**Albemarle County Planning Commission**
**July 31, 2012**

The Albemarle County Planning Commission held a public hearing on Tuesday, July 31, 2012, at 6:00 p.m., at the County Office Building, Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Thomas Loach, Richard Randolph, Don Franco, Calvin Morris, Chairman; Russell (Mac) Lafferty, Vice-Chair; Ed Smith and Bruce Dotson. Julia Monteith, AICP, Senior Land Use Planner for the University of Virginia was present.

Staff present was Sarah Baldwin, Senior Planner; Scott Clark, Senior Planner; Claudette Grant, Senior Planner; Glenn Brooks, County Engineer; Amelia McCulley, Director of Zoning/Zoning Administrator; David Benish, Chief of Planning; Wayne Cilimberg, Director of Planning; Mark Graham, Director of Community Development; and Greg Kamptner, Deputy County Attorney.

**Call to Order and Establish Quorum**:

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

**Other Matters Not Listed on the Agenda from the Public**:

Mr. Morris invited comment from the public on other matters not listed on the agenda.

Doug Arrington, of 1836 Fiddlestick Lane, spoke to the Comprehensive Plan.

- He did not oppose development, but would like to see the development on 5th Street done in a uniform convenient way in regards to traffic flow and community quality of life. The 5th Street/64 interchange was substandard particularly in the peak hours and the traffic backs up almost all the way to Bent Creek. There is a web site Kurumi.com/diamond/inter-change that gives a brief explanation of the short falls of diamond interstate interchanges.
- There is no way to gage if one is going from a one-story warehouse to a three-story office building. Built into the system there does not seem to be a way to gage what that percentage of additional square footage will be, i.e. traffic flow. It would be nice to have some sort of numbers on that.
- He understands the Southern Parkway and Sunset Fontaine have been taken off the MPO 20-Year list. It would be fair to the people south of 64 and east of 5th Street for that not to be represented on the comprehensive map. Concern with commercial build up on Avon Street. Finally, he would appreciate if the Commission would consider creating an escrow account for infrastructure for Neighborhoods 4 and 5 through the zoning processes.

Nancy Carpenter, Scottsville District resident, noted she had missed the prior meeting on Urban Agriculture and would like to make some comments.

- She was glad to read about the consideration being given to urban agriculture public policy in Albemarle County living in an apartment community in Neighborhood 4 of the urban development area. This policy should take into account the benefits in having this use in multi-family developments. Several positives would result from this type of policy: utilization of public property for gardening, the creation of an emergency food supply and addressing the needs of some citizens to live a simpler life.
- She was not in favor of allowing certain types of fowl or goats into an apartment/condo/townhouse development. However, she was in favor of allowing gardening in these areas. This activity promotes and develops neighbor connectivity. Also, from a rental business viewpoint, having policy that promotes gardening allows for increased retention of tenants. A stable tenant population increases the net operating income for landlords.
- She hoped that with each new residential request with multi-family structures, there would be a requirement to have a certain amount of ground that could be used as gardening space.

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

**Consent Agenda**:

**Approval of Minutes**: May 8, 2012 & May 22, 2012

Mr. Morris asked if any Commissioner wanted to pull any item from the consent agenda.

**Motion**: Mr. Franco moved and Mr. Lafferty seconded for acceptance of the consent agenda.

The motion carried by a vote of 7:0.

Mr. Morris noted the consent agenda items were approved,

**Deferred Items**

**SP-2010-00036 MonU Park (Signs # 49 & 52)**
PROPOSED: Creation of an athletic club with 4 soccer fields and 96 parking spaces (changed from previous description of 7 soccer fields and 168 parking spaces)
ZONING CATEGORY/GENERAL USAGE: RA -- Rural Areas: agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots); FH Flood Hazard - Overlay to provide safety and protection from flooding; EC Entrance Corridor - Overlay to protect properties of historic, architectural or cultural significance from visual impacts of development along routes of tourist access
SECTIONS:
10.2.2.4 Swim, golf, tennis or similar athletic facilities (reference 5.1.16)
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: Southeast corner of US 29 and Polo Grounds Road (Route 643).
TAX MAP/PARCEL: Tax Map 46 Parcel 18C
MAGISTERIAL DISTRICT: Rivanna
(Scott Clark)
DEFERRED FROM THE JUNE 19, 2012 PLANNING COMMISSION MEETING

Mr. Morris noted the next item was a deferred item, which was looked at on June 19 of this year and the Commission had a couple of questions that did not have a sufficient answer. So the Commission was going to take a look at that.

Mr. Clark summarized the proposal in a PowerPoint presentation and discussed what information staff was able to get in the time since the first hearing.

This is a proposal for the creation of an athletic club with 4 soccer fields and 96 parking spaces (changed from previous description of 7 soccer fields and 168 parking spaces) on Polo Grounds Road near its intersection with US 29.

Proposal Outline
- Four grass fields in existing open area of parcel
- Paved entrance drive
- Surfaced parking area for 96 cars
- No lighting
- No structures
- No amplified sound
- The existing entrance road will be used.

At the first public hearing staff recommended approval based on the following factors:

Factors favorable to this request include:
1. Impacts of the use would be limited by the absence of lighting or amplified sound systems on the site.

2. As recommended by the Rural Areas chapter of the Comprehensive Plan, the on-site impacts of the proposed use can be reversed if the use ends.
3. The use would assist in meeting the demand for soccer fields in the County.

Factors unfavorable to this request include:
1. The use will generate additional traffic on Polo Grounds Road, a rural road that serves both Rural Area and Development Area residents and an existing soccer facility. However, the site's proximity to US 29 and the scale of the use will limit the extent of those impacts.

The Commission asked staff to get more information on two matters being the traffic and noise. Unfortunately there was not a lot of information available from VDOT regarding peak hour traffic on Polo Grounds Road or the level of service at the US 29/Polo Grounds Road intersection. VDOT does not have any data on that to offer us. That was unfortunate. The applicant's traffic-generation estimates are as follows, which is a little more detail than they had last time.

Traffic projections for games based on:

- 2 teams of 15 players per team=30 players. Players typically car pool to average 2 players/car
- 1 coach and 1 assistant coach per team=4 coaches
- 3 referees per game

- Players/parents=30 trips
- Coaches=8 trips
- Referees=6 trips
- Miscellaneous=4 trips
- **Total = 48 trips**

I added 4 miscellaneous trips to allow for less than anticipated car pooling by players/parents.
Total trip could also be slightly less than projected due to:

1. More than anticipated car pooling by players
2. Car pooling by coaches
3. Referees that travel to the field and then officiate back to back games, thus being counted twice while only entering and exiting park once

Traffic projections for practices based on:

15 players/team, with players typically car pooling to average 2 players/car
1 coach and 1 assistant coach

- Players/parents=16 trips
- Coaches=4 trips
- **Total = 20 trips**

(Note: A trip here is an entrance or an exit. Therefore, it would 24 vehicles for a game. There would be up to four games at a time on the site depending on the scheduling.)

There is one set of observations Mr. Benish carried out for the evening when there were two soccer games going on at the existing SOCA facility further down Polo Grounds Road. It is just a single example and does not really set up a pattern or document the very large peak events that are known to happen on certain occasions when SOCA has try outs and things like that. It does show that there were instances where there was traffic backing up in the left turn lane to get back out onto Route 29.

See Attachment 2 for the applicant's observations of traffic for one evening on Polo Grounds Road. Also, staff observed an evening with two adult-league soccer games at the SOCA facility (one at 5:45 p.m., one at 7:20 p.m.). The numbers of vehicles in the left-turn lane on Polo Grounds Road at US 29 were as follows:

| Traffic Signal Cycle | Total # of cars stacked on Polo Grounds at US 29 |
|---|---|
| 1 (7:25 p.m.) | 3 |
| 2 | 2 |
| 3 | 2 |
| 4 | 3 |
| 5 | 6 |
| 6 | 4 |
| 7 (7:40 p.m.) | 2 |

Given the lack of more detailed information on traffic patterns at this site (such as a traffic study), staff has insufficient information upon which to base additional recommendations.

On the noise issue unfortunately staff was not able to provide anything new. Neither staff nor the applicants were able to come up with a way to provide quantifiable data on noise impacts on the site.

After the hearing one additional issue came up. One supervisor, Mr. Dumler, and a member of the Historic Preservation Committee raised a concern why they were recommending approval on this site without consideration for archaeological resources. When the SOCA facility down the road was approved by the Board there was a condition applied requiring them to do a phase one archaeological survey and to mitigate based on them. Staff had originally thought that the impacts in this case would be fairly minimal given that there is no foundation digging or anything like that being proposed. However, after talking it over with the members of the Historic Preservation Committee what staff is recommending is one additional condition, which would be the same as the one that was applied to the SOCA use. The condition is to require a phase one archaeological study. If there are significant results found from that the applicant would need to mitigate the impacts on those resources with the staff approval of that process.

The revised conditions recommended include a change in condition 2, which was not discussed at the previous hearing, was just to clarify that practice sessions could happen during July and August when this organization typically has small practices but not actual games. Condition 11 added was added about the phase one archaeological survey. However, there was one more slight change that came up today. It was pointed out that it was not clear in condition 2 when practice sessions could occur outside of the July and August period. Staff has made a slight change here in consultation with the zoning department to make sure that they can clarify that practice sessions as well as games can happen during the regular season. Staff recommends approval with those changes added into the conditions.

Mr. Morris invited questions for staff.

Mr. Lafferty noted in condition 2 of the recommended conditions where it says portable toilets only to be on site during these months. He asked if that is the months when they can only have practice sessions.

Mr. Clark replied yes that was the intention. So essentially they would only have to be removed from the site during the winter months when there is no activity there.

Mr. Lafferty said that is appears when they are having games they can't have toilets there.

Mr. Clark noted staff could easily clarify that before it goes to the Board.

Ms. Monteith said the text reads that they would have only portable toilets during July and August when there are only practice sessions. That is a little counter intuitive to the use.

Mr. Clark pointed out staff can easily fix that before it goes to the Board.

Mr. Lafferty noted there was some talk about a synchronized/smart traffic light at 29. He asked if there was some way to mitigate the backup of the traffic and if staff has heard anymore about that.

Mr. Clark replied as far as he knows that is not going to happen. However, he knows the applicant has discussed that in detail with VDOT and is probably going to discuss that during his presentation.

Mr. Loach asked on the left turn lane what is the capacity there car wise without traffic backing up.

Mr. Benish replied there really is not a turn lane there. It just tapers out so that they have a little bit of a slip after the first or second car is stacked depending on how small those cars are. So the stacking really is within one travel way. But again if there are one or two cars stacked usually another car can slip by and make a north turn. So there really is not any stacking for multiple lanes at that entrance. Just to clarify that day there were two games but not going at the same time. They were consecutive games. He looked at the period before the first game ended and as people were leaving for the first game and maybe arriving for the second game.

Mr. Morris pointed out some additional information. He was invited out to the MonU soccer fields on Thursday afternoon, July 26. He got there at about 25 minutes after 5:00. There was no traffic other than myself on Polo Grounds Road and it was easy to turn a left into the fields. He was not sure how many cars showed up with children and their parent. However, it was around 20 cars. At 5 minutes to 6 he got in his car and left the area and intermediately turned right onto Polo Ground Road and went to Montgomery Ridge about .4 of a mile. He went up into the subdivision and parked at the circle at the end of Monet Hill. Attachment B shows Monet Hill at the southeastern portion across from that area right up on top of the ridge. He stayed there for 30 minutes. There was a brick breeze moving from the west to the east. This is moving directly from the soccer fields to the subdivision. For ½ hour standing outside the car he could not hear any noise from the soccer field. He could not tell if the children were running or screaming. He did think that they were. The noise was not a factor and the wind was blowing to Montgomery Ridge and not towards Carrsbrook. This is not a scientific study, but he thought they ought to hear it.

Mr. Morris pointed out the Commission had the public hearing on the 19th of June. However, there are certain people in the audience that have signed up and with the permission of fellow Commissioners he would like to invite them for public comment. He opened the public hearing and invited the applicant to address the Commission.

Pat Reilly, President of Monticello United Soccer Club, noted that he did not want to go over too much of what Mr. Clark said or what they covered at the last hearing. He knows the main issue here is traffic. So that is mostly what he wants to address. He mentioned at the last meeting there were approximately six or seven times a year where there is a significant backup on Polo Grounds Road. He has specific dates for those for the year of 2012 - They were during soccer tryouts on June 11 and 12 and there were 13 or 14 boy and girls. It was on Monday, April 30th, Wednesday, April 2nd, Wednesday, May 9th, and Friday, May 11th. At 6:30 p.m. several hundred cars let out on those dates, and again at 8:30 p.m. several hundred cars let out and there was a significant back up. On Saturday and Sunday June 9th and 10th there was a weekend tournament. There were 56 games played. There is another tournament coming up Saturday and Sunday, September 1st and 2nd, Labor Day Weekend, and Saturday and Sunday, December 1st and 2nd, which should be similar to the June tournament with approximately 50 games that weekend.

- Typically they don't schedule any local games or practices on Labor Day Weekend or anytime in December. They are also willing to do one of two things on those particular dates of, which there were 7 for this past year, when the SOCA events take place. One, they will not schedule any events with times that coincide with SOCA event times. Thus they will not add any additional traffic to the backups caused by the SOCA event. If MonU does have a absolute need to schedule an event that coincides with the SOCA event times MonU will contact Albemarle County Police Department and submit a special activity request form to have a police officer work the stop light at Route 29 and Polo Grounds Road during the time the MonU event is taking place. This will not only manage the small amount of MonU traffic but it will also help alleviate the traffic

generated by the SOCA event. This is done at churches, schools, farmer markets, and other similar events that create an unusual amount of traffic on a specific day and time.

- Managing the traffic flow through sensitive scheduling and events and securing the assistance of local traffic enforcement professionals should be done by those creating the majority of the traffic and not only by MonU. However, they would like to set the example of being a good neighbor and to challenge others to do the same. They do not favor a condition locking them into the two traffic alleviation measures as there are several potential traffic solutions that could occur in the near future. They would be accepting of a condition where they agree to those measures until at least one of the following is done:
- The installation of new traffic light technology, or
- VDOT secondary road improvements on Polo Grounds Road, such as widening the intersection.

- He spoke with Joel DeNunzio yesterday and he said their initial engineering study has decided they are not going to use that specific technology that is being used at Pantops. It was something about the Route 29 corridor did not mix right. That does not mean that some new technology won't come out. But, that particular technology is not going to be installed at this time.

- They do not feel that there will be any noise impact to the neighboring properties. The fixed screening, the drastic elevation change from MonU Park to both Montgomery Ridge and Carrsbrook makes the sound stay there. They had done a sound test prior to the one Mr. Morris participated in where Dan as at the field with a Moyer cutting and he was at Carrsbrook. They went to the closet cul-de-sacs and he could hear nothing except cars and trucks on 29. At the test Mr. Morris was at it was just a normal session with approximately 20 kids and parents. The kids were doing the normal chatter. They could not hear from the proposed parking lot. It is such a big piece of property that the noise dissipates before it goes anywhere.

