Albemarle County Planning Commission
August 9, 2011

The Albemarle County Planning Commission held a regular meeting on Tuesday, August 9, 2011, 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, Ed Smith, Thomas Loach, Linda Porterfield, Calvin Morris, Vice-Chair; and Don Franco. Commissioners absent was Duane Zobrist, Chair. Julia Monteith, AICP, Senior Land Use Planner for the University of Virginia was present.

Other officials present were Phil Custer, Engineer; Bill Fritz, Chief of Current Development; Wayne Cilimberg, Director of Planning; Sarah Baldwin, Senior Planner, and Greg Kamptner, Deputy County Attorney.

Call to Order and Establish Quorum:

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

Committee Reports:
Mr. Morris asked for committee reports from the Commissioners.

- Mr. Lafferty reported that the PACC Tech met and discussed many on-going University projects. The issues discussed were identified by Ms. Monteith as the livability grant, the LCAP Planning Process, and the Emmett/IV intersection where a service station will be removed and replaced with a park space.

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

Other Matters Not Listed on the Agenda from the Public:

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

Review of Board of Supervisors Meeting – August 3, 2011

Mr. Cilimberg reviewed the actions taken by the Board of Supervisors on August 3, 2011.

Public Hearing Items:

SP-2010-00038 Badger Industrial
PROPOSED: Placement of fill in the floodplain to allow expanded use of industrially zoned property.
ZONING CATEGORY/GENERAL USAGE: LI - Light Industrial - industrial, office, and limited commercial uses (no residential use), EC Entrance Corridor - Overlay to protect properties of historic, architectural or cultural significance from visual impacts of development along routes of tourist access, AIA - Airport Impact Area - Overlay to protect the airport and FH - Flood Hazard - Overlay to provide safety and protection from flooding
SECTION: 30.3.05.2.2 (3), which allows filling of land in the floodway
COMPREHENSIVE PLAN LAND USE/DENSITY: Industrial Service -- warehousing, light industry, heavy industry, research, office uses, regional scale research, limited production and marketing activities, supporting commercial, lodging and conference facilities, and residential (6.01-34 units/acre) and Parks and Greenways - parks; greenways; playgrounds; pedestrian and bicycle paths in the Community of Piney Mountain
ENTRANCE CORRIDOR: Yes
LOCATION: This fill is proposed adjacent to the North Fork of the Rivanna River at the former Badger Powhatan site.
TAX MAP/PARCEL: 03200-00-00-005B0

MAGISTERIAL DISTRICT: Rivanna
(Phil Custer)

Phil Custer, Engineer with Community Development, presented a PowerPoint presentation and summarized the staff report. He asked if everyone had received the memo written by Bill Fritz and Amelia McCulley dated August 8th. They will get to that part of the presentation later on.

The applicant is requesting a special use permit to allow fill in the floodplain to expand the developable land of the existing parcel. The site was formerly known as Badger Powhatan. The Planning Commission and Board considered the special use permit for the front of the property last year. The site is zoned Light Industrial and currently contains warehouse uses.

The proposal is for fill in the floodplain and disturbance of critical slopes as shown. Most of the critical slopes are from the development of site plan 025, which was done in the late 70's. The remainder of the critical slopes is within a stream that is eroded from a pipe that contains water from Route 29. The open space line is delineated from the floodplain. The applicant's proposal shows the main aspect of the plan is to fill an additional 180 feet towards the river into the floodplain to the east and south for a total length of 900 feet around the parcel. The new plateau would accommodate a new 40,000 square foot (or larger) warehouse, associated parking, and necessary storm water management facilities. What is proposed on top of the fill is not as important as the fill. The building can move around and parking could be smaller or larger in relationship to the building. What is important here is the fill because the warehouse is an allowed use in Light Industrial.

Essentially the memo from Bill Fritz says there are two zones in the Floodplain Hazard Overlay District with one being the floodway and the other the floodway fringe. Each district has its list of by right and special permit uses. Fill is not listed in either category within the floodway. It is allowed by special use permit in the floodway fringe. The memo from Mr. Fritz and Ms. McCulley simply stated that the review of this application should consider only fill in the floodway fringe. In terms of definition, he noted a standard cross section that he took from the FEMA Model. The floodway is in the center and the fringes on the outside. They would be able to fill into the floodway fringe either on the left or right side of the exhibit. The proposal fills within the floodway, which is actually staff's largest concern with the proposal. They have other concerns with the project including the disturbance into the areas marked as open space, uncertainties with the model that they reviewed, and questions regarding the erosion and sediment plan if the special use permit was approved to the limits of the floodway as proposed by the applicant.

If they approve fill in the special use permit to the limits of the floodway they are really limited to what they can do erosion control wise past the floodway line. They are boxing themselves into a situation as having to either try to get by with silt fence or not filling in the floodway because most of the measures they would use to protect fill of this kind would be sediment traps and basins, which would require fill. If they were filling by the special use permit to the floodway line, they would not be able to go past that. For those reasons, staff is recommending denial of both the critical slopes waiver and the fill in the floodplain. He offered to answer any questions about the application.

Mr. Morris invited questions for staff.

Mr. Lafferty asked staff to go back to the cross section. He asked what the blue line is.

Mr. Custer replied the blue line was not important, but just a section of the model. The outputs give speeds, which show there are different speeds within the floodplain. The deeper the section the faster it is going. That is what it is indicating. As it gets farther out and shallower, it just slows down. It is color designated.

Mr. Lafferty asked if the fringe is defined by the speed of the water.

Mr. Custer replied the fringe is essentially the area that can be filled and only raise the floodplain elevation 1 foot. FEMA computes these for some of the larger floodplains they have in the County. In the model, they have set these lines. They set them by taking the cross section and the program finds out

how far they can fill, which essentially creates walls from both sides. By taking out areas of the cross section the water needs to go some place and it goes up. As soon as the water goes up 1 foot then that is where the floodway fringe line is. It is a little tricky doing it inside the model. Justin will get into this. However, he has some doubts of the logistics of the floodway line.

Mr. Lafferty asked if this would be moving the man-made critical slope just further out.

Mr. Custer replied that it would be filling over top of the man-made critical slopes and establishing another man-made critical slope closer to the river.

Mr. Loach noted in the report it says the model provided by the applicant shows that the proposed fill was raised to the floodplain on adjacent properties. He asked what the implications are to these properties.

Mr. Custer replied that there was no developed land on the adjacent side. There are some questions about the model that they have. The applicant gave three models. There are some uncertainties there. However, there are no houses near this and it is a critical slope on the other side of the river.

Ms. Porterfield asked if he was saying it would not affect the houses on the other side of the river.

Mr. Custer replied yes. There is some question. The floodplain model they show does show the water getting closer to the bottom of the Route 29 bridge. That is staff's biggest concern. Staff will have to work things out with the applicant at the next submittal.

Ms. Porterfield asked what he thought the difference would be in a 100-year flood between the deck and the top of the river.

