission.

Ms. Porterfield asked in order to give the applicant direction can the Commission moderate whatever the motion is going to be to give some specific movement of items in the site plan.

Mr. Fritz asked if she meant in the waiver.

Ms. Porterfield replied no. She asked if they can give them some direction in the motion to try to make this thing come down in size.

Mr. Fritz replied that the motion on the site plan would be that it does or does not comply with the requirements of the ordinance.

Ms. Porterfield asked if they could tag it on to the special use permit.

Mr. Fritz noted unless they decide that the motion is that the use is not permitted and it fails on that account.

Ms. Porterfield said the use currently is not permitted.

Mr. Fritz said that the applicant does not have the special use permit for the use until the Board of Supervisors acts on it.

Mr. Loach opened the public hearing and invited the applicant to come forward and address the Planning Commission.

Jo Higgins noted Ms. Porterfield was suggesting those compromising potential features, which was something she was trying to get to before the Commission took the action on the special use permit. She believed the preliminary site plan was either in conformance with the ordinance or not. That feedback is important as they go forward to link these two requests together. They could go on with the presentation and then get that feedback. She was not sure what they were asking.

Mr. Loach asked that she make her presentation.

Ms. Higgins presented the PowerPoint presentation, as noted below, to summarize the site plan request. This information was what she actually started the site plan with, but she did not get into the details of the site.

Re-Store N Station Information:

- Highway Commercial Zoning (HC) – has been commercial since prior to adoption of the Comprehensive Plan in 1980. Prior use – small engine repair with mowers stored over one half of the front area & an old building.
- Rolling topography – rectangular parcel of 4.06 acres
- Rte. 250 Right of Way is 120 ft wide (60' each side of Rte. 250 centerline) – improvements to include right turn and left turn lanes into the site
- After considering about five different concept layouts, the best was selected and the preliminary site plan was submitted and completed staff review. After Architectural Review Board, neighbor, and Entrance Corridor concerns were raised, a totally new concept layout was taken to an ARB work session. This was then engineered and completed staff review which is the site plan before you. We wish the layout was more efficient but with septic fields (and 100% reserve), travel ways, parking, turning radius, loading space etc. the layout has met all the requirements. There is no requirement in AC to limit the impervious area or floor area ratio. In urban locations, layouts are tighter but there is less land available and most are "re-development." Expansion is extremely difficult because they must meet all the new requirements, which is not necessarily possible on smaller sites.

There has been a question why isn't there less impervious area. There are four acres here and the whole idea is that in most cases there is less land available and it is redevelopment. In this particular case, they wanted to use the land in the most effective way. There are a lot of requirements now that did not apply when a lot of the convenience stores that they look at today have.

Modern Day Convenience Stores:

- Sheetz – 10Ksf, 10 fuel dispensers, car wash, full restaurant, and drive-thru (new prototype).
- WAWA – 5,950sf, 8 fuel dispensers, food sales.
- Liberty – Every Day Café – convenience store, full restaurant, 12 fuel dispensers, 2 diesel, car wash.
- All – typically have 2 or 3 entrances and corner locations along high traffic volume primary roads.
- RS – 4,750sf, 6 fuel dispensers & diesel, food sales (not a restaurant "use"). Although smaller footprint and less fuel dispensers, RS can be compared to WAWA in most aspects.

What Re-Store N Station Is About:

FOCUS - RECYCLING, RENEWING AND ECO-FRIENDLY.

RE-FUEL, REPLENISH, REFRESH – LOGO HAS EARTHY COLORS WITH FARM MOTIF.

GOALS – TO BUY LOCAL AND STOCK PRODUCTS SUCH AS GROCERY, FRESH BAKED ITEMS, RECYCLED CONTAINERS, DRUG STORE, HARDWARE, FEED (PETS & LIVESTOCK) AND MORE LOCAL FARM PRODUCE; AND STOCK VIRGINIA WINES AND VIRGINIA PRODUCTS. WELCOME VISITORS TO CROZET AND HAVE AN EDUCATIONAL EXHIBIT ON THE FILTERRA, RAIN-TANKS/RAIN WATER HARVESTING SITE DESIGN TO BE AN EXAMPLE TO OTHERS. RE-STORE'N STATION MAY BE A FUTURE FRANCHISE AVAILABLE IN OTHER AREAS.