- Regarding the paving for the driveway and parking lot it is their preference for gravel. They will only pave if mandated to by the County. The other issue – for the past five years they have averaged 24 games in the fall and 4 to 8 games in the spring. They are small and their intent is to stay small.

Mr. Morris invited questions for the applicant.

Mr. Dotson asked if they have considered or would it be feasible to stagger the hours of using the fields.

Mr. Morris invited public comment.

Tony Iachetta, resident of Polo Grounds Road, said his wife and he had lived on this road for 55 years. He agreed with the traffic concerns already heard. He would raise the issue that first they have scaled back from 7 to 4 fields, which reducing the number of people. Anticipating success with their operation incrementally they will back again in the future for additional fields. There is plenty of room down there for additional fields. There is no sewage available on that site. Therefore, waste water treatment would have to be handled by leech fields. The area floods and he has seen it with water up to the tassels on the corn many times in the past. He did not think floods and leech fields combine very well. They also have the question of the quality of the water in the river, which will become more of an issue with time. If they add population density in that flat he was sorry but human beings contaminate one way or other. They will add to the problem of keeping the water quality. By and large the traffic problem they regard as quite serious. Whether they can solve the traffic problem is very questionable. The environmental issues are not insignificant. He did not believe this use should be permitted there.

Dean Wengor, President of Carrsbrook Homeowner's Association, said they are the community directly across the river from this development. They would directly be affected by this development and made the following comments.

- He asked what has changed since the last time they were here on June 19. It was deferred for two reasons – noise and traffic. He suggested after reading the staff report that a few things have

and have not changed. He contends that the impact on traffic simply has not been resolved. Or worse yet the imp act on traffic has been learned to be worse than was learned on June 19th.

- The applicant has estimated that there will be 48 trips per game per field potentially. What that means with four fields in 7 operating hours on a typical Saturday that is 1,344 vehicle trips on a Saturday. That is significant and frightening for Carrsbrook residents. As to not hearing those things in Carrsbrook he could find neighbors who will be more than happy to tell them that they hear SOCA today. However, these fields are directly across from Carrsbrook. He contends that traffic has not been dealt with. There has been no VDOT traffic study yet. The only study that has been done is one night's review of the study of the fields which was during the off season. It was also adult games and not kids games. So wonder there was not much heard that night. These were two adult games at night off season. The applicant has requested a change that will worsen the noise. Before games and practice times were limited to 7 months a year and now practice times have been extended two more months into July and August. So yet more noise and more traffic is coming. So he was not sure how noise or traffic has been addressed. Finally there is a real possibility of disturbing an historic Monacan Indian site.

Ed Howe, resident of Polo Grounds Road, said that he had been to a lot of meetings over the years along with Mr. Iachetta. He was a little confused and would not take a lot of time explaining since he had sent a letter outlining his objections. He had not heard a lot about the quality of the wetlands or studies of the wetlands. There are people in the state that care about that including people who live in our area. He would only add that just before he left to come here he got a note from an observation. There were 46 cars backed up at 29 north at quarter to 5 tonight. It is not just the traffic from the SOCCA although that will add to it. They have increasing traffic of commuters. It is a real problem. Somebody is going to get killed and he did not want to see that.

Joe Kulbok, President of Montgomery Ridge, sis there are a couple things that came up that he wanted to share. On his way here on Polo Grounds Road he was the sixth car in line at the traffic light and he did not get through. The light was yellow. He could have tried but there was a police officer on the other side. Five or 6 cars is about it. It has people's attention. With the weather breaking this past weekend he walked around the neighborhood. He had one-half a dozen residents approach him about this issue. That is ten percent of the neighborhood or the homeowners. They are very concerned. They have had medical emergencies and other things that have happened. They ask that the Commission really consider it and not gloss over it. They put up with SOCA now and they exist. Doubling the size of those fields without changing that road will not do anything beneficial for the people who use Polo Grounds Road on a daily basis.

There being no further public comment, the public hearing was closed and the matter before the Commission.

Ms. Monteith said she was curious why a traffic study was not asked for.

Mr. Clark replied that staff discussed the need for traffic data with the applicant and laid out what the options were, which included either having an engineered traffic study done or responding with their own information. They elected to go ahead and have the hearing tonight rather than doing that. It might be better to ask the applicant. He did not know whether or not they feel they are able to do a full engineered traffic study at this time. However, that would not be a VDOT task but something that an applicant would normally submit.

Mr. Lafferty asked did VDOT give staff any indication why they were not going to upgrade the traffic light. The technology for the synchronized lights has gotten much cheaper.

Mr. Clark replied a lot of the specifics to what he saw from Mr. DeNunzio said that there are certain intersections that do or don't work well with this particular system. This one would not work well. He did not explain it in any more detail than that.

Mr. Benish noted based on some other locations that he knows that the volume on the side streets has something to do with how that system operates. Staff did not have any more specifics on this one.

Mr. Lafferty said it monitors the side streets. The implication was that it was not that it was a problem or was it is not a problem.

Mr. Clark said it was in regards to the lighting system. He did not say that it implied anything either way about the suitability of this use on the site. It is about the design standards for this system at this location.

Mr. Loach asked as far as the flooding and the portable toliets and the potential for contamination is there in fact a spot where these portable toilets can be put that would be mitigated or eliminated.

Mr. Clark replied the zoning division typically allows portable toilets for accessories to recreational uses in the floodplain because no structure is permitted. They cannot build a restroom building. However, there are recreational uses permitted there so they felt that some sort of facility had to be provides. On this particular site he did not think there are places that could be assured to be out of a flood. The area just by the entrance has been due to the changes that the applicant worked on with FEMA has been shown that the area right around the entrance is not in the 100-year designated floodplain. However, that does not mean that in a bigger event it might not flood. He did not think there was any place on this site short of maybe putting the portable toilets right on the road that they could be assured that they would not be affected by a flood. He supposed it was possible to have a condition of approval that would require the applicants to monitor storm events and to have those toilets removed when a certain level of flood is expected. They have discussed that for other uses that are still under review. However, he could not say he knew exactly that would be enforced.

Mr. Loach asked if there was any way to quantify what the potential would be if they got into that situation of a flood and what those impacts would be, such as mild, disastrous to the water, etc.

Mr. Benish noted that staff could check with the health department.

Mr. Loach said the second question was for Mr. Kamptner. The applicant had talked about adding on a condition where essentially they would try to mitigate the cumulative effects on those days when SOCA held events that increased the traffic. He asked if they could make a condition where those dates change from year to year. Is there a way to put language in there for that? Secondly, they also asked if there was some form of traffic mitigation to have the condition removed. How would that work?

Mr. Kamptner replied first he would think they would probably want to get a list of the specific SOCA events such as spring and fall try outs and have it triggered by that rather than specific dates. As to the latter having a condition go away the language could be crafted in a way that would say this condition shall be deemed satisfied if x, y and z happened.

Mr. Smith asked how many toilets.

Mr. Clark replied there would be one toilet.

Mr. Smith asked if they can have a requirement that the toilets be anchored even though no structures are allowed.

Mr. Clark noted the majority of the property is in the floodway rather than the floodway fringe, which contains standing water. The floodway is what carries the flood water. It is a very wide floodway and it is immediately downstream of a dam that tends to some degree regulate floods. But that depends on how water is already in the dam. It is difficult to quantify.

Mr. Benish asked if someone from the engineering department wanted to speak to this issue.

Mr. Benish noted the question is do they want to require any toilets at all. He did not know that they are necessarily required.

Mr. Brooks said it would not solve the contamination problem. It would still be inundated. The effluent would still m ix with the water.

Mr. Smith noted it would depend on how deep the water is.

Mr. Franco said there is a portion of the site that is outside the 100 year-flood plain. Is there a large enough area that they could require the toilets to be located there.

Mr. Clark replied that he did not think that would be practical. It is a very narrow area intermediately by the road. It may technically be out of the 100-year floodplain. It is such a fine distinction. He was not sure that they could really say that it would not be affected by that large of a flood.

Ms. Monteith said following up on the previous question about when the porta potties would and would not be there. He said that would easily be remediated. But she did not know what the remedy is. The way she reads it they would be there in July and August during the practice sessions. She did not know when they would actually be there based on what they have in the report.

Mr. Clark said the wording of the condition could easily be changed. The intention is the porta potties would be there during any month that activity is permitted on the site.

Mr. Dotson said he was curious if the applicant would entertain the staggered hour concept being added as a condition about mitigation. He asked if the applicant would entertain the staggered hour concept in order to spread the traffic.

Mr. Franco asked if a condition requiring an annual traffic management plan be submitted that would give them an opportunity to put specific dates in there for that year and be able to specify how they were coordinate. If it became unnecessary then that is what it would show

Mr. Randolph said it was unfortunate that they were requiring MonU to do this and they are not establishing similar expectations with what is another offending party. He would like to see SOCA provide that on an annual basis similarly if they are going to require it of Monu. The traffic issue remains the compelling issue. They can't escape that since that road serves as a bypass between Route 20 and 29. They should establish for the purposes of consistency can't require but request on an annual basis so residents know. It is reasonable to request that.

Mr. Morris noted it would be in the form of a recommendation to the Board.

Mr. Kamptner said it sounds more like a request directly to SOCA to perhaps work in cooperation with MonU on their annual traffic management plan.

Mr. Morris said he thought that would be reasonable for the County. He asked if there was a motion on this matter.

Mr. Cilimberg said it should be noted that SOCA is not an item before the Commission and there is no actual way to impose any condition on them. So other than just asking there is not anything else they can do. If they were before the Commission for an application certainly that is something they could do. It would be unfair to this applicant to expect them to have SOCA do that. It is not under their control.

Mr. Lafferty said that they are talking about maybe one portable toilet in an 100-year flood, which he know occurs every 5 years, and looking at that as a pollution factor. However, they are forgetting the factor that a lot of kids are going to be using this getting exercise. It is probably, other than farming, the best use of the land. He realized that traffic is a problem, but traffic is a problem now. If there is no event going on and only 6 cars get through the intersection that is more human engineering than anything else. Perhaps by putting the fields in VDOT will say they need to look at this intersection and improve it. He just feels that they are picking a little bit too much and not looking at the overall good.

Mr. Loach said he also sees the other side of the coin. The first time that SOCA came up the community objected to it. As they heard from the community tonight they have lived with it. However, it does not mean that it has gotten better from what he has gathered. Traffic has increased not only because of SOCA but because of the additional development. Now they are adding additional cars to the situation that they have not put a remedy to and as a matter fact have heard that one potential remedy is not something that can be put into place. Therefore, he has questions.

Mr. Lafferty said as long as they have the philosophy that our community has to have growth then they are always going to be faced with this situation of additional traffic and things like that. As long as they are having new developments, new shopping centers and things of that nature with more people moving in that problem will increase. He did not know they should be punishing one group because of our desire to keep the economy growing by growth.

**Motion**: Mr. Smith moved to recommend approval of SP-2010-00036 MonU Park with the conditions recommended by staff.

Mr. Loach asked to add the additional condition that would prevent them from scheduling things that would be conflicting with SOCA at least to mitigate what traffic impacts they can.

Mr. Smith asked if the Commission can do that.

Mr. Kamptner replied yes, that staff would craft the precise language between now and the Board meeting. There was also a request to clarify condition 2 regarding the months in which the portable toilets can be on site. One way to deal with that would be simply to have that sentence read, portable toilets may be on the site March through November.

**Amended Motion**: Mr. Smith agreed to add suggested condition to the motion.

Mr. Lafferty seconded the amended motion.

Ms. Monteith noted it should say toilet.

Mr. Smith agreed.

Mr. Morris asked if there was any other discussion.

Mr. Dotson noted he had a question of staff. It had been mentioned to have an annual traffic plan. He asked if that was something that were it a condition that it would be approved by the Director of Planning. Do they have experience with doing that kind of thing?

Mr. Benish replied that they have done that for other types of events. Usually they are more special event types of uses. However, they do have that condition and could do that.

Mr. Dotson said that might be the more inclusive way to address a variety of mitigations.

Mr. Benish said he thought that would have to include what they have asked for in that condition in terms of management of the SOCA activities.

Mr. Dotson asked if the maker of the motion include an annual traffic management plan to be approved by the Director of Planning.

Mr. Lafferty said before he amended that he requested to ask a question. Then the decision if the plan is not approved they don't have the right to put in soccer fields or how would that work. Do they shut it down for a season?

Mr. Benish replied that the experience has been it is not a question of whether the use can be permitted, but it was just coming to an agreeable plan to how to address the traffic generated by the use.

Mr. Cilimberg said that if that is the route taken that management plan would need to be approved before they could establish the use. Once approved it is expected to be the plan that is followed during the operation. Then it becomes more of a zoning enforcement matter at that point. If the condition were structured in such a way that leaves some flexibility for staff to figure out what will work best before the Board gets this. That is the best route to take. He thought what Mr Dotson suggested would allow us to do that. Essentially the concept is staggering the end times and the best way to make sure they get that as a condition for the Board's action they can determine between now and the Board meeting.

Mr. Morris said this would not be a sophisticated type of traffic management plan. As he hears what he is saying when are we going to play, what are the hours and when it is ending so have some idea as to when the traffic is going to be flowing out of this area.

Mr. Kamptner noted it was also avoiding the major SOCA events.

Mr. Benish said that is the purpose for the annual review is to be able to gage seasonally that schedule each year.

Mr. Lafferty said he assumed this was acceptable to the applicant.

Mr. Reilly replied yes it was acceptable to have a traffic management plan. Just to be clear these are the 7 dates he has for this season for SOCA. He would not want to be locked in if all of a sudden they start having up to 15 years they are doing this next year. He did not want to be locked into something that they can keep scheduling and all of sudden those days are out for us. They already know now how many games they will have this fall. They have 7 teams and know they are going to have 28 games this fall. They know they will have 8 games this spring.

Mr. Loach asked if they are doing a traffic management plan is it specific to the applicant or does it have to be adhered to by both the applicant and SOCA.

Mr. Kamptner replied no, this condition would apply only to MonU.

Mr. Franco said what he heard them say was that they will work around the 6, 7 or 8 days a year that SOCA has the heavy load, that they would use different techniques such as staggering the ending times of the games, they would be willing to pursue a police officer out there if they can't schedule around SOCA on those days, and that would be flexible on what day specifically it is. They would look at the SOCA schedule every year and coordinate around that. It would not be a commitment of SOCA to do anything. It was a commitment to work around their 7 days of the year that are heavy generators.

Mr. Reilly agreed noting they would be flexible to the dates. When they do these 7 events they will be on different dates during the year. They would be flexible to that, but not flexible to them increasing the number of dates when they are increasing traffic.

Ms. Monteith said she had a process question. She did not know how the county does this. If they are asking for a traffic management plan then that is something that is going to be submitted on an annual basis. If the applicant needs some assistance would that be from county staff just to understand where peak hour flows are because that would be an issue also and other issues. Is that assistance available?

Mr. Benish replied he thought in this case staff could assist them based on what they were hearing now as the expectations for that.