Mr. Custer replied that it would be touching it, which is what the model shows now. He would qualify that the existing floodplain model does not contain any cross sections of where a flood is going. Therefore, what the applicant has provided in the model are three or four additional cross sections with the existing condition. He has run the model to update it. Then he has provided another model that shows what the impacts of the fill is. The impact of the fill in relationship to the 29 bridge comes up once you add those cross sections. It is not once the fill is added. There are some questions. He could not say that it was the fill that was doing it. It might just be a quirk in the model that they have not quite figured out yet. If that was the case and he felt comfortable with the model that would be the lead bullet in this presentation. However, there is a lot of uncertainty in this.

Ms. Porterfield said the question would be if they had a really bad flood and things coming down the river and knocking the bridge out. That is what she is trying to ask.

Mr. Custer replied that the existing model is not far off. It is probably 18" or 1'. That is what the model says with all their assumptions.

Ms. Porterfield said at this point the scenario she was talking about could happen now without any more fill in the fringe.

Mr. Custer replied yes.

Mr. Lafferty said the applicant indicates he approached FEMA to establish exactly where the floodplain is. He asked how long that process takes with FEMA.

Mr. Custer replied that he did not, but it was not quick.

Mr. Loach pointed out the section on public safety, health, and welfare states at this time the staff cannot conclusively state that the proposed fill would have any negative effects on the public health, safety, or general welfare. In the conclusion, it says staff cannot find that the request is in harmony with the intent to protect health, safety, and general welfare. He asked if there is some contradiction there. What does staff mean when they say it cannot find that this request is in harmony.

Mr. Fritz said this is one of those types of applications because it relies on so much technical analysis. What they are finding there is he can't make an absolute finding one way or the other. So barring the ability to make the affirmative finding is why there is a statement that they can't find it in harmony. With the information they have available to do the technical analysis he can't make a definitive conclusion as to what the entire impacts are going to be that it is going to cause a specific harm. However, when they look at special use permits they have to make affirmative findings. Failing making that affirmative finding they can't find that it is in harmony with the intent to protect the public health, safety, and general welfare because there may be potential impacts. They can't confirm that. It is written that way.

Mr. Loach noted that if staff is telling him there is a potential for harm that is a significant finding.

Mr. Fritz said he did not know that they were telling them that it is, but they can't tell them that it won't be. He questioned if that is a fair question because of the level of technical analysis that has occurred on this cross section.

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

Justin Shimp, with Shimp Engineering, represented the applicant. He presented a PowerPoint presentation, as follows.

- The reason he proposed the application in this manner with a conditional FEMA approval is the things they were discussing. It is really very complicated to deal with. However, there are set federal guidelines. The model goes off to FEMA and they say it is good or it is not. The third party makes the call basically on that regard.
- Our proposal is to seek approval from the County to obtain fill up into what he believes to be the correct floodway line, which is allowed. The difference here in what staff has come up with is their argument, which he disagrees with, that the floodway line represents this set line map. He was stating that it represents a volume of water that has to go down the river safely and the detail of that location defined by FEMA is through some very detailed technical guidelines. What they are looking to do is get the Commission's input and the County's approval on this concept before all of that engineering is done. The engineering will dictate how far they can go within these guidelines. However, that will be done after they weigh in. They seek the conditional approval first. Then they will deal with FEMA should the County view this as an appropriate use. To be clear there will never be fill placed in the floodway. If the line were not amended, then what he was showing would not happen.
- They are seeking to place fill in the floodplain (or floodway fringe) for the purpose of increasing available useable industrial land to provide for additional space for industrial and commercial businesses who wish to operate in Albemarle County.
- They seek conditional approval to place fill in an area formally occupied by the "floodway" pending FEMA approval of a Letter of Map Revision (LOMR) to correct the maps for this particular section of the North Fork Rivanna River. Under no circumstances would permanent fill be placed in the floodway. Approval should be made conditional on FEMA approval of the LOMR. Should that document not be approved, the special use permit becomes void. Before they go through that process with FEMA they want to know what the County thinks about the land use.

Background:

- Why do we think this can be done:

1) Special use permits are often if not always granted with conditions, which if not met, void the special use permit. Consider the example of the relationship between the County, the Army Corp., and Stream Buffers. An application could be approved with the condition of USACE approval for a stream crossing, without that approval from an outside agency.
2) The flood hazard maps should not be considered "precise" documents.
3) A similar application was processed and approved in May 2008. SP-2007-0063 "5th Street Development" was approved with a nearly identical FEMA issue:

A project he reviewed with a similar issue was SP-2007-00063, 5th Street Development where approval was given subject to FEMA's approval of the floodplain map revision. This is an example that shows that these things do change.

RE: SP-2007-00063 5th Street Development
Tax Map Parcel 76-55A and Tax Map Parcel 76M1-1

"On May 14, 2008, the Albemarle County Board of Supervisors took action on SP #2007-00063, 5th Street Development to allow a special use permit for fill in the floodplain on Tax Map Parcel 76-55A and Tax Map Parcel 76M1-1 in the Scottsville District. This special use permit was approved based on the following conditions:"

"The County Engineer's receipt of proof of compliance with Federal and State agencies regulating activities affecting wetlands and watercourses. The applicant must obtain a map revision, a letter of map revision, or a letter of amendment as required from the Federal Emergency Management (FEMA) and copy the County Engineer on all correspondence;"

In August 8, 2008, this map was revalidated. So three or four months after the plan was approved the study was confirmed and that met one of the criteria of the special use permit.

A Brief Technical Explanation:

- From the Current FIS for Albemarle County published by FEMA:

"One Aspect of floodplain management involves the balancing of economic gain from floodplain development against the resulting increase in flood hazard. For the purposes of the NFIP a floodway is used as a tool to assist local communities in this aspect of floodplain management. Under this concept, the area of the 100 year flood plain is divided into a floodway and floodway fringe. The floodway is the channel of a stream plus any adjacent floodplain area's that must be kept free of encroachment so that the 100 year flood can be carried without any substantial increases in flood heights"

The definition of the floodway, as Mr. Custer said, is really just a tool by which the County will know where the important waters are for transporting the river in a flood stage and the backwater fringe area. He noted his site as it relates to the floodway. The hatched area is the floodway. The line just over 50' or so is the floodway fringe. His opinion is that those two lines are too close together. The floodway line should be over closer to the river, which is what the math suggests. That is why he has drawn the plan as he has.

What they are looking for is the Commission's opinion, blessing, and recommendation on using this industrial zoned property. They desire to know if the Commission believes that utilizing underused portions of industrial zoned property in the development area is appropriate in this situation with the clear understanding that:

1. Prior to placement of any fill, FEMA shall approve a LOMR for the parcel based upon more accurate engineering data showing the revised location of the floodway line and that;
2. No fill shall be placed within the corrected floodway area.

Why should this be supported?