INDEPENDENT FUEL SALES WHICH WILL BRING LOWER PRICES TO THE CROZET COMMUNITY AND OFF-ROAD DIESEL FOR AGRICULTURAL & CONSTRUCTION EQUIPMENT THAT IS 38 CENTS CHEAPER BECAUSE NO ROAD TAX.
OWNER IS 5TH GENERATION ALBEMARLE COUNTY RESIDENT, GRADUATE OF WAHS WITH STRONG ROOTS IN THE COMMUNITY WITH PREVIOUS & CURRENT BUSINESS OWNERSHIP & 3 CHILDREN IN THE SCHOOL SYSTEM. HAS OPERATED A CONVENIENCE STORE FOR 18 YEARS (16 IN ALBEMARLE) AND HAS A PROVEN RECORD OF SUPPORTING GIRL & BOY SCOUTS AND OTHER COMMUNITY EFFORTS.

Reasons for Site Layout:

- Septic field locations - high priority to protect
- Entrance – single point of conflict rather than many
- Meet travel ways and parking space requirements
- Building orientation to Rte 250 & main canopy to side with small canopy to rear (main canopy made shorter)
- Green strip across the front of the entire site with EC plantings & at northeast corner
- Yard buffer along south and west edge
- Turning radius for vehicles at all canopies
- Not inviting to large trucks (Large trucks must pass by cars backing out of parking & patrons coming into store.)
- No accommodation for truck parking (it would block turning movement). They are proposing signage to control this to have no truck parking, no overnight parking and no loitering. They can add those as items on the site plan to be binding with the site plan CO.
- Storm water management – They are proposing a filterra for water quality and to do the storm water detention. She noted that if they include storm water management in consumption, then every C-1 and HC site in Albemarle County that exists in the Rural Areas that is on a well would be in violation of the Zoning Ordinance because they all would use more than 400 gallons per acre. That consumption issue has some far reaching implications as she was thinking about it when they were talking. The trench drain will pick up run-off under the canopy that may have oily residue (to go to filterra).

Justification for Waiver Request

- With the exception of two, all the homes are from 200 – 380 feet from the property line. Just inside the property line, there is a 20-foot buffer strip shown. (FYI -The rear canopy is at least 100 feet from the rear and side property line.)
- The two closest homes block the majority of the view from the others, but for those closest homes the existing vegetation only screens in the summer months.
- The majority of the buffer strip across the rear is grass only. The waiver request is to allow a limited area of deciduous vegetation to be cleared (approx. 40 feet) and for a row of Leyland Cypress trees to be planted 15 feet on center in the middle of the buffer strip. The waiver is necessary to allow the planting within the buffer strip. Over time, there will be a more "wall like"

screen at the lower elevation. It will provide visual and noise buffering between the different zoning districts. To provide an immediate screen, a 6-foot privacy fence (shadowbox style so it looks good from both sides) will be installed along the back of the curb at the higher elevation. Allowing the minor amount of clearing and a row of trees in the buffer strip is an improved design especially with the privacy fence located at the higher elevation. They thought it was an improvement for the neighbors to add a solid fence.

- Although not required along the east edge, the fence will continue to follow the curb and wrap the southeast corner up to the recycling container area then pick up again to end approximately even with the front face of the building. There are trees along the inside of the fence along this strip as part of other landscaping.
- At the southwest corner of the rear paved area, the fence will end at the upper level. It will then start again along the buffer 20 feet from the property line and will continue along the west edge until approximately even with the front face of the building where the fence will end. From that point up to Rte. 250, a double staggered row of bushes 10 feet on center are shown to be planted inside the 20-foot buffer strip starting at least 10 feet off the property line so not to conflict with the existing driveway. (If the waiver is granted.) The shorter bushes are important to provide good sight distance at that driveway entrance.
- See Buffer Plan for specific fence and buffer plant locations.