Mr. Loach asked if SOCA is at its capacity or does SOCA have room essentially to expand from where they are now. They are doing a traffic management plan for the applicant and the applicant does not want to get locked in to any more dates. But SOCA can now expand their capacity so there are more dates and there are more conflicts and there is more traffic.

Mr. Benish pointed out they have built to what has been approved and there is no expansion capabilities. He could not speak to the intensity that they use the existing facilities.

Mr. Cilimberg said he did not believe their condition of approval spoke to the intensity of use or in other words, how many fields can be used and at what times. They have conditions about the number of fields and their seasons like this application does. The extent to which they decide to utilize their fields is really their decision. It is not conditioned. This is going to be in any form not absolute. There is no way because they have a party potentially tied to this management plan that is free to do whatever they want to do within the confines of their approval. This applicant can't know everything they are going to do in every season. He thinks it needs to be understood that they will do the best they can.
Staff will do the best we can.

Mr. Reiley asked to address the flooding. This property only floods with hurricane rains. He has been there after torrential rains and it is actually quite the opposite. There will be many puddles down the street. The water goes straight through this property. The water drains unbelievably here. Other than a hurricane type of rain it does not flood in the years he has been there. In which case there is warning to remove the toilet. He did not see how that is really an issue with flooding and the portable toilet.

Mr. Morris asked staff to read back the motion and conditions.

Mr. Benish replied what the Commission has directed staff to do is to draft motions. He did not think it would be a good idea to draft them on the fly here. It is the conditions before the Commission on the screen with a condition for a traffic management plan.

Mr. Cilimberg added or other language that would pertain to their schedule as related to SOCA. It may not end up being a traffic management plan. He thought they need that flexibility.

Mr. Dotson asked if that was acceptable to the maker of the motion.

**Amended Motion**: Mr. Smith, as the maker of the motion, agreed to the amendment to the motion.

Mr. Lafferty seconded the amendment to the motion.

The motion passed by a vote of 6:1. (Mr. Morris voted nay.)

Mr. Morris noted that SP-2010-000036 MonU Park will be forwarded to the Board of Supervisors with a recommendation for approval on a date to be determined with the following conditions, as amended.

1. Development of the use shall be in general accord with the conceptual plan entitled "Concept Plan for Special Use Permit Application for MonU Park" prepared by Meridian Planning Group LLC, and dated 04-25-12.

    a. To be in general accord with the plan, development shall reflect the following central features essential to the design of the development:

        i. Number of fields
        ii. Number and location of parking spaces
        iii. Absence of structures

    b. Minor modifications to the plan which do not conflict with the elements above may be made to ensure compliance with the Zoning Ordinance.
2. Games **and practice sessions** shall only be held during the months of March, April, May, June, September, October, and November. **In addition,** during July and August, no games shall be held, but practice sessions solely for club members are permitted. Portable toilets may only be on the site during these months. (Staff to work on language regarding portable toilets prior to Board meeting to clarify that portable toilets are permitted on site during all months when soccer activity is permitted.)

3. Hours of operation for events on Saturdays and Sundays shall be no earlier than 11:00 a.m. and no later than 6:00 p.m.
4. Hours of operation for events Monday through Friday shall be no earlier than 4:00 p.m. and no later than sunset.
5. No overnight parking shall be permitted on the site. The entrance to the property shall be closed by a locked gate when the fields are not in use.
6. No outdoor lighting shall be installed for this use.
7. No artificial irrigation shall be used or installed for the soccer fields.
8. There shall be no temporary or permanent amplified sound system permitted for this use.
9. No fill shall be placed within the portion of the property within the Flood Hazard Overlay District.
10. Upon termination of the soccer-field use, the surfacing of the driveway and parking area shall be removed and the previously-disturbed land surface shall be returned to vegetated cover or an unpaved access way.
11. A Phase I archaeological survey shall be completed for areas to be graded for this use, followed by appropriate mitigation measures as approved by the Planning Director, prior to issuance of a grading permit.
12. Staff to develop (prior to the BoS meeting) a condition that will require an annual traffic management plan based on the scheduling of events on the site, to be approved by the Planning Director before soccer activity can begin each year.

**Public Hearing Items**

**SP-2011-00011 Lewis Bridge over Doyles River (Signs # 92 & 95)**
PROPOSAL: Bridge crossing for driveway, fill for abutments, under sections 30.3.03.2, 30.3.05.2.1, 30.3.05.2.2, 30.5.5.2d6 of zoning ordinance.
ZONING: FH Flood Hazard - Overlay to provide safety and protection from flooding. RA Rural Areas - agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots)
COMPREHENSIVE PLAN: Rural Areas – preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources. Residential uses allowed at a density of 0.5 unit/acre in development lots.
LOCATION: East side of Browns Gap Turnpike (Rt. 810) approximately 0.22 miles south of Slam Gate Road (Rt. 673).
TAX MAP/PARCEL: 02700-00-00-006B0
MAGISTERIAL DISTRICT: Whitehall
(Glenn Brooks)

Mr. Brooks presented a PowerPoint presentation and summarized the staff report.

The request is for SP-2011-00011Lewis Bridge to locate a private bridge for a driveway over the Doyles River off of Brown's Gap Turnpike (Route 810) just before Slamgate Road. A number of displays from the applicant were attached to the staff report. He explained the general location of the bridge in relation to the property line. It is fairly close to the upstream property line a little more than 100 feet. There is a bridge a quarter of a mile upstream from the neighbor's farm, which they are trying to emulate that is a prefabricated wooden beam structure. They were not able to do that because their span is a bit longer to mitigate flood impacts. Therefore, they will have a steel structure with a wooden decking. It will be a little deeper.

He noted in a depiction how the floodplain spreads out in this area. A stream bank is shown where the critical slopes are shaded in. The floodplain pushes over Route 810 into the field across the road where there is another stream on the other side of the field, which a confluence with the Doyles River a little bit downstream. There is also a stream that comes in just past the property line in front of the bridge. There is a bit more flow in this area than there is for the bridge they are trying to copy. It is kind of a difficult location because the floodplain is all pushed to one side over the road. The impacts are felt a little more on that side than they would be if the floodplain was spread on both sides of the bridge.

Staff pointed out in a picture from the applicant how the driveway will come in off Route 810 and take an intermediate right to avoid the steep slope. An engineering drawing showed the bridge itself. It would have to be slightly altered from this. One side will have a large route cropping so the footing will be different and the span is a little longer now after some floodplain modeling was done. A photo showed the approximate proposed location on the river where the bridge would be. Another photo showed the upstream bridge that they were trying to emulate. Again, it is a slightly different location since they have a higher bank on one side.

Going through the provisions in the ordinance he would like to modify his statement with the public health, safety, and welfare that says the proposed bridge has a great impact. However, it does not have a great impact since it is just a little impact. It is a half a foot flood increase over the public road. That was fairly unavoidable in this location. They could not move the bridge on the property – however, it might be better but it was hard to say. So the applicant wanted to stick with this location. To VDOT it is not a big difference because Route 810 is already flooded during a flood event. There were not any existing crossings that he or the applicant knew of. This property appears to be accessed from the rear through other properties instead of across the river on Route 810.

Staff recommended approval with the conditions listed in the staff report, which are fairly standard. Conditions 1 – 5 are the FEMA changes to the floodplain, approval of the plans for the bridge (which were not quite finalized because the previous plans had a narrower span); to obtain approval for erosion control and mitigation plans, which was fairly standard for buffer disturbances. If they can get mitigation in this area a lot of it is already wooded. Also, there was a condition to obtain federal and state approvals. He would be happy to answer questions.

Mr. Morris invited questions for staff.

Mr. Loach noted it says access to the property is currently through parcel 27-6a which is off Bluffton. He takes it that is not the applicant's property they are coming through.

Mr. Brooks replied no it was not through the applicant's property.

Mr. Loach assumed within these conditions there would be sufficient structural integrity to carry a fire truck across the bridge.

Mr. Brooks replied that is not guaranteed. They don't have county requirements for that sort of access. The fire marshal may request it and he has talked about it. However, staff has not made it a condition. The applicant is doing it voluntarily. As far as he knows this bridge will be rated like a highway bridge for a secondary road for VDOT. It is not a normal requirement that it meet a certain loading.

Mr. Loach asked if that is a condition the Planning Commission could insist on.

Mr. Kamptner said perhaps the condition could say something such as the bridge shall comply with all requirements of the fire marshal. That is broad enough. Then the fire marshal looks at all of these issues as part of the review process, but they also have the Fire Code that they rely upon in establishing the appropriate design requirements.

Mr. Loach pointed out he only asks because he sits in a fire truck.

Mr. Brooks noted sometimes they will allow an alternative fire suppression system or a sprinkler system with a tank and pump and that sort of thing.

Mr. Morris invited other questions. There being no further questions, he opened the public hearing and asked the applicant to come forward and address the Commission.

Dave Wyant, representative for the owner, pointed out the location of the entrance was approved by VDOT. They looked at it all along this parcel and this was the only place. However, it also worked out nicely because there was an old road on the other side. To address Mr. Loach's concern, the owner

wanted to make sure they could get fire trucks across as well as a propane tank. It would be the only one in the area. They have a lot of bridges that are insufficient in this county. This will help get on the other side of the Doyle's River, which is one thing the owner wanted to do. The owner also wanted to make sure this bridge looked like Free Lamb Bridge up above. Therefore, they have wooden sides on the bridge so it appears that way. However, the only way they could span this was use steel members, which is why they went to that design. It will look totally like a timber bridge with 5" thick timbers on the riding surface. It is 12' wide and it is 30" of beams on the sides so it looks totally like a wood structure. They avoid the critical slope. It is a rock cliff on the other side. That model just did not seem to work like it ought to on this.

Mr. Wyant pointed out during a flood the whole bottom floods on the other side. He was thankful that years ago they approved a dam and a pond down at Mont Fair that helps control the small stream on the other side. Everything goes to the west side there. This is more to deal with an easement since the owner wants to preserve the 115 acre tract. The owner's main motive for getting this done is to be able to acquire the easement. It is not about building a development or anything like that, but just trying to preserve more land. Also, he ran it all the way up to where he would propose if he ever put a structure or a residence in. He has already taken care of the 16 percent slope or less, the width of the road, and everything. So he has done a lot of pre-planning if anything is ever done. As a matter of fact, he has also asked him to design a pond or a dam. So he has gone through all of that so they have a water supply up there as well in the area. He has met and gotten Virginia Marine Resources approval, as well as DEQ and others. He has been working with all of them. That answers all of the concerns he has heard.

Mr. Morris invited questions for the applicant.

Mr. Franco questioned the conservation easement.

Mr. Wyant replied the owner wants to put this in an easement. However, to be able to get the easement they need to have an acceptable entrance into the property and not through an adjacent property.

Mr. Franco asked if the easement through the adjacent property is not good enough.

Mr. Wyant replied no, it was not acceptable.

Mr. Franco asked if there is a condition or does he plan on building the bridge.

Mr. Wyant replied right now through mostly email the owner has indicated no intent, but he just mainly wants to get this easement.

Mr. Morris invited public comment.

Lena Garrison, resident on Route 810, said she lived approximately 2.5 miles from this location. She did not have any personal concern, but had a question about they want to obtain an easement through someone else's easement. She just wanted to make sure she understood what they were requesting.

Mr. Brooks replied that the easement Mr. Franco was referring to is a conservation one puts on your own property to preserve the land from further development.

Ms. Garrison noted she just wanted to be clear.

Mr. Morris closed the public hearing to bring the matter before the Commission for discussion and action.

Mr. Loach moved and Mr. Smith seconded for approval of SP-2011-00011 Lewis Bridge with conditions as outlined by staff.

1. The applicant shall obtain approval from FEMA for changes to the floodplain, and update the FEMA maps. This shall include FEMA's conditional approval prior to the start of construction.

2. The applicant shall obtain County Engineer approval of plans for the bridges and abutments prior to the start of construction.
3. The applicant shall obtain Program Authority approval for an erosion and sediment control plan, and obtain a land disturbance permit according to the Water Protection Ordinance requirements prior to the start of construction, regardless of whether the project exceeds the minimum disturbance limits.
4. The applicant shall obtain all necessary federal and state agency approvals prior to the start of construction (Army Corps of Engineers, Department of Environmental Quality, etc.).
5. The applicant shall obtain Program Authority approval of a mitigation plan prior to the start of construction, and provide mitigation according to the Water Protection Ordinance.

The motion passed by a vote of 7:0.

Mr. Morris noted that SP-2011-00011 Lewis Bridge will be forwarded to the Board of Supervisors with a recommendation for approval on a date to be determined.

Mr. Franco acknowledged that he provides services to Habitat for Humanity of Greater Charlottesville, which is the sole member of Southwood Charlottesville, LLC the owner of the property that is being discussed next. He declared that he was disqualifying himself from participating in this transaction and request that this fact be recorded in the appropriate public records for a period of five years. He left the meeting room at 7:19 p.m.

**The Planning Commission took a break at 7:19 p.m. and the meeting convened at 7:29 p.m.**

**SP-2012-00009 Southwood Boys & Girls Club Expansion (Signs # 84 & 85)**
PROPOSAL: Request to allow the expansion of the existing Community Center on approximately 1 acre. No dwellings proposed.
ZONING: R-2 which allows residential uses at a density of 2 units/acre. Section 14.2.2.1 Community Center.
ENTRANCE CORRIDOR: Yes
COMPREHENSIVE PLAN: Neighborhood Density Residential – residential (3-6 units/acre); supporting uses such as religious institutions, schools, and other small-scale non-residential uses in Development Area Neighborhood 5.
LOCATION: Southwood Mobile Home Park. 387 Hickory Street. Northeast corner of the intersection of Hickory Street and Bitternut Lane. Hickory Street approximately 2,100 feet from the intersection of Old Lynchburg Road and Hickory Street.
TAX MAP/PARCEL: 090A10000001D0
MAGISTERIAL DISTRICT: Scottsville
Claudette Grant

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

The property is located at the northeast corner of the intersection of Hickory Street and Bitternut Land. The applicant requests a special use permit to allow the expansion of the existing Community Center primarily for the use of the Boys and Girls Club. The property is zoned R-2, Residential. The subject community center is located in the Southwood Mobile Home Park. About four years ago there was a special use permit approved to allow the expansion of this building to accommodate up to 80 youth members who would use the Boys and Girls Club. Along with improvements to the building the applicant improved the basketball court, the playfield, and the surface lot in front of the building.

The Boys and Girls Club has been quite successful. The applicant now would like to increase the number of youth allowed at the center by 40 additional children bringing the total of allowed children on the site at any one time to 120. A transportable modular building of up to 1,920 square feet and a small addition of approximately 360 square feet to the existing structure are proposed.

Factors Favorable

- This proposal will provide a much needed comprehensive youth development service for more youth who live in the Southwood Community.
- This proposal will provide a larger community center/meeting place for the entire Southwood Community.
- The renovations to the building and facilities will enhance the site.

- There are no factors unfavorable.

Staff recommends approval of SP-2012-00009 Southwood Boys & Girls Club Expansion with the conditions listed in the staff report, amended as follows for clarification issues.