- Industrial property in the development area has an economic value to the County. The potential benefit to the County is upwards of a $5 Million Dollar tax base increase and the addition of ~ 40 new Jobs in the area.
- Add to the growth area? Or utilize existing parcels more effectively?
- The river/floodplain is protected because the SP approval is contingent on FEMA's review and approval of the floodway revision and fill in the floodplain. This data shall be reviewed by their experts to determine if the floodway maintains adequate capacity.
- With approval of the SUP the applicant will repair the badly eroded gulley flowing through the stream buffer area to the North Fork Rivanna.
- With the approval of the SUP the applicant will agree to provide for water quality treatment for the existing parking lot on parcel 5B with the development of the site plan for the new fill area.

Mr. Morris invited questions for the applicant.

Ms. Porterfield asked Mr. Shimp to go back to the two things he would improve, which included the parking lot.

Mr. Shimp replied that there was an old pipe that was put in from Route 29 to drain back through the site and on to the river. It is literally now a 10' deep eroded gully. He felt that Mr. Custer has seen the gully and could attest to what it is. If they are going to be back there working, it would be appropriate to repair that all the way out to the river.

Mr. Lafferty asked if they had applied to FEMA and when did they expect a response.

Mr. Shimp replied that it could take three to four months. It can be a long and expensive process.

Mr. Lafferty asked if they were looking for approval before they commit to the expensive process.

Mr. Shimp replied he thought the idea is to get a buy in on the land use question in whether this is appropriate before they go and get all of the final documents. If in fact he is wrong, then it all goes away. The application would become void because the LOMR could not be approved.

Mr. Smith asked if the FEMA cross sections are correct what effect does that have if they were to do the fill upstream.

Mr. Shimp replied assuming the math is correct today if they applied fill to the limits of the floodway line the most it would raise the elevation is 1'. It would really be less than that because they would not build a retaining wall straight up like a true wall. It would be back. Therefore, it would not be a true 1', but something less than 1' would be the maximum.

There being no further question, Mr. Morris invited public comment.

Jo Higgins said she was very familiar with this property. Currently there is a major pump station under construction in the northeast corner. There was a previous approval for critical slopes disturbance for the Albemarle County Service Authority to do that pump station. The wastewater treatment plant just to the north of this is being taken out of service. She was thinking about the open space plan and staff's comments. It seems that the open space plan was tailored to show the land along the river and pick up any space that is not used. It is really important when one has an industrial site that is already developed to consider the two things being offered here regarding water quality. There are many sites out there that have uncontrolled run off. If they don't do it with further development of the site, they are grandfathered. There are many developments that this pertains to with Highway Commercial and Industrial being the worse. If an opportunity to do some benefit occurred, it is very worthwhile to consider. This was all man-made slopes anyway. There might be a useable area if the LOMR is not approved. The pump station is under construction to be done in early 2012. The activity in the clearing has already taken place. Therefore, it is not pristine.

There being no further public comment, Mr. Morris closed the public hearing to bring the matter before the Planning Commission for discussion and action.

Ms. Porterfield noted the applicant made a comparison between this request and the one on 5th Street. She asked staff to talk about similarities and differences between the projects since 5th Street was approved.

Mr. Brooks noted staff also recommended denial on that application.

Mr. Morris pointed out the Planning Commission recommended denial.

Mr. Brooks noted the 5th Street request was approved by the Board. However, that was a different situation. When the Commission saw the request, it was the second time through the process. The first time through the process was a number of years before that. The county had done a study with the city after 5th Street was nearly constructed and the bridge was rebuilt. That study effectively changed the

FEMA lines based on the new construction of the road and the bridge that was just upstream of that site. As part of the study there was a letter of map amendment done with FEMA. The map that Mr. Shimp showed the Commission tonight was an updated FEMA map that unfortunately FEMA did not include with the letters. If they are looking at the order of how things occurred, he thought that FEMA had already been applied to and notified of the changes and it was a county initiative. Then the site came in and took advantage of that because the bridge had constricted the floodplain. This site was just downstream of the new bridge. They took advantage of the narrowing that the bridge had done on their site. It has never been built.

Ms. Porterfield said she was trying to figure out if the Board of Supervisors approval was based on getting the documentation from FEMA that it could be done.

Mr. Brooks replied that staff already had that documentation in another form. They knew it could be done and it was more determined.

Ms. Porterfield said in this case this would be a start up with FEMA to try to see if it would work.

Mr. Brooks agreed. He was not sure how the other one was approved since he was not a direct lead on that project. He noted that everything he said might not be accurate because it was ten years ago. The way the ordinance is written it is very strict. The ordinance says one cannot get a special use permit – you cannot deny it, approve it, or apply for it in a floodway. Right now, that is what the applicant is doing. His suggestion was not to bring this before the Planning Commission because they could not act on that part. There is a portion in the fringe, which could not be built with this plan. However, technically there is a portion in the fringe that they can have a special use permit for. He was confused about how they would approve that if they wanted to.

Ms. Porterfield said he was saying regardless of whether they wanted to place the burden on the applicant to get FEMA to weigh in and bring in the information that would move the actual floodway so they can't do that because they are not allowed.

Mr. Brooks replied that our ordinance restricts us from a special use permit in that area.

Mr. Kamptner asked to throw out an analogy, which they shared with the applicant's attorney. Imagine that your property is zoned residential, but you want to operate a fast food restaurant. That use is allowed by special use permit in the C-1 zoning district. What the applicant is proposing here is essentially asking for the special use permit for the fast food restaurant before they get the C-1 zoning with the promise that at some point in the future they will go through the rezoning process once they know they are going to approve the special use permit. The distinction between the floodway and the floodway fringe has zoning implications because the uses that are allowed within the flood hazard overlay district depend on whether or not the land is within the floodway or the floodway fringe. The applications for special use permits for fill in the floodway are allowed only within the floodway fringe. There is no right to apply for a special use permit for fill in the floodway. The Commission's authority tonight really extends only to that portion to the limits of the floodway fringe. The Moore's Creek Yacht Club application is unique. His recollection going back to right after FEMA adopted the new maps and the Board followed and adopted them also, was that there was a recognition that there were dozens if not hundreds of LOMR's and LOMA's that had not been incorporated into the maps. His recollection is that FEMA has already informed us and they are going to grandfather all of those in. They need to go through the process.

Mr. Brooks noted that they had acknowledged that there had been a mistake and left those out. There are about 10 or 20 of those.

Mr. Kamptner said they knew there was already a letter of map amendment in place and FEMA was going to grandfather that in and adjust the maps accordingly.

Mr. Brooks noted having done our own studies as a county; he thought that they were pretty comfortable with the new line. There is another aspect to the FEMA process that creates a circular logic with staff. When they apply to FEMA they need a community official signature that acknowledges that the county

agrees with what they are doing. He usually ends up signing those. It is not like the county does not review it at all. They will still be looking at it.

Mr. Lafferty said he also sees they are losing some open space in Places29. They have the critical slope part that they need to address. It is not simply building into the floodway.