THIS WAIVER IS NOT A CRITICAL ELEMENT BUT IT MAY BE IMPORTANT TO THE VIEW FROM PROPERTIES BEHIND THAT ARE CLOSEST TO THE SOUTHEAST CORNER.

Conclusion:

- STALE ZONING IS ALWAYS A CHALLENGE. PEOPLE FORGET WHAT WAS OR DON'T KNOW WHAT COULD BE WHEN THEY MOVE INTO A NEIGHBORHOOD. FORTUNATELY, THE ORDINANCE REQUIREMENTS IN PLACE AT THIS TIME ARE BETTER THAN EVER AND THE PROBLEMS FROM GRANDFATHERED SITES CANNOT BE REPEATED.
- HAVING ANOTHER BUSINESS EXPEND THIS AMOUNT OF EFFORT WITH ATTORNEYS AND CONSULTANTS TO KEEP ANOTHER BUSINESS FROM OPERATING IS VERY UNUSUAL. I DON'T RECALL THAT IT HAS HAPPENED BEFORE. TRADITIONALLY, COMPETITION IS HEALTHY AND THE COMMUNITY BENEFITS BOTH FROM COMPETITIVE PRICES AND FROM THE VARIETY OF PRODUCTS OFFERED.
- FOR THOSE THAT ARE SURE THAT ANOTHER CONVENIENCE STORE IS NOT NEEDED - THEY SHOULD FEEL COMFORTABLE THAT THERE WILL BE NO CUSTOMERS FOR RE-STORE N STATION.
- THE PRELIMINARY SITE PLAN HAS COMPLETED STAFF REVIEW AND WITH THE EXCEPTION OF THE SPECIAL USE PERMIT – IT CAN PROCEED TO FINAL SITE PLAN DESIGN AND APPROVAL.
- RE-STORE N STATION SITE DESIGN INCLUDES A WIDER GREEN STRIP ACROSS THE FRONT THAN ANY OTHER SIMILAR USE *IN THIS COUNTY.* THE PROPOSED BUFFER PLAN IS ALSO IMPORTANT. HOPEFULLY, YOU WILL GIVE THIS FAVORABLE CONSIDERATION AND GRANT THE WAIVER.
- WE DID LISTEN TO THE NEIGHBORS AND COMBINED WITH THE ARB INPUT RESULTED IN SUBSTANTIVE CHANGES IN THE SITE PLAN AND REDUCTION TO THE STORE SIZE. (EVERYONE SEEMS TO FORGET THAT – ONLY A FEW DEVELOPMENT PLANS MAKE SUCH DRASTIC CHANGES.)
- RE-STORE N STATION MUST MEET ALL SITE PLAN REQUIREMENTS WHICH HAVE EVOLVED TO ADDRESS THE MANY CONCERNS THAT HAVE BEEN RAISED.
- THIS WILL NOT BE A REPEAT OF THE TRAFFIC CONFLICTS IN FRONT OF BROWNSVILLE MARKET, AND NO VEHICLES WILL BE PARKED IN THE STATE ROW. RTE. 250 TRAFFIC WOULD BE SIGNIFICANTLY IMPROVED IF ALL BUSINESSES HAD THE SAME IMPROVEMENTS AS IN THIS CASE. .
- DUE TO THE EXISTING ZONING, THE USE IS BY-RIGHT. THERE ARE NO ORDINANCE REQUIREMENTS SPECIFIC TO THE SCALE OR SIZE OF THIS USE OTHER THAN ITEMS SUCH AS HEIGHT LIMITATIONS ON THE BUILDING.

- WE ASK THAT YOU ALLOW THE PRELIMINARY SITE PLAN TO PROCEED TO FINAL SITE PLAN REVIEW.

The preliminary site plan has completed staff review and will meet all of the requirements and satisfy all of the concerns that have been raised about runoff and impacts to the site. It has evolved and is a better plan than it was and they think the waiver should be approved. The reason it was only revised today is that the staff report was rather late getting out. She realized there was some confusion regarding the plantings which was an issue for the waiver. They were trying to work it out to get Leyland Cypress because the ARB indicated they wanted a mixture of slow-growing plants. They thought the Leyland Cypress was a more wall-like feature to put on the site. She asked the Commission to consider the waiver favorably. She suggested that the neighbors might speak and say that it is better than just some small trees that might grow up. It really is more important to the neighbors than to the applicant.