- The first conditions relates to the development shall be in general accord with the concept plan.
- The second condition relates to the number of youth that will be allowed at the site "at any one time" is the new language added in for clarification.

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

Paul Huddleston, Director and Officer of the Boys and Girls Club and a resident of Albemarle County, agreed with staff's recommendations and conditions for the special use permit. He thanked Ms. Grant for walking him through the process. They were able in this case to come before the Commission in the earliest amount of time possible given the prescribed dates that are available. This is not a process that he normally goes through. Bob Andoga, Director of Operations for all the Boys and Girls Clubs in central Virginia was present. Together they were available to answer any questions about the process.

Mr. Morris invited questions for the applicant.

Mr. Smith asked how long did the process take.

Mr. Huddleston replied they started the process on April 13 with the application submittal. Due to a conflict with a Planning Commission meeting they pushed the meeting forward two weeks. The earliest Board of Supervisors meeting would be in September. Therefore, it would be about five months from start to finish.

Mr. Morris invited public comment. There being no public comment, the public hearing was closed and the matter before the Planning Commission.

**Motion:** Mr. Dotson moved and Mr. Randolph seconded to recommend approval of SP-2012-00009 Southwood Boys & Girls Club Expansion subject to the conditions recommended by staff, as amended.

1. Development shall be in general accord with the concept plan titled Southwood Boys and Girls Club Expansion, dated April 13, 2012 (hereafter "Concept Plan"), as determined by the Director of Planning and the Zoning Administrator. To be in general accord with the Concept Plan, the proposed building and existing building renovation and use shall reflect the following major elements within the site essential to the design of the site, as shown on the Concept Plan:

   - Location of buildings, uses, and structures, inclusive of the minimum setback for the new structure from Bitternut Lane must be 15 feet.
   - Location of parking areas
   - Location of outdoor play area

   Minor modifications to the plan which do not conflict with the elements above may be made to ensure compliance with the Zoning Ordinance; and

2. The parking study is based on a maximum of 120 children. There shall be no more than 120 children at any one time served at this location of the Boys and Girls Club.

The motion passed by a vote of 6:0:1. (Franco abstained)

Mr. Morris noted that SP-2012-00009 Southwood Boys & Girls Club Expansion will be forwarded to the Board of Supervisors with a recommendation for approval on a date to be determined.

**Mr. Franco returned to the meeting at 7:35 p.m.**

**ZMA-2009-00001 5th Street-Avon Center (Signs # 2, 3 & 5)**
PROPOSAL: To amend the proffers, application plan and development framework of *approved rezoning ZMA-2006-00009, (changed to include application plan and* development framework) which rezoned 81.94 acres. PD-SC - Planned Development Shopping Center zoning district allows shopping centers, retail sales and service uses; and residential by special use permit (15 units/acre). Approx. 470,000 sq. ft. of commercial uses proposed.
PROFFERS: Yes
EXISTING COMPREHENSIVE PLAN LAND USE/DENSITY: Community Service/Mixed Use-community-scale retail wholesale, business and medical offices, mixed use core communities and/or employment services, and residential (6.01-34 units/acre) Neighborhoods 4 & 5
ENTRANCE CORRIDOR: Yes
LOCATION: Northeast intersection of Interstate 64 and Fifth Street Extended (Rt 631), bounded on the east by Avon Street Extended. Access is Bent Creek Road.
TAX MAP/PARCEL: TMP076M10000002A0, 076M10000002B0, 076M10000004A, and 0770000000011E0
MAGISTERIAL DISTRICT: Scottsville
(Claudette Grant)

***AND***

**SP-2010-000003 5th Street - Avon Center - Parking Structure (Signs # 2, 3 & 5)**
PROPOSED: Parking Structure
ZONING CATEGORY/GENERAL USAGE: PD-SC Planned Development Shopping Center - shopping centers, retail sales and service uses; and residential by special use permit (15 units/ acre)
SECTION: 25.2.2(3) Parking Structure
COMPREHENSIVE PLAN LAND USE/DENSITY: Community Service/Mixed Use-community-scale retail wholesale, business and medical offices, mixed use core communities and/or employment services, and residential (6.01-34 units/acre) Neighborhoods 4 & 5
ENTRANCE CORRIDOR: Yes
LOCATION: Northeast intersection of Interstate 64 and Fifth Street Extended (Rt 631), bounded on the east by Avon Street Extended. Access is Bent Creek Road.
TAX MAP/PARCEL: TMP076M10000002A0, 076M10000002B0, and 076M10000004A
MAGISTERIAL DISTRICT: Scottsville
(Claudette Grant)

Mr. Morris noted that SP-2010-000003 and ZMA-2009-00001 would be heard together but need separate actions.

Ms. Grant presented a PowerPoint presentation and summarized staff report. Staff pointed out the photo is the existing warehouse building on the site.

**Proposal:** The applicant is requesting to amend the proffers, application plan and development framework of the approved rezoning. A special use permit is also proposed for a parking structure.

The application plan shows the proposed buildings and building envelope areas with flexibility in mind regarding how the site is actually developed. The connector road remains an unchanged commitment providing interconnection between 5th Street Extended and Avon Street. The maximum square footage of gross floor area for all uses in the total project area remains unchanged at 470,000 square feet. The zoning district remains Planned Development – Shopping Center or PD-SC. With the approved rezoning the development framework was a separate document describing the expected uses, design elements

and other details for the development. The proposed framework is now incorporated into the application plan and is in many ways similar to the approved one, but now lacks expected design characteristics and provides less specificity regarding the final location of uses and buildings within sections of the development.

The proffers and requested changes are described in the staff report. The applicant has recently requested a condition for this special use permit request so that it would not have an expiration date. This is a similar condition that was done for the Martha Jefferson Hospital. The reason for this request is that the applicant is not sure when the parking structure will need to be built. This is a new request and it was not captured in the staff report. Staff is fine with this request and has included a proposed condition for the Commission's review in a later slide.

Staff also wants to bring to their attention that one of the public comments that were recently sent to the Commission requested that the parking structure be located away from the adjacent Willoughby neighborhood. At this point they do not know where the parking structure would be located.

Staff reviewed the actual approved application plan and the proposed plan and noted the similarities and things that were not quite as similar. The approved plan seems to be somewhat similar to a plan that staff has just seen and the Commission has just received from the applicant.

**Factors Favorable**:

- Bent Creek Parkway (Connector Road) will be extended to connect 5th St. and Avon St.
- Development of the property as a shopping center is consistent with the land use recommendations of the Comprehensive Plan. It is consistent with the approved plan as well.
- Funding towards construction of greenway and provision of transit service as recommended in the Comprehensive Plan is provided. Although the level of commitment has changed.
- Provides shopping and service alternatives for the residents in this portion of the County and City.
- Will provide employment opportunities and tax revenues to the County.

In many emails recently received there appears to be a lot of support for additional shopping opportunities in this portion of the county.

**Factors Unfavorable**:

- The proposed application plan does not provide sufficient detail regarding proposed buildings location and architecture to assure consistency with the form recommended in the Comprehensive Plan. It should be noted that the currently approved plan for the development of this property also does not meet all expectations of the Comprehensive Plan regarding form, although it does provide more specificity as to architecture, building locations and building scale in particular areas. (As noted before the plan that the applicant is now showing that staff has just received yesterday is showing a little more detail than they had to review.)
- Commitments are substantially decreased from the prior rezoning with revised proffers for the Willoughby pedestrian bridge and trail and transit (either due to offers of cash instead of construction or a reduction in the total amount of funding offered for certain impacts).
- (Staff noted in regards to the pedestrian connection to Willoughby they have received public comment both in favor and not in favor for this connection.)
- The proffers are in need of technical revisions. (It is more detailed in the staff report.)
- While a work plan with DEQ for the remediation of the former City landfill is proffered, there remain outstanding issues regarding the proffer commitment. (As detailed in the staff report. There are staff present that can speak in more detail to this if there are questions specifically regarding the landfill.)
- Stormwater facilities are shown in the floodplain. (That is something not supported by staff.)
- Special use permit for fill in the floodplain is still needed for stream crossings to assure the development can take place.
- Development Framework needs technical revision.

**Staff Recommendation**:

There remain several outstanding issues related to this rezoning, but staff can recommend approval if the following are addressed:

- The outstanding technical issues with proffers are fixed.
- Stormwater/BMP facilities that are shown in the floodplain on the application plan are removed from the floodplain.
- Development Framework is revised to not include items that are already applicable per the Zoning Ordinance.
- Landfill remediation commitment is made as recommended by Zoning staff.
- Additional funding is committed to adequately cover the anticipated cost of the Willoughby pedestrian bridge and trail. (The applicant has proposed $25,000 Staff has gone out and done an estimate, which is about $100,000)
- Staff finds the special use permit request for a parking structure consistent with the provisions of the Zoning Ordinance and the Comprehensive Plan and recommends approval of SP-2010-00003 with the following condition: The special use permit approval shall not expire but shall remain in effect so long as the approval of ZMA-2009-00001 remains in effect.
- Staff recommends deferral of the critical slopes decision to be determined during the site plan process when specific details regarding the development will be available. (The applicant did apply for a critical slopes waiver. It was related to one of their earlier versions of the plan. The plan staff has now is very different from the plan. Therefore, staff feels it is best for the applicant to submit this request when they have more detail.)

Mr. Morris invited questions for staff.

Mr. Loach asked to clarify some wording. On the report at the fourth page conformity to the Comprehensive Plan it says the Comp Plan designates the project area as community service mixed use. He asked is that still the designation for this property.

Mr. Grant replied yes.

Mr. Loach pointed out staff used the verbiage shopping center. He asked if that was a use versus a zoning type of plan.

Ms. Grant replied yes. When she said shopping center she was referring to the zoning district.

Mr. Benish noted that the Comp Plan designation is consistent as mentioned. The amendments that were approved earlier assumed that there would be a shopping center built here. The mix of uses that were identified as the possibilities in the Comp Plan were possibilities and not requirements of that mixed use.

Mr. Loach said this goes on to say other uses such as industrial, light industrial, residential and public amenities could also be considered appropriate for that site.

Mr. Benish noted that could is the operative word. It was not expected that they had to be there, but could be in terms of the recommendation in the Comp Plan.

Mr. Lafferty said in the presentation staff said that it did not necessarily have the form in the Comp Plan. He asked what staff meant by form.

Ms. Grant replied staff was referring to certain expectations described in the Comp Plan amendment that is specific to this particular location. There are certain things that sort of give a sense of an idea of the type of building, how those buildings should be laid out on the site, and buildings should be close to the street. Some of the elements she would consider to be similar to what they looked for in the Neighborhood Model. She did not know if she totally answered the question of form.

Mr. Benish noted that it included relegation of parking to the streets and general pedestrian orientation of the development were the types of form issues that are identified in that amendment to the Comprehensive Plan approved earlier in the 2000's. It should be noted that the prior plan that was approved also did not meet all of those provisions either. It met more of them in the plan that was approved, which was more predictable in the form, whereas this is more flexible in terms of this other form. So it is really a question of whether they are going to get all of those components or not.

Mr. Lafferty assumed from the proposal that the applicant has a one anchor store at least and they are trying to fill in and looking for a little bit more flexibility.

Ms. Grant pointed out that was correct.

Mr. Lafferty said he did not have a problem with that.

Mr. Randolph noted as a follow up to Mr. Loach's question he noted that staff indicated in the report that the principles of the Neighborhood Model are not fully applicable to this development. However, that suggests that there are some principles that are applicable in this development. He certainly wants to have discussion this evening about interconnectivity from a standpoint of not only of pedestrian access north and south to this project but interconnectivity in terms of bicycle access here. He sees this as a significant model project within the southern end of the county. He wanted to see it be a showcase project. His goal will be in the discussions forthcoming is to try to make that as good a project as possible for the residents in the south both from a recreational standpoint as well as from a shopping standpoint. Another question relates to Monticello and to the issue as to whether this project can be consistent with assuring that there is a reduction of a visual impact from Mount Alto. He asked for a little bit of the history as to the reaction to the proposal that there be some sensitivity to Monticello on Mount Alto with this project in terms of architectural design and colors, roof design, etc.

Ms. Grant replied that the background is that the Monticello Foundation requested of the applicant that they provide a proffer that provides the details that they normally like to see in proffers. They have done some in the past in the Pantops area for developments that are part of the Monticello viewshed. Monticello Foundation did make this request of the applicant. The applicant did not make any response to the request. There has been some discussion between the Monticello Foundation and the applicant. The reason they see it in the report is that staff was also copied on that request. Staff felt it was important to acknowledge that this request had been made.

Mr. Lafferty asked for a point of clarification regarding the Monticello viewshed. Since the Foundation bought Carter's Mountain does the viewshed extend all the way up Carter's Mountain? He did not think they could see this property from Monticello itself. However, they probably can see it from the top of Carter's Mountain.

Mr. Cilimberg replied that historically in discussions of viewshed regarding the visibility it has been from Monticello the house. They have had some conversation with the Foundation very recently about incorporating into the Comprehensive Plan some viewshed language and possibly a map. Certainly the consideration of what is the appropriate viewshed can be made as part of the Comprehensive Plan work staff will be bringing forward to the Commission. It is not specified anywhere right now in terms of anything other than what is viewed from Monticello. The question whether Mount Alto is considered to be also a point from which the viewshed is determined is really one that they have not discussed other than the potential of that being incorporated into the Comprehensive Plan or not. It may be decided that is not appropriate. They will certainly talk about that during the Comprehensive Plan update.

Mr. Lafferty asked as far as this discussion goes they can eliminate that from consideration.

Mr. Cilimberg replied that is the Commission's decision to make.

Mr. Morris pointed out that is open for discussion and that is something the Commission has to decide when they go forward on this.

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

Valerie Long, representative for the applicant and the owners of the property, presented a PowerPoint presentation to explain the proposal and the present condition of the property. She said that tonight several representatives of both S.J. Collins and Riverbend Management, the co-developers on the project, are present. They also have several of their civil engineers present to address any questions.