Ms. Porterfield said that it was a good explanation.

Mr. Loach asked for clarification. In the findings, it says staff can identify no public purpose that would be served by granting this waiver. Staff is unable to recommend any of the findings in the ordinance can be made. He asked if he was hearing from staff that they have weighed all of the potential positives or if when they made that recommendation it was directly related to the loss of aesthetics resources.

Mr. Fritz asked if he was talking about the critical slopes waiver section and staff's findings under section 4.2.5.a.3 on page 8 and 9 of the staff report.

Mr. Loach agreed.

Mr. Fritz pointed out staff looked at the very specific criteria that is contained in those sections and made the finding. The broadest criterion was granting the modification or waiver would serve a public purpose of greater import than would be served by strict application of the regulations sought to be modified or waived. They could potentially interpret the expansion of the buildable industrial area on this property meets that criteria. Staff thought about that and did not find it trumped the impact of what is designated in the Comp Plan. It is not designated as an industrial area. If it had been designated as an industrial area, then perhaps they may have recommended that it allows achieving the Comp Plan. That is a purpose of greater public import than protecting the critical slopes.

Mr. Custer said they could have approved it administratively if it was not in the open space. It is man-made critical slopes on the site plan. Mr. Fritz has the ability to approve that, but not if it is on an open space plan. On the first plan they had said it was man-made slopes and could approve it administratively. However, then they discovered that ½ of them were on open space.

Ms. Porterfield asked if the owner of the property for the critical slopes was paying industrial taxes.

Mr. Fritz replied he did not know how the land value has been determined.

Ms. Porterfield said if they are going to keep them as open space it would seem unfair that they have to pay industrial rate taxes.

Mr. Fritz pointed out they don't consider that specifically because the criteria excludes the priority interest of the developer as a factor in analyzing disturbance of critical slopes.

Ms. Porterfield said if they want to maximize the use of the property she understands the disturbance of the critical slopes is needed to do the fill.

Mr. Fritz agreed that was correct.

Ms. Porterfield said that they basically are attached. If they approve the critical slopes, it would not do them any good.

Mr. Fritz said if the Commission recommended approval of the special use permit without approving the critical slopes they have gotten nowhere.

Mr. Morris invited the applicant to give a rebuttal.

Mr. Shimp noted he had one comment to clarify what Mr. Brooks talked about as far as the difference in the Yacht Club application and the current application. He was unaware of the history with the county. At the time the Planning Commission and Board reviewed the application for that particular project the floodway line was shown in an area that fill was to be placed in. Perhaps it was a mistake that everyone

feels certain that it could be changed. Legally that line was in the middle of the site when that special use permit was processed. He did not see a problem with that because the condition attached to it was the LOMR would have to be approved. Without that approval the dirt never goes in. In this case what is different is that they are relying on his word essentially saying he thinks this can be changed. Whereas, previously there was a much more detailed study that the county had looked at. He supposed that was ideal, but at the same time the person at risk is not the county. It is the applicant. It is on the applicant to prove this theory correct. If they do, the floodway line can be amended. If they don't, that is really on the applicant. He sees that as the big difference in his position with what he is saying and what the county is saying. He was not trying to fill in the floodway. They are saying in the past there was a situation where a map was believed to be wrong, it was corrected and fill was approved in that location. He was seeking the exact same treatment.

Mr. Morris invited further discussion.

Ms. Monteith said normally FEMA maps are not generally disputed. This is not common practice. They are being asked for a special use permit both for affecting critical slopes and for the floodplain.

Ms. Porterfield said the applicant could go to FEMA to see what they can do. She asked if the applicant has to have the county sign off on the request prior to that.

Mr. Fritz replied the applicant could go and do that, but as part of the work there is a sign off by the county.

Ms. Porterfield asked if the county could sign off on this if the applicant wanted to pursue this.

Mr. Brooks replied that was a good question. What they typically would apply for is a conditional letter of map revision or map amendment. There is a community acknowledgement signature that goes on the form. They are acknowledging that the applicant wants to change the floodplain and they agree or don't agree with it. There is room for comment.

Mr. Franco said he thought they were only acknowledging that staff was aware of it. He was not under the impression that staff was sanctioning it or saying yes or no they agree with it.

Mr. Brooks said if he withholds his signature, it goes to the county executive. He was not sure. He had never tried that. Since he had never been in this situation he could find it out and come back.

Mr. Franco felt that it was only an acknowledgement that this was occurring in his jurisdictional area and not that they sanction it. FEMA has control of that line. It is an interesting discussion. If FEMA decides that the line is moved, then essentially it is moved. The question before the Commission tonight is really the land use. If they take some of the technical stuff out the real question is would they support this new land use and do they want to see an expansion of the industrial area in this critical slopes area or not. By this area, he meant to say the critical slopes, the open space plan and some of the other aspects that have been discussed. That is the core thing before the Commission. He feels torn about it, but wants to give the applicant some kind of direction. Based on the fact that the Comp Plan calls for it to be open space, he is not inclined to support this. It may change his opinion to see the floodway line moved, but right now, the way the proposal is submitted he sees many problems with it. He was not inclined to support it.

Mr. Morris agreed. It is in his district and he hates to see the master plan going down the tubes with the loss of the green space.

Mr. Loach said it comes down to a risk benefit ratio. The ratio is not in the applicant's favor taking everything staff has said in the report.

Motion on SP-2010-00038:

Motion: Mr. Franco moved and Mr. Lafferty seconded to recommend denial of SP-2010-00038 Badger Industrial based on the factors unfavorable as identified by staff

The motion was approved by a vote of 5:1. (Ms. Porterfield voted no.)

Mr. Morris noted that the motion to recommend denial of SP-2010-00038 Badger Industrial was approved.

Motion on Critical Slopes Waiver:

Motion: Mr. Franco moved and Mr. Lafferty seconded to deny the critical slope waiver associated with SP-2010-00038 Badger Industrial based on the fact that the special use permit was recommended for denial.

Mr. Morris invited further discussion.

Mr. Kamptner asked to clarify if the motion also includes for the reasons stated in the staff report.

Mr. Franco replied absolutely it includes the reasons stated in the staff report.

Mr. Lafferty agreed that would be true for both motions.

Ms. Porterfield voted aye for denial of the critical slopes based on the fact that the special use permit recommendation was for denial.

The motion was approved by a vote of 6:0 to deny the critical slope waiver associated with SP 2010-00038. It was based on the reasons stated in the staff report and on the finding that the waiver would:

- be detrimental to the public health, safety or welfare, to the orderly development of the area, or to adjacent properties; and/or
- be contrary to sound engineering practices; and/or
- all four of the considerations listed in 18-4.2.5.a.3.a-d.

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Mr. Morris said that the critical slope request was denied by a unanimous vote.

Ms. Porterfield asked the engineers to let the Commission know whether the county has to take a position should an applicant come in and want to contact FEMA or whether it was just a signature as Mr. Franco was saying or whether staff has to take a pro or con position on it. That would be good for future applicants to understand so the Commission would know for future applications.