There being no questions for the applicant, Mr. Loach opened the public hearing and invited public comment.

Marcia Joseph pointed out that at one point in time there was a policy that staff would not receive things on the day of the Planning Commission meeting so the Planning Commission would have an opportunity for review and not have to do it cold in front of the public. It would also offer the public the opportunity to look at whatever had been submitted. She questioned how the site plan can be on a time line because the use is not allowed by right and the applicant has to wait until they get the water use issue determined before the site plan itself can be on a time line. But they are here now.

Ms. Joseph continued noting that the diesel pumps themselves do not necessarily have to be behind the building. On one side of the pumps is 60 feet and 40 feet on another. If they take out the area where the diesel pumps are, it is about one-half acre of actual pavement back there. She has driven a diesel car for 11 years, and the diesel pumps in a lot of stations around town are nestled in between regular gasoline pumps. They will see trucks and trucks with trailers on the other side of the pump. To say this is not designed to serve semis is bizarre. There is no reason to put the expense of all this pavement and filterra etc. out there unless they are serving semis. She asked that the Commission remember that standing at the base of that hill looking up at this site you would be down 38 feet from the top of that canopy. They might have a 6-foot fence, but there will be three light poles that are bound to be taller than six feet. So the lighting would be visible. They would want to see more indigenous species out there than the Leyland Cypress that would be friendlier to the neighborhood. They would be planting the trees at the base of the hill. The trees will grow fast but they don't live that long. She did not think the Leyland Cypress would reflect the character of this neighborhood. It would not help the neighbors because they would still have a lot of lighting in the area and the diesel trucks in the back. She questioned how they would stop the trucks from sitting on the lot even with many signs. It is another thing that they would be relying on the county to do the enforcement for something that just should not happen in first place.

Mike Marshall, president of the Crozet Advisory Committee, spoke against the request and particularly about the note on the site plan that says "future addition." He attended the ARB meetings on this plan and they were exasperated and got to the point where they asked the applicant to show them the whole plan. The fact is that the Commission is not being shown the whole thing either. What will the impact be of the additional 2,500 square feet? They don't get to see the traffic study until the special use permit is passed. On the water question, Ms. Higgins gets three attempts for their attention and the public unfortunately will get a second attempt. There is a meter that monitors the septic tank. So even without the special use permit, he understands what Mr. Franco is trying to say that they can request the information from that meter as their enforcement device. Just because they have the special use permit does not mean that they don't have information they can get access to monitor with. The applicant can offer to reduce two pumps. It is a hasty concession to try to win support for the plan. They have the applicant submit new information today to the staff trying to sweeten the deal on the buffer waiver. He submits that this is not an applicant that is dealing in good faith with the public. These concessions on pumps could have been made anytime in the last two years. The Advisory Council at its last meeting tried to discuss these issues as they were pertinent to the Board of Zoning Appeals business. They were told by county staff that unless they had published an agenda three days in advance of their meeting that

they were going to talk about this, it was illegal and not allowed for discussion. So they can't talk about something that is on the public agenda because they did not publish that item three days in advance. But they can come in here today and put it before you now. The Crozet Community Advisory Council is appointed by the Board of Supervisors and in some sense have the same constitutional authority as an advisory board such as the Planning Commission. It is contradictory. He thought that the request should be denied because it does not have the special use permit; they are not showing the whole plan; and they don't deal with them in good faith.