- The conceptual site plan is similar to the materials and exactly the same to the materials they provided earlier today. As Ms. Grant indicated the property was approved for a shopping center in 2008 consistent with the Comprehensive Plan. It is the Planned District-Shopping Center zoning. So the shopping center is permitted. The zoning district was found to be compatible with that Comprehensive Plan designation. They are proposing not to change the zoning district or change any of the uses or add to the amount of the square footage of the project, but merely to update the proffers to permit the project to be developable and to permit the anchor tenant that they have secured, which is the Waguman Grocery Store. The revisions to the application plan will permit that flexibility. The existing application plan that was approved in 2008 does not provide that.
- The layout does not work for the projects currently nor is it flexible enough to address the current market conditions they are working with. So this is a conceptual site plan. Many versions of this have been seen. It continues to evolve. However, this is how they hope that the project will develop. It will probably continue to evolve. However, Waguman is the major anchor tenant. She pointed out the application plan and the conceptual site plan with the application plan building envelopes overlaid so they can see the relation between the two. The application plan still provides the flexibility that they need as they continue to work with tenants and those tenant mixes evolve depending on who they are talking to. As their building needs, sizes and layouts evolve they would have the flexibility to work with all of them and hopefully achieve the best tenant mix for the project.
- The next slide provided a close up to give a better understanding of how the building envelopes work and the relation of those buildings to the connector road. The proposed location of the pedestrian connection to the Willoughby Subdivision was highlighted. To address one of the suggestions in the staff report to increase the funding level she noted that they were happy to do that. They are proposing to modify the proffer so it would read when the significant right-of-way is obtained that the right-of-way would have to be obtained, but once it is obtained thus making the path actually buildable to one of the neighborhood streets within Willoughby that they would be willing to increase the proffer amount from $25,000 to $100,000. The way it is written right now the cash would just be provided to the county immediately before the first store opens. If the issue is having sufficient cost for the county to build the trail they are happy to increase the amount once the right-of-way is acquired. They are happy to work with staff on that issue.
- She pointed out some of the pedestrian connections to be included between the two major north and south zones of the property to demonstrate and address the questions about pedestrian connectivity. One way they have improved the project is to add a sidewalk along the entire span of the connector road. The original 2008 rezoning does not include a sidewalk. It did include the trails, which were intended or envisioned to create the pedestrian connections on site. Staff has determined in their opinion that won't provide sufficient pedestrian connections. Therefore, they have added a sidewalk to the plans.
- They have heard from some of the Commissioners who are biking experts about the need to provide some bike lanes in some capacity. There are a couple of different slides to review. They are not exactly sure how this is going to eventually come together. They have two options for how they can provide it. The dimensions are approximate since they have to work out the road design and dimensions with VDOT. There are some engineering challenges involved given the proximity of the floodplain and so forth. One option is to increase the width of the sidewalk from 5' to 10' and treat it as a shared use path so that pedestrians and bikers could use that together. It will probably be made of asphalt. Then the shoulders on the road travel way would be less wide. An alternate option is to maintain the sidewalk at 5' and widen the shoulders of the travel way of the road so that bikers could use the shoulder as a bike lane in essence. That is one

option and they are not sure how that will come together. However, they wanted to demonstrate their commitment to continuing to work on that issue and demonstrate they know they can achieve that objective. The sidewalk and bike path would extend all the way from Avon to 5th Street.

- She addressed the five issues that were included in the staff report as the conditions.
    - Two of them are very easy since it is technical revisions to the proffers and the development framework. Those were for the most part mostly technical and they were fine with essentially all of them. They did address the sidewalk or pedestrian path to Willoughby. They will increase that amount to $100,000 once the right-of-way is obtained.
    - One of the issues had to do with the proposed storm water management facility being located in the floodplain. There are a number of elements of the property that are located in what is currently floodplain. That known, as staff indicated, they have to work with the county and obtain a special use permit for fill in the floodplain. Then they have to go work with FEMA to amend the floodplain limit maps. So there are portions of the connector road, for instance, that lie in what is currently floodplain. Once they work with FEMA the maps of the floodplain limits will actually be modified and updated so that neither the road nor any portions of the project or the storm water management facilities will. At the end of the day they will not be in the floodplain. They are hopeful that the Commission can agree that is a reasonable solution to that issue.
    - The last issue was the landfill work plan. Unfortunately, they are just going to disagree with the staff on that issue. They continue to feel pretty strongly that they are most comfortable having DEQ be the sole decision maker on that issue since they are the state agency with sole jurisdiction and really the expertise to determine how the landfill should be remediated. They are not proposing any substantive changes to the proffers regarding the work plan. They have suggested and been working with DEQ for many months to update it so they can improve it a little bit. But it was the staff that came to us and asked us to kind of change how that work plan is approved. They feel strongly that they would like for that to continue to be DEQ's sole role.
    - Regarding the Monticello view shed guidelines; they have actually been having conversations with the Monticello representatives. They have a representative present tonight. They have pledged to continue to work with the Foundation on addressing their view shed guidelines. They did not think it was in the Monticello view shed at first. However, they found out that maybe it will one day. Depending on the vegetation and what it looks they are happy to do that. Once of the challenges they ran in initially was the proffers provide that they will use highly reflective roofs. That is an improvement to the project, which is essentially a white roof. It is the same roof that was installed at the Whole Foods in the city and actually enables you to obtain points on the LEED certification checklist. Of course, a white roof is not as consistent with the view shed guidelines for Monticello, which specifically say no white roof. Through the good works of the engineers and architects on the project they have been able to identify a product that is essentially has the same environmental characteristics in terms of reflectivity as a white roof, but it is actually an earthtone color – a tan or something like that. They are going to work with Monticello and try to get the actual material samples to them for review. They are happy to work with them on the side and make sure their concerns are addressed. She would be happy to answer questions.

Mr. Morris invited questions for the applicant.

Mr. Loach noted that he wanted to make sure that the regional anchors and the mini-major tenants are essentially going to be commercial retail structures.

Ms. Long replied that primarily that is what they envision at this time. However, they do have the flexibility through the zoning designation, which again is Planned District Shopping Center. There are other non-retail uses that are permitted in a PD-SC zoning district. One use, for instance, that they are interested in attracting if there is a market for it, is a hotel. It depends on whether they consider that a retail use. She

would say that it is not. However, that is allowed by right in the PD-SC zoning district. There are a handful of other similar uses.

Mr. Loach asked if they have any contemplation of any of the other designations in the community service such as industrial, light industrial or residential.

Ms. Long replied that she would have to check the zoning ordinance, but was not sure if any of those uses are permitted in the Planned District – Shopping Center District.

Ms. Monteith noted that previous it was 25 percent green roof and now they were talking about another material. Will it be a mixture of another material and green roofs? What is the combination?

Ms. Long replied actually it would be in lieu of the proffer to have 25 percent of the roofs be green or vegetative roofs. They have replaced that with a proffer that says 100 percent of the roofs within the project will be highly reflective roofs meaning a certain reflectivity standard. It is essentially the same standard as the roof material that they intend to use.

Ms. Monteith pointed out that the LEED goal is not just about the reflectivity. It is also about storm water management. So it does not do the same thing.

Ms. Long said certainly and they acknowledge that. So there are other measures that will have to be considered during the design in order to satisfy the proffer, which says they will design the building to meet LEED certification and build the building to LEED standards. So they know they are going to have to make up for it in other ways. Most likely it will be through rain fall harvesting measures or other storm water management facilities. It addresses certain things just as she noted.

Mr. Dotson asked that she explain proffer 12 on transit funding.

Ms. Long replied the proffers as approved in 2008 were very unusual. She has worked on rezoning on a number of large projects in the county over the last 15 years. That one had a proffer for transit that is unlike any other that was ever approved. It requires that 20 cents per square foot of rentable square feet within the property be proffered to the county in cash every year in perpetuity and that it would be subject to essentially a CPI increase. That equates to just about $100,000 per year in perpetuity. That is what makes the project as currently approved undeveloped. There was a discussion about it at the Board level. The thought was that charge could be passed on to the tenants in the form of a common area maintenance expense. The tenants would not notice it and would not object to it. It was not really a true cost to the developer because it could be passed on. The reality is that is just not the case. Tenants are very focused on their expenses these days far more than ever and those costs just could not be borne by the project year in and year out. She looked at other large projects that had proffered cash for transit and tried to get a feel in how they all handled it. None of the others had a provision like that. Most projects had either a cash proffer at the beginning of the project or a certain amount of cash that was proffered over a term of years. North Point proffered $25,000 a year over ten years. Stone Field/Albemarle Place proffered around $100,000. Hollymead Town Center proffered $150,000. They looked at the differences in the size and scale of the projects and tried to come up with a number that they felt was equivalent for this square footage in this project. Instead of the $100,000 a year over a term in perpetuity they are proposing to contribute $100,000 cash up front so that it would be given or dedicated to the county before the first store can be opened. That is how they got there. The staff report stated that they agree that the amount was appropriate for this size project or it was consistent with similar projects.

Mr. Dotson asked staff if that was the case.

Ms. Grant replied that it is consistent with other similar projects. She looked specifically at Stonefield.

Ms. Long added that it was a matter of just trying to keep the project on an even playing field, too, with other projects of a similar scale in terms of proffer expenses and contributions.

Mr. Morris invited public comment.

Doug Arrington, of 1836 Fiddlerstick Lanes, noted once again he was concerned with infrastructure. When this project was originally approved Biscuit Run was a going concern. Since then that is devoid and the Southwood Connector is not a concern. The Southern Parkway has been withdrawn from the 20-year plan. Also, in the proffers for Biscuit Run there was going to be a turn lane from 5th Street North to 64 east added and the double up of 64 East to 5th Street. There was going to be a turn lane added at 5th Street South to 64 West. The on ramp from 64 West to 5th Street was going to be doubled. He has a serious concern with traffic flow on the 5th Street Bridge. The bridge is going to have to be widened. The solution as expressed by a staff member was a double turn lane left from 5th Street South to 64 east. There is not enough room for a double ramp to merge and then to merge onto 64 before coming to the Biscuit Run Bridge over 64. There are access problems that he sees there. He wondered about the width of Bent Creek Parkway as to possible future expansion. Should it be considered possible in the future to expand it to four lanes? It is going to be by default to the cross over. He questioned the road design proposed and where the traffic is going to go when it gets to the 5th Street Bridge.

Nancy Carpenter, resident of Albemarle County, noted what brought her here tonight was the inclusion in the staff summary of several proffers that the developers want to amend regarding trails and public transit. Even though the staff may find some of these amendments acceptable she does not as a resident of that area. She did not know if any of the developers and lawyers attended any of the meetings with the Neighborhood 4 and 5 groups when they started talking about the Planning Office updating the plan in that area. But, she did. The message was loud and clear from all of the residents of the two meetings that there was a strong desire for bike/pedestrian infrastructure. It was a consistent request that people were looking ahead and trying to figure out ways of moving people because there are a lot of bikers in that area. Moving people from the southern development area up through a retail area, Willoughby, 5th Street and on into Downtown and West Main Street is important. What she sees now is a desire to use green backs, cash, in lieu of actual construction to subrogate what the residents in that area said they wanted to see as part of the vision for this area. It is one of the big areas left in the County left with the ability to do the development right. Don't make the past mistakes of Hollymead or Route 29 area in this area. They should start with some right tools. The greenways, trails and public transit will make our environment more sustainable with less carbon emissions from cars. It also revitalizes neighborhoods because bike trails, bike paths and pedestrian walkways increase home value. It also increases neighborhood interaction and decreases social isolation in this area. The Commission has stewardship over this issue and she asks that they acknowledge what the residents in this area want and not let this center be built without that infrastructure along with it.

Morgan Butler, with the Southern Environmental Law Center, noted that they were very active in the review of this proposal when it came before the county a few years ago. Because this would bring new regional scale commercial uses to a new part of the county they recognized then and recognize now how critical it is that this project improves significantly upon the car oriented sprawling shopping centers that line much of Route 29 in which it contributed disproportionally to traffic and pollution problems along that corridor. It is not just SELC that recognizes the importance of creating a better form of development at this site. The Comprehensive Plan does, too. Specifically it calls for a compact pedestrian oriented an environmentally sensitive development that will serve as a vibrant town center for the southern urban area. The application plan and proffers that were ultimately approved in 2008 contain a number of important commitments to that effect. They are disappointed the applicant is now asking to reduce substantially several of those commitments. He would like to highlight a few of the items that they think are essential to creating the type of development at this location that the Comprehensive Plan envisions.

- First, transit to help ensure this development would serve more than just cars. The existing proffers provide for a substantial annual contribution to help fund transit service to the site as Ms. Long just explained. The amended proffer however would simply offer a one-time $100,000 contribution in an amount that would do little to provide ongoing service. While this may be the same amount of Stonefield's transit proffer, that seems like an apples to oranges comparison. It will cost more to bring effective transit service to this site than to Stonefield because no service currently extends this far south on Avon Street. There is no evening service that extends this far south onto Fifth Street. A stronger funding commitment to transit is needed.
- Like transit, pedestrian orientation is also critical at this site. A shopping center dominated by massive big boxes is a far cry from a town center. The Comprehensive Plan states that the

footprint for any single big box store on this site should not exceed 150,000 square feet. It also states that the aggregate square footage of all big box stores on this site should not exceed 300,000 square feet. But the language of the applicant's new application plan would allow both of those caps to be exceeded. The application plan and proffers should be amended to either incorporate these caps or to clearly demonstrate compliance with the factors that are set forth in the Comprehensive Plan that if met allow those caps to be exceeded.

- Similarly they share staff's concern with the lack of detail regarding the location of buildings and parking lots. This makes it impossible to ensure that this development will achieve the form the Comprehensive Plan envisions. Surely some additional detail could be provided while still providing some of the flexibility the applicant desires. The conceptual site plan the applicant offered today or yesterday does not become part of the enforceable application plan that would apply to this site.
- Finally, they support staff's recommendation regarding additional commitments needed towards landfill remediation. In closing as they deliberate the proposed changes tonight please keep in mind that the form this development takes will have an impact far beyond the boundaries of this particular property. Thank you for the chance to provide input.

Natasha Sienitsky, with the Thomas Jefferson Foundation, pointed out they own and operate Monticello and 2,600 of Jefferson's original 5,000 acres. As a preservation organization they ask that the Commission and Board carefully consider the impact of this development on 3 Entrance Corridors and the views form Monticello's property. The Foundation has recently updated its analysis of the views from Monticello, which indicates that this property is visible from points of importance on original Jefferson lands. She wanted to address specifically the question of whether it is in view from Monticello, the house. As a Foundation increases its efforts to preserve the house and plantation they are increasingly focused on the landscape. They know that the landscape as it appears at Monticello today is not as Jefferson once saw it. Specifically much of what is forested now would have been in cultivation which really opens up the views to the east and west. She submits that it is for their consideration because as they stand at Monticello now this property is not visible. However, as the Foundation continues its preservation and restoration efforts of the landscape it may be visible in the future. They are delighted that the applicant has expressed a willingness to work with Monticello to use earth tone colors on the roof. They think the most appropriate expression of this commitment would be in the form of a proffer. They are very open and willing to negotiate with the applicant. They have a working relationship with them. They hope to continue those conversations as they approach the Board.

Julienne Mineshell, resident of Willoughby, said she was very active in her neighborhood. It has roughly 230 units. In regards to this development they have not been asked to have a pedestrian right-of-way. They own common area and felt that would be required. That would be something they would need to ask first before deciding about how much money to ask the developer to put forth. Very likely the Willoughby residents will not want it. They have had local police come and talk to them about safety and how that would impact our neighborhood. They are a dead end subdivision. They get people that come in off of their private trail along Moore's Creek. They are easily coming and going on that trail. The police say this likely would only encourage more easy access for the car thefts and things like that which they have had happen in their neighborhood. First it would be nice if they were asked. Then it would be a moot point for the Commission to come up with a dollar amount. She was concerned about the landfill and hoped they would allow Albemarle County to work with DEQ only because they are here local. They are able to physically be present more easily than DEQ. It would be really nice to include them in part of the monitoring of the landfill. She hoped they have seen the erosion that her daughter video from the landfill into Moore's Creek in the devastation with all the developments. She would be happy to provide copies of the video by email.