Mr. Custer replied that staff would send an email to the Commissioners.

Mr. Morris noted that SP-2010-000038, Badger Industrial would be forwarded to the Board of Supervisors with a recommendation for denial based on staff's recommendation that the request would be inconsistent with the provisions of Section 31.6.1 and 4.2.5(a) as outlined in the unfavorable factors comments detailed in the staff report, as follows:
Unfavorable factors:

- Fill is shown within the floodway
- Comp. Plan Open Space is disturbed
- Uncertainties within the applicant floodplain models
- Model shows the fill raising the flood elevation
- Uncertainty with the Erosion Sediment Control plan, if approved
- Proposal requires the disturbance of critical slopes

The critical slope waiver associated with SP 2010-00038 was denied based on the reasons stated in the staff report and on the finding that the waiver would:

- be detrimental to the public health, safety or welfare, to the orderly development of the area, or to adjacent properties; and/or
- be contrary to sound engineering practices; and/or

- all four of the considerations listed in 18-4.2.5.a.3.a-d.

Regular Items:

SDP-2008-00154 Re Store N Station – Preliminary
Request for Planning Commission approval of the entrance location and changes associated with any modification of the entrance design or location as required by the conditions of the preliminary site plan (SDP 2008 – 154). (Bill Fritz)

Bill Fritz presented a PowerPoint presentation and summarized the staff report. The Planning Commission has already seen the preliminary site plan and approved it with conditions. The site plan shows the building, parking and circulation. The issue before the Planning is a specific condition that deals with the entrance. At the time the preliminary was approved the Virginia Department of Transportation had not approved the entrance location with the access standards for Route 250. The entrance location has now been approved. As part of that approval VDOT is requiring that an easement be provided. If abutting properties were ever redeveloped at some point that causes their traffic generation to increase, VDOT could require these areas to be utilized as an entrance so that they would have a consolidation of the entrances at one location instead of mixed entrances across 250. It is part of their access management plan.

The big change that has occurred between the preliminary approval and the final is the provision of the access easement. A taper has been added that comes up into Route 250. Essentially they are giving the road that goes back and serves a variety of residents, and will have in essence a turn lane to get them off Route 250 to allow them to come onto that. Those are the changes that have occurred between the preliminary approval and the final. The location is the same. These access easements do require anything of any adjacent property at this time. It is simply putting something in place so that if properties develop in the future there are opportunities for improved entrance locations.

What is before the Commission tonight is a very specific finding. There was a condition on the preliminary that read, The Planning Commission approval of the entrance location and changes associated with any modification of the entrance design or location. He has talked with the Commission about what those changes are. The final design has not yet been approved by VDOT. Those VDOT comments are included in the staff report. What staff reviewed are really technical requirements dealing with drainage, the radius, and other aspects. Staff did not see that as an obstacle. Staff is recommending approval.

Mr. Morris invited questions for staff.

Mr. Loach noted staff said the easement was made for future development on either side. The 250 Corridor is sporadic between what is commercial and what is not. He asked what the zoning is on either side.

Mr. Fritz replied that it was rural on one side and in the rear. Two adjoining properties are zoned commercial. The road, which is a fee simple strip of land, is zoned commercial. However, the road goes back to serve residentially zoned properties. It is important to note that even if those rural properties were to redevelop in some manner VDOT may require alterations to the entrance if there was an intensification of use. He pointed out Joel DeNunzio can speak to the particulars to that. Staff is trying to put something in place for the future.

Ms. Porterfield asked staff to talk about where areas “a”,”b”, and “c” are.

Mr. Fritz noted the location of the areas. What the maintenance agreement is saying in essence is whoever uses “a” is responsible for maintaining “a” and whoever uses “b” is responsible for maintaining “b”. The maintenance of area “c” would be based on predicted usage because it could be a combination of Restore’n Station “a” and “b”.

Ms. Porterfield said that it is specifically future use when it is utilized only. So until that point the people at Restore'n Station will maintain it.

Mr. Fritz replied that was correct. They would have sole responsibility for maintenance because they would be 100 percent of area "c" until such time as something else happened.

Ms. Porterfield asked if they can keep it the way they want in the front, and Mr. Fritz replied yes.

Mr. Smith asked if the road to the back is fee simple.

Mr. Fritz replied that this piece of land is actually not an easement, but it is actually owned. It is not part of the adjacent property that is commercially developed. Restore'n Station will stay on their property and will not touch that road. It is owned by the property just to the south. Staff recommends that the Planning Commission determine that condition 8 of the Preliminary Site Plan approval has been satisfied. The condition is "Planning Commission approval of the entrance location and changes associated with any modification of the entrance design or location."

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

Jo Higgins represented Jeff Sprouse, the applicant, who was present. Mr. Fritz has clearly explained why they are here tonight. Joel DeNunzio is here from VDOT. Since they last met with the Planning Commission the details of the easement have been provided by staff. The only comments that remain to be addressed are on sheets related to the improvements in the right-of-way, which again they consider minor engineering things that usually are associated with the entrance permit itself that is done at the time of the construction. Those items were minor in nature.

- The extension of the right turn lane was actually mentioned when they were here before, but not shown on the plan and they were not entirely clear with what VDOT wanted with that. The idea is that a vehicle traveling east on 250 can now veer off into the right turn lane to enter into Restore'n Station. It takes them out of the lane with traffic going 45 miles an hour so someone does not crowd up behind them. If they are turning into the road adjacent to Restore'n Station they also would continue in that right turn lane and then access it. They have also moved that taper, as noted on the previous plan, to the east side of Free Town Lane so that when someone is exiting they actually have an apron of asphalt to move out onto the road.
- All of these improvements are totally within the VDOT right-of-way. The right-of-way at that location is about 120' wide. Therefore, none of it will be done on the property that is next door. That has been a point of contention. She wanted to make clear that VDOT would never review a plan that affected a property owner. It is all within their right-of-way. Therefore, they have jurisdiction over it. Along with the final site plan they will have an easement plat, which is part of the process that will actually show this easement. It will be on a recorded document. It will also show the drainage easements and such that go along with the property and the storm water maintenance agreement. All of this will be put to public record. It won't just be something drawn on the site plan.
- They are appreciative of the note about the maintenance because should the Moose or a property on either side intensify their use the idea would be that they could join in the entrance to have the benefit of a right and left turn lane. It is again part of the improvements that Restore'n Station will do to the right-of-way. It will appear very much like what is at the Harris Teeter. They will be able to move out of the lane of traffic when traveling west to turn left and traveling east to turn right. That will also end up by default to create a left turn lane for those traveling east to turn into the Exxon across the road. When the pavement is tapered it creates a turn lane across from each other. They are working with VDOT and if that means striping it that way they have no problem with that. They are the first ones there so it goes with Restore'n Station. As to who comes later they would actually construct within that easement their improvements and then there would be a share agreement, which they are totally in agreement with. They have no right to impose people to use that easement. That would be up to VDOT totally. She wanted to again make that clear so the property owners don't feel like it is something that Restore'n Station was

causing to happen. It is just part of what has been imposed based on the 2009 access management regulations. It is actually a condition of their waiver.