Bill Schrader, a member of the CCAC, asked the Commission to think about what the applicant is proposing at the Re-Store N Station not as an individual piece of property but how it impacts the master plan even though it is right outside the boundary of the master plan. They have made tremendous strides in changing how they are transitioning the core of Downtown Crozet so that it is slowly moved into the rural areas outside the boundaries of the master plan. He felt that what was being presented is that they have done their work and eliminated some of the core centers that would be businesses in the Crozet Master Plan area. They have made sure that it transitions out to the rural area; but as soon as they get to the border, they are going to have a Re-Store N Station the size of a Sheetz station. So why did they do all the work with the master plan to transition to rural areas if they plop a big gas station in the area. They need to make sure they are working together on these projects. He asked that they please take a look at this site. It does not match what they are trying to do with the master plan and what they are trying to do to protect the rural areas. If they look at Article 18 Section 30.6, which is noted in the staff's recommendation on the certificate of appropriateness, there is no way in what the county says it wants to do to protect 250 that this site is appropriate to the rural area and the Crozet Master Plan. He asked that the Commission request that it be cut back.

Johnathan Hunt said the proposal is unprecedented in this county. The only thing that is comparable is the Liberty station on Pantops. They have all seen how big that station is, and this one is proposed at 200 feet from the neighborhood. He felt that 200 feet was not very far when they look at the slopes coming off the back of the property and the increase in traffic. They can only imagine how difficult it will be when someone tries to get out of their driveway while fighting the traffic coming into and out of this station. He did not think that the community should have to absorb these things. The only person who will benefit would be the applicant. This does not benefit the safety of the community, or the safety of the students. It does not do anything good for anybody except it puts more money in the applicant's pocket. He did not think that is why they have a representative government.

Richard Brown, resident of Freetown, said that he was not satisfied with the runoff they were talking about. He had heard what Ms. Higgins said about the water, but she does not say where the water will end up. If oil gets away from that station on the hill, it is going to go into the springs first, then it is going to hit Stockton creek, then Mechums River to Mormon's River and on into the drinking water. That is pretty serious. Eventually it is going into the rainwater. His property was destroyed one time by the same party. Runoff ruined the pond and killed his fish. There was 4 feet in depth of sediment in his pond. So he knows what running water can do. Speaking of traffic, they have 40 school buses leaving the three schools every day onto Rte. 250. Then they are going to put a big service station there with tractors and trailers coming in and out. It is ridiculous. He can't believe that the county people can't feel what the residents feel. It is not about 250, Freetown, Hillsboro or Old Trail, but about making the right decision. Before they make a decision, they need to come out and look at the property. He noticed Ms. Higgins has taken pictures, but she did not take any pictures of where this water is going to end up. He knows the stream that leaves that property. and the runoff is going to get into the drinking water.

Bruce Kirtley agreed with Ms. Porterfield that they were trying to approve something that can't be approved. There is another dimension they have been trying to track, which is through the ARB. What they decide today will impact what their thinking is. They could potentially be planning on approving something that is not ultimately going to be approved. He asked that they keep that in the back of their minds as they make their recommendations. He reiterated that their intentions are not to stop this project. They have maintained all along that they would just like to see something a little smaller that is more compatible with Scenic 250 and the neighborhood. The hours of operation and the scope of the operation are important to them.

Frank Calhoun said that he did not think the creation of the Greenwood Historic District has been mentioned. He was not sure of any of the changes suggested tonight by the applicant will enable the Historic District that is going to be established to look any better.

There being no further public comment, Mr. Loach closed the public hearing to bring the matter before the Planning Commission for discussion and action. He invited rebuttal from the applicant.

Ms. Higgins made following rebuttal comments:

- She did not give any additional information about the note on the site plan. The note on the site plan that shows a façade and says future addition was specifically at the request of the ARB the second time they were there. The ARB wanted to see what could possibly be. It was added just for their purposes for a location. They again went back and said they wanted to see the parking for it. They responded that would be a subject of a site plan amendment. The note will be removed on the final. It was not intended to be any part and it says that clearly on the site plan. It was not meant to be confusing.
- Regarding the good faith comment, she noted that there was some confusion. It was not until staff made a recommendation for denial that she realized that confusion exists. Again, it was just to improve what was being offered. It was not part of their goals to begin with, but they were trying to do something better and thought it was important to get to the Commission. Many times the Planning Commission will look at those buffer and waiver requests and say what they would like to see is this or a more integrated plan. They can address most of the concerns regarding the runoff. The filterra requirement is part of the storm-water quality controls. It is not something they are throwing out there to just satisfy anyone, but an integrated part of a plan.
- Regarding the reference Ms. Joseph made about the turning radius around the diesel pumps is exactly the turning radius provided not only for tractor trailers but for horse trailers, construction equipment and that sort of thing. It is actually very limited to get turned around because there is not an entrance to come in and an entrance to go out. The other choice would be to wrap a whole road around the building, which they thought would make easy access for trucks. However the facility is perceived, it is not a truck stop. It is not a use that is defined as truck stop by the zoning. It is clearly trying to keep conflicts on site rather than in the state right-of-way. They think the conflicts won't exist as at other locations.
- School buses will have a way to get around cars that are turning left or turning right, which does not exist today. At Harris Teeter, there is a good functioning intersection where people won't be impeded by the traffic flow. That was the intent with the design of that. She did not know if there was a response to give on all the issues. This is by-right zoning, which she thought Mr. Kamptner touched on before. Things like traffic and that sort of thing are not something that can be considered in something like this. It is really the site design itself. The traffic study that will be done for VDOT is a requirement that will go in their data base for information only. It is not typically part of the consideration of the site plan when zoning is in place exclusive of the underlying use. She suggested that Mr. Kamptner might be able to shed light on that. Lights, noise and all these other things--they understand that the fence will help with that.
- There is a Noise Ordinance that drops the decibels down at night, which is enforced. Regarding the Lighting Ordinance, the fixtures will be full cutoff. They do agree with that perspective. There is eight foot of fill at the back of the site, and the height of the canopy is 14' 6" to the bottom and 17' 6" to the top. That is one of the reasons they wanted the dual buffering at the back. They have tried to consider all of these things. Mostly, the general anxiety that people have that it will become a truck stop like Zion Cross roads in reality will become an enforcement issue. It will not be acres of parking for trucks because that is not being provided here. There are four acres. There is no requirement to make it really intense and small. It would look more urban if it was. The size of the store seems to be an issue, but it is not much bigger than the Texaco, which is 4,080 square feet. They downsized from 6,000 square feet to 5,750 square feet and then down to 4,750 square feet. The intent was to be as efficient as possible. The square footage has been considered.

- The main thing brought up is the diesel in the back, which was intended to give clear access. They have tried to work with the community. It is not just the neighbors. There is a business competition issue here. Most of the people involved are attorneys working for the adjacent business, such as Mr. Zobrist, who do not want this to open. The applicant feels that competition in the market is good for the community. Having price competition is good. Gateway, for instance, has an approved site plan to take away their gas pumps. So in the future Gateway will not be a gas filling station, and it does not do much business now. The applicant's desire is to do something right and to do it to protect the drinking water and the runoff. Under the current regulations that are in place, the site plan can meet all of those requirements.

Mr. Loach said that he would bring the request back to the Planning Commission for further action. He invited further discussion. He noted that he would start the discussion since it was his district. He agreed with Ms. Porterfield's logic. He could not in good conscious approve this site plan in the face of the special use permit they just denied. In addition Ms. Porterfield made an effort to get the applicant at least to think about a deferral in the face of everything being said and he appreciates that. Fifteen minutes ago what they were hearing was the applicant was starting to remove pumps. But he really did not think at the Planning Commission level at this late stage of the game that this is the place to play "let's make a deal" especially since the community does not have any chance for input on a deal that they are making. He appreciates the staff's attempt to put the landscaping in with the waiver itself and what they were trying to do. That said when it comes in today, he thinks that is problematic. As Mr. Marshall pointed out at the CCAC they were told that they were given the rules like three days before and had it on the agenda and it was set. So he thought there was element in that. He could not support an approval of the site plan based on the special use permit being denied. He could not support the waiver either due to the lateness of submittal of the new information.

Mr. Franco asked if the Commission needed to take two separate actions on the waiver and site plan.

Mr. Kamptner noted that an action should be taken on the waiver first.

Mr. Franco said he tends to agreed with everybody that has commented about the late change. He thought that it was a modification for the better, but he would prefer to act on what has been submitted and they had an opportunity to digest.