There being no further public comment, Mr. Morris closed the public hearing to bring the matter before the Planning Commission for discussion. He invited the applicant to have the five minute rebuttal.

Ms. Long asked to clarify one point. One of the speakers mentioned that the Bent Creek Parkway should be a four lane road or at least have sufficient right-of-way. That is actually covered in the proffers. So it would be a two-lane road initially but it would have sufficient right-of-way to be expanded to four lanes in the future if it is ever deemed to be necessary.

Mr. Randolph asked given what she had heard from Ms. Sienitsky would she be open to actually offering a formal proffer that formalizes her commitment to ensuring that visibility is minimal from Monticello held properties.

Ms. Long replied they were not opposed to it in theory. The challenge is the implementation of actual proffer language. She has struggled with this on other projects. To have the level of specificity and precision that is necessary for the county to enforce proffers and know when proffers are actually satisfied or not requires such a level of detail that it is far more than any of us are ready to commit to in terms of exactly what they are willing and able to do. They have not designed all of those things yet. But they are definitely willing to commit to continuing to work with the Foundation and use the earth tone roof materials and work with them on the materials that they provide to them and so forth. They would prefer to have it be a side agreement with the Foundation so they could work directly with them and not have the county be part of that. When that came up before the language has gotten very detailed and they have never been able to get what worked. She feels very confident that they can work with the Foundation because they don't need that same level of definitiveness because they are not enforcing a proffer like the county is.

Mr. Randolph said it was his understanding that was why they hired lawyers because of their ability to work with details.

Ms. Long agreed, but noted again it is a difference of perspective. In order for the county to be comfortable the level of proffers are very detailed. The county attorney's proffers are incredibly precise details and are sort of the final round of comments to the proffers. That is the level of detail they have to proffer. She appreciates and understands why it has to be done that way. That way they can know on the front end can they agree to this and comply with it. With the view shed guidelines they are not quite there yet. They are confident they can work very well with the Monticello Foundation and work those out. However, they are happy to discuss with them between now and the Board hearing as well.

Mr. Randolph suggested she contact Jim Haden at Martha Jefferson Hospital because they did not seem to encounter any difficulty and that was a rather small development project with a minimal visual impact in the county. They seemed to be able to work it out.

Ms. Long pointed out that was the exact approach in that they entered into a side agreement to work together to work out the issues about the view shed guideline that were important and relevant for that project. All the county had to do was check in with the Monticello Foundation and confirm that was addressed. That is one of the approaches they have been discussing with them.

Mr. Lafferty said he had a problem with expanding the view shed without a separate discussion. If they had done that in the past and they already owned Carter Mountain the Piedmont Community College would not have been built. There would have been a lot of things that would not have been built. It is good that they are working with the Foundation to minimize the visual impact is good. However, he did not think they should make it a requirement because it is still an issue that is up in the air. On a different topic he was against mixing pedestrians and bicycles even on a 10' walkway. They just don't mix. A bicycle can be doing 20, 25 or 30 miles per hour and the pedestrians are doing 4 miles per hour. On the roadway if they wanted to put bike trails in the standard is a 5' bike lane. If they can get it off the road that would certainly be better. As far as the connectivity to the neighborhoods they have tried to emphasize that in connecting neighborhoods. It would be appropriate if they could work it out to connect to Willoughby. However, he understands if they don't own the land they can't do that.

Ms. Long acknowledged that they can't build the connection to the Willoughby neighborhood through anybody's land whether it is privately owned by individuals or by the Homeowner's Association certainly without their consent and agreement. That is why the proffer is structured the way it is. It has always been structured to be essentially conditioned on being able to obtain that right-of-way way or easements as necessary. That is why originally when they started amending the proffers they knew there was disagreement in the neighborhood about whether the connection was positive or not. Some feel very strongly it is a good thing. However, some feel very strongly that it may not be a good thing. So they

thought the best thing was to get out of it and give the county some cash on the front end to start those discussions or start the design. Based on some feedback received from some of the neighbors they thought maybe even a better solution is it would still be conditioned on somebody getting the right-of-way and if it is obtained they will at least contribute the full amount of money that the staff has estimated it would cost. Hopefully, they can obviously provide the money if it works out. If the Homeowner's Association decides that they don't want it as a community certainly they would not force it on them.

Ms. Monteith agreed with the comment about mixing bikes and pedestrians. Also, in the bike version where they put the bike lanes on the road they also have two directions of bikes. When they put them all on one path and they only allow for one direction they will have a situation where they have two bikes and pedestrians and that can't happen within ten feet.

Mr. Morris noted that he could never recall the question about expanding the view shed be brought up or even considering that as part of the Monticello view shed. He thought this was expansion without reason from his point of view.

Mr. Franco said he was not sure it was expansion without reason. He thinks there is a reason, but was not sure that was strong enough to be a proffer. The applicant's willingness to work with Monticello is enough to satisfy that concern. If they are going to cut down trees at Monticello to replace open fields, that is going to make things more visible. He starts to think then don't cut down the trees and it won't be more visible.

Mr. Morris agreed as long as the applicant was willing to work with the Foundation fine, but there is nothing that says the view from Mount Alto is sacred.

Ms. Monteith requested to ask staff a question. She was trying to understand the concerns around the landfill. She can't really tell in regard to timing or if they are in regard to process or what the concerns are.

Ms. Amelia McCulley asked Glenn Brooks to tag team with her because he has much more technical expertise in this area. She explained the issue:

- She wanted to make sure the Commission has one of the attachments that is not in the paper copy but goes into the full comment that describes why they are suggesting this. That would be attachment D page 4 and going over into page 5 where it actually has the performance standards being suggested.
- Based on their discussions with DEQ this is not a regulated landfill under their solid waste authority. It is subject to open dump criteria. Those are some basic criteria. They have to prevent wash out of waste to the stream and so forth. It is not subject to regulation as a landfill. It has very little to no cover over some existing solid waste in places. If it were subject to the full blown regulations they would have a liner or a cap monitoring well cells and so forth. They don't and won't. What staff suggested initially was that the county engineer be inserted into the review of the work plan. That is primarily because our standards are higher than the more minimal standards that DEQ expects that they can impose for the work plan. When that did not work they stopped and thought what another way to achieve this is and came up with these performance standards that are in the report. Glenn Brooks is going to explain what is relevant in those standards and how it really is a universally applied standard.

Glenn Brooks, County Engineer, said basically they took these out of the general provisions of the zoning ordinance, section 5.1.28, not all of which are applicable. But, they are just asking for a basic cover like they would apply to any other material or waste at a particular site. If they dumped a load of concrete or asphalt in a certain area one of our erosion control and stability requirements is just to put a layer of clean fill over it before you leave it or plant it. That is the same thing they are asking here. It was a surprise when they met with DEQ about what remediation measures were being discussed. When they had first gone through this application many years ago they had talked about different remediation that would happen in any areas that were near for instance near the trails, roads, storm water facilities or anything the public could get to. What they learned is that they were not going to do any of those things. Those were up to the county. What they would get is people walking through the site and picking up any trash

on the surface. If areas of the landfill were too exposed and considered dangerous they would fence it off with a chain link fence. That is just not what they were expecting. So they tried to negotiate something, but the applicant was unwilling to let the county get involved with that. DEQ was unwilling to make any more stringent requirements. They were asking the county to do it. They were saying that they could not take a regulatory stance with this. They actually have some grant money they are trying to push to the project. They don't want to cite them with a violation because that would make them ineligible for the grant money. It is complicated on their end. However, they are having a very light approach. All they are asking for is the same standard they would apply to any other waste area in the county.

Mr. Morris invited questions.

Mr. Lafferty said when they granted the Charlottesville Police Department access to the Keene Landfill did they require the same thing.

Mr. Brooks replied that Mr. Kamptner could go into that in to more detail. He has been involved with that. So there are some conditions that they are still working out with the Keene Landfill about how they install a road on the property. They have to fill on top of it rather than penetrate the surface and expose any landfill that is there now. It opens you up to a liability if they expose any parts of it or if they puncture the surface and create any sort of leech problem or changes in the ground water. He would say they are doing it very carefully and trying to do it all on the surface.

Mr. Lafferty noted Keene was an open cell landfill.

Mr. Brooks replied it was the same.

Mr. Lafferty asked if there were any kind of conditions they could put on this project. For example, put a layer of field on top.

Mr. Brooks noted those were staff's suggested conditions.

Mr. Lafferty said that it should not be so open-ended. Going over a landfill seems like going over a cash pit and they could just toss enough money into it.

Mr. Brooks said that he did not know what he meant by open ended because it was a limited site. There is a difficult situation along Moore's Creek. But, when they talk about road improvements, the storm water improvements, the crossings and then the trails – all these improvements that are going to be in the buffer area and then the county is going to have ordinance requirements for mitigation and what can they do to mitigate the disturbances to the buffer. They are going to be talking about all kinds of fringe improvements and plantings. It just seems sort of silly that on the same stream on the same property they have this glaring problem of landfill waste in the stream bank and they are saying that is okay they are going to do their mitigation elsewhere. It just seems so silly.

Mr. Franco asked if they are able to do the mitigation by improvements to that area versus plantings and some of the other things he just talked bout.

Mr. Brooks replied that they certainly can talk about them since nothing has been proffered. They should take down the pretty picture because none of that has been proffered and put up the picture that they are actually proposing. So they don't know what the mitigation might be. They don't know what the impacts are. Most of the things on the plan that have been proffered say potential areas or possible areas. None of it is concrete it is all still moving.

Mr. Smith asked if he has investigated enough with the topography and the proximity to the stream. Can they do what he is thinking about doing physically?

Mr. Brooks said they have talked about a filtrexx product which is a stabilization product that can be put on the stream bank. A lot of things are possible but expensive. It is a big trade off.

There being no further questions, Mr. Morris invited discussion.

Ms. Monteith said in regard to the landfill what they heard from staff there seems to be a difference between having DEQ being the final approving agent in this case and having the county actively involved in the process. She thought that ought to be addressed in some way.

Mr. Kamptner noted the county and DEQ approach this particular issue from different perspectives. He noted the following:

- DEQ is a regulatory agency. This case because it is an open dump is a little bit beyond their direct regulation. County staff is looking at this from the zoning standpoint in addressing impacts and looking at considering the factors that the county is obligated to consider when they are evaluating a request to rezone property. One of the factors is the suitability of the property for particular purposes. Here they have a PD-SC development pretty intense in use and they have this existing landfill with some materials that are exposed that is also part of the property. That is the direction from which staff is coming. They are trying to address the impacts and trying to assure that this particular consideration is addressed in the process.
- They also received some documents around 5:00 p.m. today that may or may not be responding or addressing the issue. It may be that whoever is out of county staff that has been able to review those documents the most if they can share. However, that may help move this discussion along.

Mr. Brooks said DEQ sent staff the document at 5:00 p.m. today. It makes some amendments to the work plan that they had previously. There are five or six surveyed areas where they have gone out and identified that trash is exposed or there are areas to be corrected on a slope or something like that. They have offered some solutions to that and the filtrexx product is mentioned and some other things. As far as he knows DEQ has not reviewed it and there are not hard commitments at this point. The applicant can probably speak to that also. They have an incomplete document that refers to a lot of appendixes that they did not get. It had plans and locations and things like that. It is unfortunate because this plan has been in since 2009 and they have been asking for things like this such as the bike paths, the road conditions and the landfill areas. They have been frustrated with not receiving that. They have probably been still working on a lot of it. Obviously, it was just given at 5:00 p.m. today. They just don't have a lot of those answers.

Mr. Lafferty asked if there have been core samples of the landfill so they know how deep it is and stuff like that.

Mr. Brooks said he thought the applicant should speak to those specifics. The report does indicate that there have been surveys and soil borings to see the extent of it. They would know more.

Mr. Lafferty said if they do nothing right now the erosion and the exposure to the landfill will continue.

Mr. Brooks said they will have to qualify that. It is not a runaway erosion problem. It is like Mr. Kamptner said, there is some exposed waste. A stream is a living thing. It moves around and could have major flood events. It could move it further. It has been sitting there for 30 or 40 years. There is some debris in the stream as the Willoughby residents will tell them it does not look very nice. It has grown up a lot since the 80's and 70's when it was more exposed. They could say it is being stabilized further by vegetation, but when a hurricane knocks the vegetation down it could be exposed again. It is a continually evolving area.

Mr. Morris said that seems, however, that this is the most problematic area on this entire plan. He can see it on both points. As was said it could be an absolute cash pit. Of course, they have the road going across it. He asked if the applicant wants to address with their engineers on this.

Ms. Long noted she was not an expert on the landfill issue, but offered the following information.

- She explained they have hired consultants who have been working on this issue for many years. Mr. Brooks is correct that they have been working on this for many years. They had a work plan

that was submitted to DEQ in 2007. They have been reviewing it and they asked them to do additional samples of some of the water they found coming out of the base of it to test it. It was tested and found to not be a threat to human health and the environment. So it was in somewhat of a holding pattern because the landfill work plan obviously requires funding to be implemented. It is an extremely expensive remediation plan even as it is proposed now. The project will provide the revenue to help implement the remediation plan. Once they obtained the Waugman's commitment to the project they had the ability to confidently move forward with the implementation of the plan. They are working very hard to be able to do that. It is so dense the consultants literally can't get in there right now because the paths and roadways are obscured by the vegetation. This winter as soon as all of the dense vegetation dies back they will work on it.

- They did ask DEQ to let them amend the plan to improve it to add this filtrexx product that Mr. Brooks mentioned. They think it is a better solution to addressing and providing a natural cover material in a couple of places where the exposure is very severe and it is along a very steep area of the creek bed where really other options don't address the problem very effectively either from a health and human safety standard or from an aesthetic standard. The filtrexx they call it compost socks. It is essentially applying some compose in a long mess bag and they apply it and stack it up against the side of the creek and hydro spray it. Eventually it turns into a living wall. It has a triple benefit of stabilizing the slope further, covering up the exposed waste, and looking very natural once it grows in. That is an incredibly expensive measure. So they are asking DEQ to let us use that in the areas where the exposure is the most significant.
- There are other areas where it simply does not warrant such an expensive measure where DEQ has said don't pull the waste material out where it is exposed because they will just destabilize the area. But, they don't want people to be able to climb on it and get hurt either. So put a fence there. The staff had concerns about a fence being located in the floodplain. They have confirmed they can implement the fencing requirement that DEQ suggested in areas that are beyond the floodplain limits. So those are the kinds of examples of where they are. DEQ as far as they know has been comfortable with our suggestions. They have just recently submitted the revised work plan to them because they have continued to work on it as they said they would. They need to get them to review it so they can hopefully approve it in time so that they can actually start the implementation of that work plan in the early winter.
- The proffers as they are written now require that the plan be completed before the first CO is issued or the first store is opened. So they are committed to doing that. There is a lot of site work to be done and this is an important part of it. But they need to have the plan be economically viable in order for it to be put in place. One correction, Mr. Brooks mentioned that there was grant money – but there is not actually grant funding for this but there is a low interest loan program that DEQ is working with them on. It is not a grant.

Mr. Morris invited questions.