- Last week the Architectural Review Board reviewed their request and provided eight comments. The decision was 2:2. The minor changes had to do with some siding in place of brick; and making the cupola a little different in style. The 3,000 square foot limit also includes exterior porches. The square footage of the three porches was pulled out of what they call the usable space. The usable space ends up to be around 2,700 square feet on the first floor. The upper floor was totally revised and reduced to about 1,900 square feet. It has been pulled off of the front and kind of stepped back into the building. They also removed the staircase from the exterior and put it inside the building, which reduces the lower floor to 2,560 square feet. Scale wise things have been cut down substantially. The ARB seemed more pleased with the exterior. One item was a correction. Another had to do with adding some additional trees on the western side to stagger them. All the others had to do with cornice details and such things as that. That was a topic of consideration when they were here before.
- They have made final site plan submittals. The engineering and planning comments are being addressed. One of the features brought up was the fencing does not show very clearly on the site plan. They have maintained a double sided composite board 6' high privacy fence. To the western edge it is actually double fenced. The fence starts at the equipment court for the building and continues down around the site up high due to the grade. It continues around to the corner where the parallel parking spaces are located. On the perimeter it starts back and shields the western corner. They have submitted their photometric and lighting plans. All the other details have been addressed.

Mr. Morris noted the Commission was focusing their attention on the approval of the entrance location and changes associated with any modification of the entrance design and location. He invited public comment.

Richard Brown, resident of Free Town Lane, said that he was concerned about the right-of-way coming into Free Town. He has a deed with a plat that shows the 10' belongs to the road. Fifteen years ago they could have extended that road. He did not want to hear any talk about taking that road away from them. They said this is for the entrance to Free Town, which is what they are talking about tonight. However, he has not heard Ms. Higgins say anything about the run off going into Stockton Creek, Rivanna Reservoir, Mechums River or Mormon's River. They need to address the run off before the Commission makes the decision on this. They are already up about 30' higher than Free Town, which means a 6' fence is not going to hide anything from this station to the people in Free Town. He hoped Mr. DeNunzio could speak tonight. He had asked Mr. DeNunzio where the school children will get on the bus while they were standing at the bus stop. He questioned where the bus stop was and could the children walk to school. He told him no way the small children could walk to school on 250 with the current traffic. They have tractor trailers turning around right at Free Town and when asked Mr. DeNunzio suggested they talk with the State Police. He requested that these issues be addressed tonight since they have a mess out there. He asked the Commission to think about these things before they make a decision.

Ms. Sandra Mears, resident of Freetown, said since the main issue was the entrance and the maintenance that she wanted the road maintenance cleared up and explained as to what the residents of Free Town have to do with it.

David Fisher, resident of Freetown, said he had nothing to say right now.

Marcia Joseph asked the Commission to consider a couple of things. One has to do with a drainage easement. She did not know if staff can help clarify where this water is going that comes off this site. She asked if a drainage easement or an assessment of the receiving stream is required for this. The other thing is Ms. Mears asked about the entrance and the maintenance agreement. There is a note on the plan that talks about a maintenance agreement between all of the parties. She is hoping that this maintenance agreement will not just be written by the developer but will include the people who be using this road. When she sees that note it just worries her about what the expectations are. Because they are putting the gas station here it is just too bad they would just have to pay this if this ever comes to past.

The zoning administrator's determination has been appealed to Circuit Court, which is the determination on the general accord of the building itself and whether the proportions are correct.

Mr. Loach asked when she was talking about maintenance was she talking about the road that is owned by the owner that goes back to Free Town.

Ms. Joseph replied she was talking about the entrance itself. When that entrance to Free Town is closed the assumption is that all of those folks will have to use that commercial entrance and will be responsible for maintaining that entrance. If seems that if they are going to have to be responsible for maintaining that they ought to be party to the maintenance agreement.

Mr. Morris asked if that falls into areas a, b and c.

Mr. Fritz replied yes.

Mr. Morris invited the applicant to make a rebuttal.

Jo Higgins noted that Mr. Brown brought up information about Free Town Lane.

- If they research back historically pre-1980 they would find that 10' of this site was added to the 15' that was existing at that time where Free Town Lane is built. She thought that the intent when someone gets a 10' strip is that the road would be upgraded. To her knowledge the road has never been upgraded. She thought that it was in its existing condition. However, there is 25' for the Free Town residents to upgrade the road. That is where that question comes.
- The issue about runoff has been brought up by two parties. They have submitted the site plan. There is an easement off-site that will be 20' wide that passes between trees that were surveyed that were not being affected. It goes back to Stockton Creek across the property behind Restore'n Station. Again, that will be shown on a plat that will be recorded. Nat Perkins has already submitted their WPO. The water will be captured and subject to water quality and quantity controls. They are allowed at the front of the site to collect off the canopy and roof of the building and use that water for landscaping. There will be a tank at the front. There will be underground storage at the rear. Those are in the site plan and the area is being addressed.
- The grandfathered sites along 250 are the ones running off totally uncontrolled with no quantity or quality control in place. This site will be subject to the very strict requirements of Albemarle County. Also, the drainage is reviewed by VDOT for what comes off of the public right-of-way at the front and how they get the water through the site. That is all addressed.
- Regarding the road maintenance if there is intensification of commercial use of if they decide to intensify their subdivision, they would become subject to the Albemarle County review process. In that process a road maintenance agreement would be appropriate and the owners would contribute based on traffic. The county reviews road maintenance agreements. They would be a party to the center of it, which is area "c". The party from Free Town Road is the short segment that gets them over to that entrance. Then the longer section goes over to the Moose. There is really nothing that dictates that their existing entrances would be closed. However, the issue is really the right and left turn lane. They might be allowed to use their entrances to come out or go in for a right-in and right-out only, but maybe not cross over 250. That was the way it was explained. It would depend on the intensification of use, which were unknown factors. Mr. DeNunzio could speak to it. There are two notes on the plan that apply to that strip where improvements will be built. One talks about area "a", "b", and "c". The other says when they cross over the septic field any pavement in that area will be concrete to protect the septic field. That is the only concern they have.
- They adjusted the landscaping and met the setback requirements. Again, it is per VDOT's details and no one is dictating the Free Town Lane people have to do anything at all. They would not unless they became subject to the new requirements.

Mr. Kamptner noted the staff report addresses this issue at the top of page 3.

Ms. Higgins pointed out as part of their process they offered at the time to cooperate and build a connection over to Free Town Lane and provide all of those improvements and the easement to work with the property owners. Understandably they did not want to do that. She understands no one wants to be forced to do that. However, they still got a way to get out of the eastbound traffic to turn right into Free Town and to exit better than what is out there now. It is a very large strip of gravel with a lot of potholes in it.