Motion on Waiver:
Mr. Franco moved and Mr. Lafferty seconded to recommend denial of the waiver of the buffer for SDP-2008-000154 Re-Store N Station as submitted and based on the reasons identified in the staff report.

The motion passed by a vote of 5:1. (Ms. Porterfield nay) (Mr. Zobrist had disqualified himself and left the meeting.)

Ms. Porterfield said she had no problem with the original waiver and liked the second one better. Therefore, she voted no.

Mr. Loach noted that they need another motion on the site plan itself.

Ms. Porterfield requested to ask again because she did not know where this puts the applicant. Unless the applicant is upheld by the Board of Supervisors are they back to square one again.

Mr. Kamptner pointed out with the preliminary site plan they would need to submit, they may appeal it to the Board of Supervisors in which case he assumed staff would likely schedule it to around the same time as the board is considering the special use permit.

Ms. Porterfield asked if they defer, can the special use permit go to the board and the Commission could see how that one pans out and then go from there.

Mr. Kamptner replied yes if the applicant wants to request deferral they could hold on to it and keep it here until the board has acted on the special use permit.

Ms. Porterfield asked the applicant if they were interested in that.

Ms. Higgins asked that it be restated so she could understand what she was asking.

Ms. Porterfield replied what she was trying to say was if they go ahead and make a motion and hook it to the special use permit, which went down, the logic says as she said before that she could not possibly vote for a site plan that is connected that way.

Ms. Higgins asked if the denial would be the basis because the special use permit recommendation for denial and if it is an appropriate reason.

Ms. Porterfield asked if they want to start from square one with their site plan or do they want to defer it and see what happens at the board level. If they don't get the special use permit, then the site plan is still alive and they could adapt it.

Ms. Higgins said if she understood what Mr. Kamptner said correctly, if the Commission denies it based on the special use permit recommendation of denial, then when it would go to the Board of Supervisors it would be an appeal of the site plan. So if the Board approved the special use permit they would actually take action on the site plan also.

Mr. Kamptner noted that they would have to file an appeal of the denial of the site plan to the Board of Supervisors. It does not automatically go to the Board of Supervisors. They would have to file an appeal.

Ms. Higgins asked if that takes longer than a resubmittal. It is a process question.

Mr. Cilimberg noted one thing to keep in mind if it is appealed to the Board of Supervisors and the Board acts on the special use permit, the site plan is still alive in whatever way that they act on the special use permit. It is very possible that the board will refer the site plan back to the Planning Commission and they won't act on it.

Mr. Kamptner noted that in deferring it keeps the site plan here, which is where it normally is.

Ms. Higgins asked if they could do that as an indefinite deferral. She asked with that deferral would it be possible to get the Planning Commission's input that they are trying to get. In other words, they could approve it if X, Y and Z.

Mr. Franco noted the answer to the question from his perceptive was that he voted no on the waiver of the buffer because he heard the neighbors say they don't want it. He understands her position of saying that it is for their benefit. Staff has recommended approval because it meets the conditions of the site plan. He was prepared to vote against this because of the lack of the special use permit for the water usage. But if it was to come back then he thought that is solved and he would feel obligated since staff has recommended approval.

Mr. Kamptner said that the other thing she should know is that when the special use permit goes to the Board of Supervisors, they may impose additional conditions which may significantly affect the design of the site, which would require that the site plan be amended. So it might be worthwhile to wait until after the Board has acted to see if they are going to impose conditions that change the site design.

Ms. Higgins asked if that means it is better to defer. She requested deferral of the Planning Commission's action on the site plan and asked respectfully for their input to the extent possible that they feel comfortable with.

Mr. Kamptner said if the Commission decides to defer action on the site plan, he would recommend that the Commission also reconsider the action on the waiver so that they can keep all of that together.

Ms. Higgins noted that they were okay with the action on the waiver.

Mr. Cilimberg pointed out that they don't really need to have another action on the waiver. The applicant will just refile.

Mr. Fritz said that the applicant would just bring the waiver back with the site plan.

Mr. Franco asked if there are other points that someone wants to express to the applicant with respect to the site plan.