Mr. Lafferty said one of the problems seems to be the applicant's willingness to work with the county on this. County staff has the county interest at heart. What are the problems with working with the county instead of only the DEQ?

Ms. Long replied that it really was just the matter of the DEQ staff are the ones who have the experts in hydrology, landfill design and engineering, environmental investigation and remediation, and geology. It may be that some of the county staff has that same expertise, but they know that DEQ has that expertise.

Mr. Lafferty said they are going to have to work with the DEQ regardless. What are the problems in working with the county?

Ms. Long replied that the challenges of having the county's standards be added to the DEQ standards are essentially it could create a conflict situation just as they have described in the two examples she mentioned. It is where DEQ is saying we want you to do this and do not pull those exposed materials out of that steep slope because it will destabilize it. They suggested fencing it off and let the natural vegetation grow back and obscure it. The county memo says well they think that all of those areas of exposed waste should be pulled out and removed. Our consultants say that would be the worst thing to do. So they can't be in a situation where they have conflicting directions with guidelines saying do one

thing and DEQ regulations or an approved work plan that says do something else. They have been working in good faith with DEQ for many years on this and as far as they know her understanding is that they have been agreeable to the solutions they have proposed. The only real change is the addition of the filtrexx material, which everyone agrees is a positive. That is the main concern. Their memo made reference to our community's standards for how the landfill should be fixed. They feel that is a regulatory issue that the state DEQ experts should have the say in and the concept of community standards and expectations about how a landfill should be remediated gets to his point about it that the cost would be unending. That is our concern.

Mr. Lafferty said as she had mentioned this project is pretty old. It has been going on for a number of years. It seems that they could have some kind of agreement between the county, yourself and the DEQ as to what would go on. He trusts the county staff more than he does the DEQ to help keep my environment when I live here clean. Their concerns are my concerns, too. He thinks from what has been said tonight the DEQ and the county are looking at it from totally a different perspective. He understands the open ended nature of it and would hope there could be some way they could work with the county on this.

Ms. Long asked to clarify or correct her prior statement. It is not that they don't want to work with the county obviously. They appreciate and respect the county's concerns and the county's desire to look out for its interest and those of the community and general public. They have concerns with how they get there. Even the proposed performance standards they were optimistic when she understood the goal of the performance standards was to instead of having the county have to approve the work plan here is some standards that they would like them to agree to. She thought at first that was a good approach and sent them to their consultants and colleagues who are environmental experts and asked for their input. One of the suggestions in the performance standards was that at every area have a minimum of 2' of fill. What the consultants are saying is that they would have to spend probably about a million dollar surveying the entire area to establish kind of a grid system and measure what is the fill level in each quadrant of the grid to know whether it needs more fill or not and then go back and add it where it is needed. Then how does that get enforced and how do they always endure that it always 2' of fill that is always in place. Those of the kind of things that at first she thought it seemed logical and asked if this is okay. They pointed out the challenges of how that would be implemented. So those are the types of things that are not a desired. They want to cover up the waste, too, again especially in the areas where it is very steep and that is the best solution. But in other areas where even DEQ has said that does not make sense or do it a different way - they want to have the ability to follow DEQ's direction and not have to be subject to undefined community expectations and what someone might think is appropriate when they are not experts.

Mr. Lafferty said he thought the project has been going on long enough that these should not be undefined. He thinks the county has shown a willingness to be flexible in this whole project. They are willing to accept a form that is really not defined. So he thinks the county has been trying to work with you.

Ms. Long said they would be happy to continue to try in perhaps define the standards differently. It is kind of the same issue she talked about a little earlier with the proffers. It is often challenging to get proffer language standards precise enough that everybody can know whether they have been satisfied or not, but yet provide flexibility to be able to know you can implement them. They can't agree to a standard until they know with certainty that they can comply with it. So they know they can comply with what they have proposed at DEQ and what they have already approved. Really they have already approved it. The only new change was to ask their permission to add the filtrexx in a few locations. That is why they are a little perplexed because the plan was approved and the project was approved already with the same standard or the same language in place in essence that said DEQ has to approve the work plan. They are not asking to change that. This is just all of a sudden came up in the last three or four months or not even that long that the county wanted to have a say in how the work plan was prepared or how it was approved. They have not had a whole lot of time to react to it because they have just been working with DEQ all these years.

Mr. Franco said he had a question of staff at this point. He asked staff if they have seen the DEQ plan and where are the differences at this point. Both sides are making logical arguments. He was a little torn trying to understand it.

Mr. Brooks said he received it at 5:00 p.m. today. It is not even the complete plan. They met with DEQ. Ms. McCulley has done a great job communicating with them. They did not have the same plans that the county staff had when they met. This was a couple of months ago. They have not seen that plan. He could promise that they would not be in conflict with DEQ. They could make that a condition. The proffer can be written as long as the county is not in conflict with DEQ. They have written up their concerns in a list, which says they want cover and that is all.

Mr. Franco said he was just trying to figure out what their concerns are that DEQ is not going to cover.

Mr. Brooks noted that DEQ is not going to cover the landfill. They are going to put up chain link fences around areas.

Mr. Kamptner pointed out that was part of the concern. Up until late this afternoon our understanding from DEQ was that they were going to require the chain link fence at the top of the stream bank.

Mr. Brooks noted it was still in the plan and it was still there.

Mr. Kamptner said but that was the extent of it and the concern that staff had.

Mr. Franco said he was trying to understand it. If they were not going to be in conflict with DEQ, but if they say that is a better solution but is not what staff wants, then aren't they in conflict.

Mr. Brooks said that they are not offering solutions. It is a voluntary thing right now with them. It is not a landfill site, it is a dump site. They are not cited with any sort of violations. They are working with the applicant to do what they can. Is fencing something off improving it? He did not know. How long is a fence going to last?

Mr. Kamptner noted that the applicant is committing to do what the work plan requires. So it is getting that work plan to be acceptable.

Mr. Brooks said that he did not know. Does the county know that? Can the work plan change at any time. It is not up to us.

Mr. Lafferty noted the project seems like it has a lot of pluses for the county. He can't quite understand why they are hung up on this point except the economics of it. He can understand the developer's perspective there. He can't imagine they would want to have one of their exits from their project going over a bunch of tin cans laying around and rotting garbage. But, they always have to consider the worse case sitting up here. If they don't require something then they may in fact get the worse case and they will say well that is all you required of us.

Mr. Franco said that he was not sure, again if that is the worst case. Some of this is the aesthetics. Driving past the tin can that he just described and walking the green way trail as staff described earlier and not wanting to see this - that is an aesthetic issue. If DEQ is saying that is the safest way to deal with it versus pulling this stuff out and opening up even more of the landfill he was torn as to whether that is the better solution or not.

Ms. Monteith said she can't agree that when one has a riparian adjacency that is just aesthetics.

Mr. Brooks clarified that nobody has said tear anything out. All they have said is cover. They have never said remove. He heard that mentioned a couple of times.

Mr. Smith asked steep is the slope. How steep is the slope normally from the bottom of the creek bank to the top of the dump.

Mr. Brooks replied it was 30 to 40 feet.

Mr. Smith said if they put dirt on it how are they going to get the dirt on it and have it compacted on a slope which is probably a 1 to 1 slope.

Mr. Brooks replied that would be the area they are talking about using a different product on the slope or the face itself. It could be a number of things.

Mr. Smith said he knew that they could not put dirt on a slope like that and have it stay there without it going into the creek.

Mr. Brooks agreed and that it was in the creek now.

Mr. Smith said that it is not just tin cans but everything from refrigerators to washing machines.

Mr. Brooks said that is right. It is not just an aesthetic issue to staff. It is public safety and welfare. If they have to fence it off it is a danger to people. The other is the environmental concern. There have been some studies of the leeches coming out. DEQ said that it was only tested for organics and nothing else. So there was not a broad spectrum of tests and they don't know what is in there.

Mr. Loach noted that tonight sounds more like a work session. The more he heard from staff and the public the more questions he had at least in the proffer language. He certainly did not think tonight was the place to try to make let's make a deal over the proffers. The question he had was on the recommendation they should have to move for approval of the rezoning is there a way to do that. As Mr. Lafferty said in certain respects there are all these benefits, but it seems like they are a long way from a resolution of the problems to get at those benefits. The question goes back to in making the approval what is he approving and what would be lost if he did not approve it or did approve it and could not get back to because they have approved it. He did not want to make a recommendation for approval of something that is going to come back to bite them later on because they did not resolve all the problems that were associated with the application.

Mr. Benish pointed out what staff is recommending are the issues that they feel needs to be addressed. If the Commission agrees with those recommendations the Board should take under considerations before they act on the proposal before them. So there is sort of a leap of faith the Commission is taking if they agree with these conditions that those will be addressed with the Board in the future. If the Commission feels they want to see this information before they make a recommendation, then that is their prerogative to consider. That is the type of recommendation before them now. They have done that before. It is not the normal practice, but these are the issues staff feels need to be addressed for our recommendation. Some of those are technical issues. The landfill is more of a substantive issue.

Mr. Loach said he feels uncomfortable with a vote when the engineer for the county comes in and says the solution to this came in at 5:00 p.m. and he does not feel it is a complete solution. For the Planning Commission what level of comfort do they have in forwarding this to the Board in the condition it is in?

Mr. Franco pointed out his answer to that is staff has four issues or conditions.

Mr. Cilimberg pointed out that was not all of them. There was another one.

Mr. Franco said that there are five concerns listed in the staff report. It sounds if they follow the conditions of staff that the concerns Mr. Loach was talking about would be addressed because staff would have the ability to say yea or nay to the landfill plan. He was comfortable if they move it forward with these conditions. He was not sure if he was comfortable with all of the conditions.

- He goes back to some of the discussions that were made on bullet one – the outstanding technical issues. It does not seem to be an issue on either side. So he was comfortable with that. It sounds like staff and the applicant is comfortable with that.

- Number 2 is the BMP facilities. Having heard the applicant's explanation of it he clearly understands what they are saying there. As long as it is a condition in the proffers that says that the BMP's will not be located in the future floodplain, then that seems to be something that would satisfy staff's concern.
- Number 3 is the framework. That does not seem to be a debate to staff or the applicant.
- Number 4 is the landfill. They have been talking about that.
- Number 5 is the funding for Willoughby. The applicant offered to provide the additional funding if the right-of-way has been acquired.
- Therefore, it really boils down to item 5 regarding the landfill and whether they are comfortable with staff's recommendation for including them as one of the entities on the review and approval of that plan.

Mr. Benish pointed out that they could not condition the rezoning. What they are identifying are those issues that need to be resolved through the proffers or plan of development.

Mr. Loach added that there were pertinent issues raised by the public tonight that were in the context of these issues which included the infrastructure and the funding. The funding will now be a single funding, which should be taken into consideration as well.

Mr. Cilimberg said the Commission needs in their action to decide what expectations they have. If that is one they decide to add, then that needs to be included in the action. Staff identified what they identified as the points that should be addressed before the Board would take its action.

Mr. Morris agreed with what he was saying.

Mr. Franco said that it was a tough balance to figure out view shed versus LEED credits and things like that. He was not saying they were exclusive. However, it is a tough balance at times. He would be comfortable moving this forward tonight, but would prefer to eliminate issue 4 landfill and trust with DEQ that they know best.

Mr. Randolph asked does DEQ have the capability to do the verification on site that is necessary for the application.

Mr. Franco said that is not what they are talking about. They are talking about the plan and whether it should be fenced or not fenced.

Ms. Monteith said apparently they don't know what the plan is.

Mr. Loach said that he had heard suggestions on ways that staff and the applicant may come together, but certainly at this point he would not say there is a conclusion.

Mr. Franco agreed that he did not know what the plan is either. However, the plan will have to be approved by DEQ.

Mr. Kamptner recalled that the current proffers provide that the work plan be approved. They did not know what the work plan would be when the original proffer was accepted. It was anticipated that DEQ would approve some work plan that at that time the county was comfortable accepting and going with. He thinks county staff decided that they wanted to step in because they did not see the work plan accomplishing what had been anticipated. What came in at 5:00 p.m. today they don't know. Staff needs to evaluate that.

Mr. Morris said that will be known if this goes before the Board of Supervisors.

Mr. Kamptner replied that it would certainly be known before this goes to the Board of Supervisors.

Mr. Franco pointed out what would be known is what come in tonight and not necessarily the final plan. That does not have to be implemented until before the final CO.

Mr. Morris said that at least Mr. Brooks will be able to see the plan and if there is a difference iron those differences out.

Mr. Franco said that is where he gets confused in what is being said. He understands what Mr. Brooks said earlier that the water was not tested for anything but organics. He asked if the county would then require that it be tested for metals or other things.

Mr. Brooks replied that they have no standing so there won't be any agreement. They have no standing in the process. They will handle it with DEQ and they tell us there is a work plan with DEQ, then the proffer is satisfied.

Mr. Loach said that is a problem that he worries about is that DEQ is the expert but also the lowest common denominator.

Mr. Brooks noted that it is true that they don't have the expertise and won't know what tests to ask for in the water. DEQ is better at that.

Mr. Franco noted that part of it goes back to the balance. Nothing is happening now. They have an existing environmental problem now that may not be the ultimate fix that is occurring towards some of the details that staff is looking for. However, it has to be better than what they have got now and they have had for the last few years.

Ms. Monteith asked Mr. Brooks if they have a precedent for this. Is there a way he can work with DEQ to get this resolved?

Mr. Brooks replied that he did not think they have a precedent. He asked Ms. McCulley since she works more with waste areas and dumps.

Ms. McCulley said she thought it was all a matter of whether they can impose higher standards in places such as the area that would be chain link fence exposed waste or whether they go with the most minimal standard that DEQ would apply, which is the open dump standard. They have said they have to accept it. They have not said that this is really what they would want in their best professional practice. This is what they have to accept because that is the limit of their authority.

Mr. Dotson commented that Commissioner Franco said he was comfortable with the rezoning going forward without item #4. He was comfortable with it going forward with item 4.

Mr. Lafferty agreed. It is probably a very time sensitive proposal anyway because of Waugman's and the whole project is being sold on its beauty in bringing in a high end tenant. So he would hope they could work this out. But, he thinks item 4 should be included. He was comfortable with moving it forward in a positive manner.

Mr. Morris asked if he was making that as a motion with conditions as stated.

**Motion**: Mr. Lafferty moved to recommend approval of ZMA 2009-00001, 5th St.-Avon Center based on the recommendation of staff

Mr. Kamptner added with the five (5) recommendations of staff plus the proffers as addressed as recommended by staff.

Mr. Lafferty agreed adding the amendment of $100,000 offered by the applicant.

Mr. Kamptner said it was recognizing that staff's recommendations will also trigger revisions in the proffers.

Mr. Benish noted that the minutes will note that they have already committed to that.

**Motion:** Mr. Lafferty so moved as amended.

**Second**: Mr. Dotson seconded the motion.

Mr. Franco asked to hear from the applicant one last time since they were putting additional conditions on it.

Ms. Long said it would help her because she was not quite sure she understands how the landfill condition or proffer would be handled.