Mr. Smith asked if the driveway to Free Town Lane is in the 25' strip.

Ms. Higgins replied yes that it was shown on the site plan. The 10' that was cut off the parcel is actually between the property line and the actual gravel. There is actually a strip of trees in there. However, they have the 25' strip to use. It would have worked out better if the two property owners had cooperated and laid that slope back to improve it. However, that was not an option.

There being no further questions for the applicant or public comment, Mr. Morris closed the public hearing to bring the matter before the Planning Commission. He invited Joel DeNunzio, VDOT representative, to address the Planning Commission.

Mr. Loach asked what the status of the road was going back to Free Town. He asked who would be drawing up the maintenance agreement.

Mr. DeNunzio replied that would be a private subdivision road entrance. If anybody in the future were to use the access easement across there it was his understanding that it was under a county ordinance.

Mr. Fritz noted the way the language is written they need to prepare a maintenance agreement, which needs to be approved by Albemarle County. They do maintenance agreements all the time on private roads to distribute the cost of maintenance based on the actual usage, how the maintenance will occur, how the monies will be collected, and what will happen if monies are not paid.

Mr. Loach said they have a private road going back to multiple homes, but only one homeowner that owns that road would be encumbered on the maintenance agreement.

Mr. Fritz replied the maintenance agreement they are talking about does not affect Free Town at all. It has zero impact on that at all in any way. The maintenance agreement they are talking about is only for the shaded areas shown on the presentation slides.

Mr. Loach noted the question he had for Mr. DeNunzio is that if next door gets developed and they want to continue that access road or easement what happens to the roadway piece between those two properties.

Mr. DeNunzio replied that VDOT had no control over that property. He did not know how far in the future additional commercial development may occur. Many of the commercial entrances along this corridor are not well defined or spaced adequately and the idea is to get the easements across the frontage so they can have proper access management spacing over time. It is not intended to change anything on Free Town Lane. It is not intended to force Free Town to allow someone to access across their property. If someone on the other side of the Free Town property came in whoever owns that piece of land right there would have to allow access. They can't force that.

Mr. Fritz said there would be no construction within those access areas right now.

Mr. Loach said in area B if commercial went next door to the right on the diagram Mr. DeNunzio is saying they would have an access road, but essentially that access would stop at the limits of the private road.

Mr. DeNunzio agreed that was correct.

Mr. Loach said so therefore as far as a maintenance agreement then that road would not be encumbered by a maintenance agreement since there is no access to the road. He wanted to make sure that the

people who own that road when they were talking about adding a maintenance agreement to add additional monies, etc. that the property owners would know what their liability is.

Mr. Fritz noted that staff has not crafted that language yet. There are multiple properties back there. If one property owner were to develop and cause the need for this relocation or closure of this entrance causing a consolidation, they would want to write it in such a way that it was the person generating the need to have this connection would be the one responsible for the maintenance of it. The others would not be subject to enter the maintenance agreement.

Mr. Morris asked based upon the way this is presented does this new entrance meet the requirements of the original preliminary site plan.

Mr. DeNunzio replied that the location is the same that it was. He looks at the changes here as very minor in detail as far as the actual pavement. Something to consider that is not actually shown on the site plan layout, but they would see in a typical section for the widening of Route 250, is there is also a paved shoulder and a graded shoulder on 250 and a ditch section shown. Those don't come out. So when they saw the original taper that went back into Free Town Lane there was still a paved shoulder outside that taper. It is not normally shown on the plan to the Commission, but normally shown on the typical section. Therefore, the typical section was correct and had the correct dimensions on it. Some minor adjustments to actual paved area had to be made. However, that shoulder would have been there either way. What they are doing is extending that right turn lane. They are not making anybody going into Free Town Lane go across the gravel area that has a lot of pot holes and collects water right now. The entrance location is in the same place as it was in the preliminary. Their intention is not to close that entrance because of the adjacent development. Even if at some point in the future if the back area were to develop or any sort of site plan came in they want to continue those easements as needed. They might piece together and get a very good access plan in the future and they may not. In reality these easements may never be used. If the areas don't developed, they don't get used. If they have a gap in them, they set it up to try to get the access there. That is what their intent is. However, they only have so much control over what properties get developed. VDOT is not going to go out and develop a property outside of a road project. So they don't have 100 percent control in that. The intension is to set it up so in the future as development does occur that they get the best access they can.

Mr. Morris thanked Mr. DeNunzio for his input. He asked if there were any questions for Mr. Brooks. There being none, he asked if there was any other discussion.

Motion: Mr. Franco moved and Mr. Smith seconded to approve the entrance location and the changes to the site plan associated with the entrance (part of SDP-2008-00154) for SDP-2008-000154 Re-Store N Station based on the staff report.

The motion was passed by a vote of 6:0.

Mr. Morris said that SP-2011-00043 Re-Store'n Station – Preliminary (part of SDP-2008-000154) was approved unanimously. This is a matter that does not require Board of Supervisors approval.

Old Business

Mr. Brooks provided a response to the question raised during the consideration of SP-2010-00038 Badger Powhatan regarding the County's sign-off on requests to FEMA for changes to the floodplain map.

- There are two separate sections for signature. The first is for fill in the floodway fringe. The second is for properties located within the regulatory floodway. They make the distinction. It is pretty lengthy. Therefore, he would just pick out the pertinent parts. It says for the person signing it that he hereby acknowledges that they have received and reviewed the letter of map revision. Based upon the community's review they find the completed or proposed project meets or are designed to meet all of the community floodplain management requirements including the requirement that no fill be placed in the regulatory floodway and that all other necessary federal

and state local permits have been or will be granted. Therefore, it is sort of a community acknowledgement for the fill that is going in the floodway fringe.

- For the other section, which is a different application with whether they are actually applying to say there is a mistake in the map and the line should be somewhere else, there is a different acknowledgement for that. It says as the community official responsible for floodplain management I acknowledge that they have received and reviewed this request and they understand it is being forwarded. We acknowledge that no fill on this property has been or will be placed within the designated regulatory floodway." It says we understand that it is determined that this property has been inadvertently included in the regulatory floodway. In other words, we think they have made a mistake so change the line. As a community official, he would be agreeing with that and FEMA should take another look at the line and see if that is the right one. That is what they would do. They would do that second acknowledgement and that second application type to change that floodway line before they came to staff to ask for permission to fill in the floodway fringe. That is the way he understands it.

Ms. Porterfield said that he would basically have to take a stand either way on the second one that at least he thinks that it should be studied.

Mr. Brooks replied yes, and that does not bother him as much as the first one where he was saying he was giving community agreement and review. He feels that he should have something more than just the engineering math working out. For the floodway itself all they are saying is that perhaps it was inadvertently added in the floodway and it should not be. He would be comfortable just doing that based on the engineering alone.

Ms. Porterfield said if the previous applicant wanted to go with this they could try that method to see what he could come up with and then make another application.