Ms. Porterfield noted that from what was heard from the community that they really need to look at the positioning of the pumps. She felt that the pumps in the back are not very popular. She invited Stacy Hunt up to speak.

Stacy Hunt asked to correct Mr. Franco's statement of saying that the neighbors did not want the buffer because that is incorrect. They have met with the applicant multiple times and have addressed all of their concerns for scale, the location of the pumps, hours of operation, lighting, noise, traffic and all of those and nothing has really changed.

Mr. Franco noted that his expression was the public did not want the waiver of the buffer requirement. He acknowledged that the public did not want the grading in the buffer.

Motion: Mr. Morris moved and Mr. Franco seconded to accept the applicant's request for deferral for SDP-2008-000154 Re-Store N Station.

The motion for deferral was approved by a vote of 6:0. (Mr. Zobrist had disqualified himself and left the meeting.)

Old Business:

Mr. Loach asked if there was any old business.

Discussion about fences:

Mr. Cilimberg noted that in talking with Mr. Fritz regarding the question of how to treat fences next to residential property, Mr. Fritz has said that is something that he had the discretion to deal with. There is sometimes the question of what the good side of a fence is. Mr. Fritz pointed out the fact that a lot of people when they build their fences for their yards end up putting the good side to the outside. It is to the neighbors. Mr. Fritz has said that is in his discretion to decide in the fencing next to residential areas.

Ms. Porterfield noted the biggest place that she has seen fencing controversy since she sat on the Commission is when the ARB wants the good side facing the Entrance Corridor and she the neighbors being buffered.

Mr. Cilimberg said that could be dealt with.

Ms. Porterfield noted that she felt that is what is happening in this case.

Mr. Cilimberg said that in that case he would make sure that the ARB gets what it wants as the treatment on their side and then they treat it on the other side for the neighbors.

Ms. Porterfield said that would be great.

Mr. Fritz noted for clarity sake for this special use permit that earlier today for Earlysville Service Center he thought one of the things the Commission was recommending was that the nice side be towards the neighbors. For the record, he asked what the nice side is.

Mr. Loach replied it was the one without the ribs.

Ms. Porterfield replied that it was the side without the struts or whatever you call them.

Mr. Fritz said it was the blank side.

Ms. Porterfield said that there are new fences being designed that actually have two nice sides, in which case one does not have to pick.

Mr. Franco said one of the things they talked about during the break is that he was not sure if he was completely on board with Ms. Porterfield's position on this. He would want to use some discretion if there were tree buffers on the neighbor's side of the fence as well then he felt that it might be less visible to have the good face, if there was only one face that was good, on the side that has parking lots and things like that. He thought they ought to present a reasonable face to the neighbors. If that was the back side of the fence, then there ought to be buffers there. But if they are presenting a fence with a double row of trees to keep from seeing the fence, then instead of the expense of a double-sided fence he would just assume have the good side toward the parking lot.

Mr. Fritz noted a couple of cases in what they have done. Fences are not common as a sole means of screening. They are usually used in conjunction with other measures. What they have done in the past is worked with the neighbors in one case in particular with 20+ neighbors to get a fence design. Our only requirement was they were only going to require the developer to put in one kind of fence. So they need to come to a conclusion. But they wanted some different design to it instead of just a solid wall because with the nice side towards them they were feeling like they were being fenced out rather than their yards being fenced in. So they actually wanted the fence flipped around to what she had defined now as the good side was actually facing the commercial development and the other side was facing the residences because they wanted it. In one case they requested that a gate be installed in the fence and that they have the key to the gate so they could maintain both sides of the fence. That was done. Staff has done different things.

There being no further old business, the meeting moved to the next item.

New Business:

Mr. Loach asked if there was any new business. There being none, the meeting moved to the next item.

Adjournment:

With no further items, the meeting adjourned at 10:13 p.m. to the Tuesday, June 15, 2010 meeting at 6:00 p.m. at the County Office Building, Second Floor, Auditorium, 401 McIntire Road, Charlottesville, Virginia.

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V. Wayne Cilimberg, Secretary

(Recorded and transcribed by Sharon C. Taylor, Clerk to Planning Commission & Planning Boards)