Mr. Franco replied what they were saying was between now and when they go to the Board they would have to increase the landfill remediation commitment to the satisfaction of the zoning staff and the county engineer.

Ms. Long said that they were happy to continue to work on that. She asked to provide some clarification to correct some things that were stated regarding the landfill plan. Our consultants sent the plan to DEQ. They did not unload that on the staff at 5:00 p.m. today just for clarification. They submitted that to DEQ because they have asked us to resubmit it. The plan was first developed in 2007. It is not a new plan. There are small elements of it that are proposed to be updated. Those were to improve it and use this filtrexx product. She wanted to make it clear that it was not that they have been doing things at the last minute or not working with DEQ. They have been working with DEQ literally since 2007. The plan was in place in terms of it was submitted to DEQ in 2007. The project was approved in March of 2008. So it was approved with that plan. All they are asking is the ability to update it to improve it. Certainly now she personally was regretting that decision. Second, the areas where DEQ has suggested the chain link fencing would be appropriate are those areas where the waste may be slightly exposed in some areas more. But there is no ongoing threat to human health in the environment. That is the one thing that the consultants have stated very, very stringently to her. The testing determined that there is no ongoing threat to human health or the environment. DEQ's concern was keeping individuals off of it so that literally they would not cut their feet on the exposed waste. So their suggestion was a chain link fence. They are agreeable to that. Those are the concerns. She just wanted to be clear because she felt like it was misrepresented or there were some of the Commissioners who felt they had dropped this off on the staff at the last minute and that was not the case.

Mr. Morris noted there was a motion and second. He asked if there was any further discussion.

Mr. Lafferty said his motion was made on the feeling that they will be installing a quality product. It certainly will be a safety product as far as things go, but it will also have the aesthetic value. They need to work out the details with DEQ and the county. That is the nature of the motion he was making.

Mr. Morris noted that they already have a motion on the table.

Mr. Lafferty agreed and that it had been seconded.

Mr. Loach said the motion is that this is going to the Board for further review. There is nothing written in stone now except these issues have to be resolved.

Mr. Benish said the Commission is recommending that these issues be resolved for the Board to approve this.

The motion passed by a vote of 7:0.

Mr. Morris noted that ZMA-2009-00001 5$^{th}$ Street-Avon Center will be forwarded to the Board of Supervisors with the following recommendation:

The Planning Commission recommends approval of ZMA-2009-00001, 5th Street-Avon Center based on the recommendation of staff, as amended, that the following outstanding issues related to the rezoning are addressed prior to the Board approval.

1. The outstanding technical issues with proffers are fixed.
2. Storm water/BMP facilities that are shown in the floodplain on the application plan are removed from the floodplain.
3. Development Framework is revised to not include items that are already applicable per the Zoning Ordinance.
4. Landfill remediation commitment is made as recommended by zoning staff.
5. Additional funding is committed to adequately cover the anticipated cost of the Willoughby pedestrian bridge and trail.

   Note: With the amendment made by the applicant to change the proffer amount to $100,000 for the connection to Willoughby with staff working out the proffer language. It is recognized that staff's recommendations will also trigger revisions in the proffers.

Mr. Kamptner said it was recognizing that staff's recommendations will also trigger revisions in the proffers. He pointed out that the Commission needed to take an action on the special use permit, SP-2010-00003.

**Action on SP-2010-00003**

**Motion**: Mr. Lafferty moved and Mr. Dotson seconded to recommend approval of SP- 2010-00003, 5th St.-Avon Center – Parking Structure with the condition recommended by staff.

1. The special use permit approval shall not expire but shall remain in effect so long as the approval of ZMA 200900001 remains in effect.

The motion passed by a vote of 7:0.

Mr. Morris noted that SP-2010-00003 would also be forwarded to the Board of Supervisors to a date to be determined with a recommendation for approval.

**Critical Slopes waiver Request**

Mr. Cilimberg noted that with this project there was also the critical slopes waiver request that staff had suggested deferring to the site plan.

Mr. Morris asked if staff wanted a motion on that.

Mr. Franco asked if the applicant was comfortable with that recommendation since they had not talked about it. He suggested hearing from the applicant.

Ms. Long said they would actually ask the Commission consider approving the critical slopes waiver. They submitted the waiver two years ago. The plan has evolved during that time. The limits of disturbance, however, have not changed. They are exactly the same. Some of the critical slope areas are man-made. She has a slide that shows the critical slopes if anyone wants to see them. The waiver was originally recommended for approval by staff in early 2010, but they could not get to the Commission for action to be taken on that. So they would ask if the Commission is inclined to take action on that tonight so that they know they have that in place and can move forward without having to wonder about that.

Mr. Morris asked what the pleasure was of the Commission. He asked Ms. Grant if she agreed with the recommendation.

Ms. Grant replied that staff does not agree with that recommendation.

Mr. Benish said they can defer to Mr. Brooks for specifics. But again, the plan that was originally submitted was based on a different plan. Staff feels that it would be better to look at details at the site plan level for the critical slopes waiver since there is less specificity to the current plan.

Mr. Morris said based on the staff report he felt this is something they would be looking at later.

Mr. Lafferty asked if this would be delaying the project.

Mr. Franco noted his concern is if they deal with it at site plan it is an unknown until it is actually granted. Depending on where these slopes are, for instance in the middle of the site, he would want some kind of assurance before he started to spend the big design dollars to know that he could disturb those slopes. If the limits of clearing and grading have not increased and they were willing to support before simply not having the information now does not bother him as long as those limits are consistent.

Mr. Brooks said they don't have the limits of clearing and grading at this point. They have a concept plan with a rezoning and a lot of moveable parts.

Mr. Franco asked how they know which slopes they are asking to be disturbed.

Mr. Brooks replied they can look at the general areas on the concept plan they have shown development on and give them a blank slate if that is what the Commission wants to do.

Mr. Kamptner noted in Attachment I on pages 82 and 83 are the considerations for the Commission. However, staff was unable to provide the Commission with that information. It does not look like they have the information unless it can be presented here verbally to make a well informed recommendation. But that is all the Commission would be doing is making a recommendation. The other thing the Commission has to recall is that like a special use permit the Commission has 90 days to act and he would assume that they were up against the 90 day period. Perhaps at least the Commission should make a recommendation tonight recognizing that when this does go to the Board staff has to have the information upon which to make an informed recommendation.

Mr. Franco asked if the Commission could see the graphic that shows where the slopes are.

Mr. Morris asked Ms. Long if she had that graphic.

Ms. Long replied they submitted a critical slopes waiver exhibit as recently as April of this year as part of their resubmittal in April. They then resubmitted the actual application plan again. They did not get any comments from the staff to the April critical slopes waiver. She did not believe it was in their packet either. There is an exhibit that shows the limits of disturbance. They also have their civil engineer present who prepared that exhibit, the application plan and assisted her with the original waiver application. She noted he can provide additional guidance on that.

Mr. Kamptner said he did not know if Ms. Long was referring to Attachment J, which is her letter from February 16 or maybe something more recent than that.

Ms. Long said it may be February of 2010 that was from when they originally submitted the application. There was an exhibit that went with that waiver application. Once they amended the plan, and again it evolved, they resubmitted an updated exhibit to accompany the critical slopes waiver application. That was submitted to the staff with the other proffer revisions in April. Therefore, staff does have that information. She was trying to find her hard copy in her file. She probably only has one copy, but can dig it out.

Mr. Franco asked if the Commission has that in their packet.

Mr. Morris replied no.

Mr. Randolph asked for help with this disconnect and if staff can explain the history of the missing critical slopes information.

Mr. Brooks replied the Commission has a very vague plan. Anything that is shown on the plans now can change pretty significantly in the future. Therefore, he was not comfortable giving his approval to something that he really did not know how much it would move.

Mr. Randolph questioned whether it was definitive.

Mr. Brooks agreed that was correct. He did not think they were going to get that before the Board meeting because the plan is not going to get any more concrete before then. He learned today they wanted to move the floodplain to accommodate the storm water facility.

Mr. Randolph said in light of the hour it is 9:30 p.m. and they were finding they were dealing with quick sand. There is no definition here. One of the best things they can do is defer making a decision on critical slopes because they don't have the information. He was not comfortable saying they are going to pass it on to the Board of Supervisors and waive their responsibility here to make this decision.

Mr. Loach said the discomfort comes because Mr. Brooks says it won't be ready by the time it goes to the Board of Supervisors.

Ms. Monteith noted that staff does make a recommendation in the report.

Mr. Lafferty noted staff recommended the decision be deferred.

Mr. Franco said the applicant also submitted the information and it did not get passed on to us.

Mr. Morris said he thought they granted the critical slopes waiver when they use to have that authority. Really they saw it if they look at the site where is it going to go. He thought that was exactly what he was saying.

Mr. Franco agreed. He understands without the graphic it is hard to really respond to some of the comments. However, if it is disturbance that is required to execute the plan that they have seen he would support it because they are supporting the plan. So he would be comfortable since they are just making a recommendation to say that graphic would have to be provided again or included in the packet to the Board that those are the limits and that as long as they stay within that box it should be granted.

Mr. Morris said the development site is the same as it was in 2007 and 2008. He was comfortable with the recommendation going forward.

Mr. Franco asked do they have the application number for this request.

Mr. Randolph replied that it was not in the packet.

Mr. Franco moved for a recommendation of approval of the critical slopes waiver request.

Mr. Smith seconded the motion.

Mr. Morris invited questions.

Mr. Loach asked if they heard enough from the applicant that there would be adequate data on the critical slopes for the Board of Supervisors to make a decision. Otherwise, they are going to be as blind as the Commission.

Mr. Brooks pointed out this was similar to the special use permits for the fill in the floodplain. Those can move around, too, and they are not approving them with the rezoning. They will have to come in later. If they are in the box they will probably approve them, but it is not guaranteed. Typically, when he looks at

these he would lay out what the disturbances are in his opinion and it is never the same as what they claim. There is always erosion control disturbances in other areas that they will need to go and carry it down the slope for instance and things like that. He will make some recommendations on that. He thinks the storm water management facility should be moved over and as long as they meet those conditions he will recommend approval of the critical slopes waiver. However, he just can't do that here. There is just not enough to the plan. He thinks Ms. Grant and his recommendation is to save the request until later is one approach. If they want to give them a clean slate like Mr. Franco is suggesting then that is fine.

Mr. Franco said he was not necessarily trying to give them a clean slate. However, he would like to give them some assurance that they could execute the plan that came before us today. He asked if there was anything that prevents us from some point in the future if they are at the site plan level coming back and saying no for some reason they have decided they can't disturb the middle of the site where the parking lot is.

Mr. Brooks added or they can't disturb the floodplain for instance in this location or that location and now the whole layout has to change or they have to put everything underground like Stonefield did. When Stonefield came up for approval they told them those storm water facilities are not going to work. They said don't worry about it since it is just a fringe detail. Then the whole thing changed when it came to the site plan. He suspects that the same thing might happen here. Especially if they come to the Commission and say that it is not their usual practice to put up dams in the floodplain to move the floodplain so they can allow storm water management facilities. That is not a good practice and he recommends against it. If they end up not approving it that way, then it has to move and they have to provide storm water facilities somewhere else on the site or underground. Lots could change. Critical slopes are just one piece of it. They still have to get a waiver to use a rural section for the connector road for instance. Our ordinance currently requires a curb and gutter section. They have discussed that so they have proffers that allow either/or. However, he noticed that all the documents that have been submitted to DEQ require a rural road section. They have to get special approval to do that.

Mr. Franco pointed out that rural roads are a bit different and that is not a go or no go.

Mr. Brooks said that it was just another detail that is not finished. Therefore, it did not seem like a big deal to leave that one too.

Mr. Franco said if he put it in the context of this being a rezoning he did not expect to have all that level of detail at this point in time.

Mr. Morris said they have a motion on the table. He asked for a second.

Mr. Kamptner noted the motion was to recommend approval.

Mr. Smith seconded the motion.

The motion passed by a vote of 5:2. (Randolph and Loach voted nay)

Mr. Morris noted that the special exception for the critical slopes waiver will be forwarded to the Board of Supervisors with a recommendation for approval on a date to be determined.

Mr. Kamptner noted a minor procedural note was the Commission did need to act tonight, but it was because it they had already acted on the rezoning and the special use permit. The special exception regulations provide that the special exception should be acted upon at the same time as the rezoning so everything goes to the Board at once. That was just to correct that.

Mr. Franco questioned if that included the rural section roads.

**Old Business**

Mr. Morris invited old business. There being none, the meeting moved to new business.

**New Business**

**Resolution of Intent: Highway Commercial Wall Signs**
Rebecca Ragsdale

**PROPOSAL:** Amendment to correct the maximum wall sign size permitted in the HC Highway Commercial zoning districts.

Mr. Cilimberg noted that if the Commission does not have any questions, they can go ahead and act on the resolution of intent for Highway Commercial Wall Signs because it is simply a resolution of intent. The Commission will be getting the actual matter as a public hearing item next month.

**Motion**: Mr. Franco moved and Mr. Loach for approval of the resolution of intent for Highway Wall Signs.

The motion passed by a vote of 7:0.

Mr. Morris noted the Planning Commission adopted the resolution of intent for Highway Commercial Wall Signs as follows. Staff will set the public hearing for the Planning Commission as soon as possible.

**Adopted Resolution of Intent – Highway Commercial Wall Signs**

**WHEREAS,** Ordinance No. 12-18(2), adopted March 14, 2012, amended the Albemarle County Zoning Ordinance to, among other things, have signs in the Highway Commercial zoning district subject to the regulations in County Code § 18-4.15.12, which also pertains to signs in the Commercial and Commercial Office zoning districts, instead of County Code § 18-4.15.13, which also pertains to signs in the Planned Development Shopping Center and Planned Development Mixed Commercial zoning districts; and
**WHEREAS,** County Code § 18-4.15.13 allows wall signs of up to 200 square feet in area and County Code § 18-4.15.12 allows wall signs of up to 100 square feet in area; and
**WHEREAS,** it may be desirable to allow wall signs in the Highway Commercial zoning district to have wall signs of up to 200 square feet in area, as was previously allowed when signs in the Highway Commercial zoning district were subject to County Code § 18-4.15.13.
**NOW, THEREFORE, BE IT RESOLVED THAT** for purposes of public necessity, convenience, general welfare and good zoning practices, the Albemarle County Planning Commission hereby adopts a resolution of intent to consider amending County Code § 18-4.15.12, Regulations Applicable to Signs in the C-1, CO and HC Zoning Districts, to allow wall signs in the Highway Commercial zoning district of up to 200 square feet in area, and amending any other sections of the Zoning Ordinance deemed to be appropriate to achieve the purposes described herein; and **BE IT FURTHER RESOLVED THAT** the Planning Commission will hold a public hearing on the zoning text amendment proposed pursuant to this resolution of intent, and make its recommendations to the Board of Supervisors at the earliest possible date.

Mr. Kamptner handed out information requested by the Commission pertaining to how to deal with disruptions at public meeting

**Adjournment**:

With no further items, the meeting adjourned at 9:39 p.m. to the Tuesday, August 7, 2012 Planning Commission 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)