Mr. Brooks said they could potentially get this property out of the floodway just in the fringe and then come back to the Commission with a special use permit for that.

Ms. Porterfield thanked Mr. Brooks for the information.

Ms. Higgins asked to say one thing because she thought that some people were going to leave here with a misunderstanding. She clarified there is no road maintenance agreement that is pertinent to the Re Store N' Station site until someone in the future decides to use the easement. That is number 1. So there is no road maintenance agreement that is being drafted. Number 2, they tried to make it a future easement by a note and put it on there. But, VDOT wanted it as a recorded easement. Therefore, they are doing that. However, the Yancey parcel has a wide open entrance on the right side. That has been a point of controversy. But, even if they become subject to the access management regulations that 25' that Free Town has they would have to either purchase it or those folks would have to agree. No one could impose it on them without their agreement. It is really a land rights issue. Unless it was condemned for some public project, which is not going to happen as Mr. DeNunzio said, nothing is going to infringe on that 25'. If they do an easement it could stop. She wanted to make sure to make that clear even though the public has gone. She wanted to make sure they understand that no maintenance would be imposed on them and no easement would be put across them unless it was purchased by someone or someone bought a property that is accessed by Free Town Lane and decided to intensify its use. She wanted that to go on the record that those two things are entirely clear and settled and nothing is being imposed upon them. They have gotten a strict comment about making sure their improvements in the right-of-way do not even touch their property line.

Mr. Loach noted that he thought everybody understood that. It was clarified by staff during their discussion. That said, he wanted to make it clear because there was some concern on the part of the residents about the maintenance agreement.

Ms. Higgins noted that Mr. Fritz talked about it as it was being drafted. It would never occur if no one uses it. Restore N' Station maintains everything that is on its site. At some point in the future it would

become a party to a portion of it. However, then it would be giving up some of the maintenance. So it is a share thing.

Mr. Loach said it was important that is on the record as well as Ms. Higgins saying should the other side be developed that those people have that access to that road and are not encumbered by VDOT.

Mr. Franco asked who the beneficiary of the easement is if it is being recorded now.

Ms. Higgins replied that the easement is shown on a plat with the note that the Commission saw. There is no beneficiary or no deed. She brought it up, which was why she did not want to do an easement without those parties being on there. However, when someone comes through the review process and gets the same access management regulations applied, then it will be up to the property owner of Re Store N' Station and that property owner to come up with an agreed way. However, nothing can be built there and there is no impediment to it. Regarding the fairness of this and the way it is handled, VDOT was adamant about they wanted it recorded and it is there. VDOT can force somebody to use it since they can force a lot of things with their access management regulations.

Mr. Morris asked about the 25'.

Ms. Higgins replied that 25' is fee simple and 10' of it came off. They will not be involved.

Mr. Kamptner asked to go back to the Badger Powhatan application, SP-2010-00038, just to give the Commission a bigger picture and put all of this in context. Staff was not trying to impose a procedure for the sake of imposing a procedure, but wanted to assure that the applicant received a valid action. They want any application to be processed with enough information for staff to be able to make an informed recommendation. However, they also want the actions of the Planning Commission or the Board to be valid not only because they want the government to be taking action, but they want the recipient of that approval to walk away knowing that their approval is going to be valid. There is a question when an applicant seeks to leap frog through the process and get the more specific approval, in this case the special use permit, before they have the underlying zoning. The final approval may be void. It may be void in a way that five years from now when somebody downstream is upset can have the court declare that approval to be void. The applicant would have spent hundreds of thousands of dollars or millions of dollars in approving the site and they no longer have a lawful permit. Or, they may not be able to get financing and things like that. They are not only looking out for staff's interests, but trying to assure that the action is valid for the applicant's benefit as well.

Mr. Loach noted on the part of the Planning Commission if they approve this, then could it be misconstrued in some of the application process to FEMA. It would be part and parcel of the application to say oh look the community approved it as Mr. Brooks was talking about on the check off sheet. He thought the way the Commission handled it was probably more prudent.

Mr. Kamptner said in this case they recognize that there was no opposition to this particular application. However, staff cannot do their analysis based upon whether somebody is going to object to the application. They want to have a consistent process. In talking with Mr. Brooks over the past few days, his approach as the County Engineer over the past is when an application comes for fill and the fill is shown as being in the floodway, Mr. Brooks has rejected and said they need to go through the FEMA process first before they can have their application processed. Staff was just a little late in identifying that issue in this case. The County Engineer has been consistent the last few years with this.

Ms. Monteith said the first question on her list was why they went to FEMA first.

Mr. Franco pointed out he understood why not to go to FEMA first. It takes about a year, not three or four months, to go through the process. It takes a long time to go through that process and it is expensive. He thought the real question is the land use and whether the Commission would support it or not. That is why he tried to give feedback to the applicant tonight that even if they went through FEMA he was not sure he would support it so don't go and waste the money if they are going to bring it back to the same Commission.

Mr. Lafferty said one thing that came up in both discussions about the applications tonight was run off. Since they are in the Chesapeake Bay Runoff Watershed pretty soon they are going to be subject to EPA regulations that the State has endorsed. It is under the total daily maximum load, which will basically be treating storm water just like sewer. It has to be cleaned up before it is dropped into anything that goes to the Chesapeake Bay. It came up a couple of times in the discussions tonight. That will probably be in 2014.

Mr. Morris noted that he really thinks their action tonight with Badger Industrial was consistent with their action on the 5th Street. As he recalled the Commission recommended that it be denied simply because it was in the floodplain. Then additional information was brought before the Board of Supervisors and the Board overturned it based upon the information that they had. He thought the Commission did the right thing in denying it based upon the information they had.

Mr. Porterfield noted what Mr. Brooks said was that it would have been good if the applicant had taken the second route if they thought it was worth the money and go ahead and do FEMA first either by asking for deferral right now or plan to reapply if they eventually get something from FEMA.

Ms. Monteith noted that their projections are just projections. Personally, she felt that in good planning the first thing to check is the FEMA map. Yes, they can challenge the FEMA map, but that is not usually the approach.

Ms. Porterfield noted they had a couple of decent points of things that could benefit the county in cleaning up some very old situations that would behoove them. However, she was very glad that staff clarified there was a path for them and they chose not to take it.

Mr. Loach noted had they approved this they would have lost 12 acres of open space. They have had other applications before them they have approved that actually used the open space. He was hoping they were keeping track of how much open space they are losing in the master plans. He would like to know on a yearly basis what they have really lost.

Mr. Morris suggested that it be kept for each master plan.

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

New Business:

Mr. Morris asked if there was any new business.

- NEXT MEETING ON August 16, 2011 is a Joint City/County Planning Commission meeting.

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

Adjournment:

With no further items, the meeting adjourned at 7:48 p.m. to the Tuesday, August 16, 2011 meeting at 6:00 p.m. at the County Office Building, Second Floor, Room #241, 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)