

**Albemarle County Planning Commission
FINAL MINUTES February 4, 2020**

The Albemarle County Planning Commission held a public hearing on Tuesday, February 4, 2020 at 6:00 p.m., at the County Office Building, Lane Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Julian Bivins, Chair; Jennie More; Bruce Dotson; Rick Randolph; Corey Clayborne; and Luis Carrazana, UVA representative.

Members absent: Karen Firehock, Vice-Chair; and Tim Keller.

Other officials present were Mariah Gleason; Tori Kanellopoulos; Francis MacCall; Kevin McDermott; Frank Pohl; David Benish, Chief of Planning; Andy Herrick, County Attorney's Office; and Carolyn Shaffer, Clerk to the Planning Commission.

Call to Order and Establish Quorum

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

Mr. Bivins welcomed students from the Department of Urban and Environmental Studies from UVA, who were in the audience.

From the Public: Matters Not Listed for Public Hearing on the Agenda

Mr. Bivins asked if there were any matters from the public not listed for public hearing on the agenda (including consent agenda) that anyone would like to speak to.

Hearing none, Mr. Bivins closed matters from the public and moved on to the next item.

Consent Agenda

Mr. Bivins asked if anyone cared to pull the item that was on the consent agenda.

Mr. Clayborne moved to approve the consent agenda. Mr. Randolph seconded the motion, which carried unanimously (5:0). (Ms. Firehock and Mr. Keller were absent.)

Public Hearing Items

SP201900006 Boyd Tavern Market

Ms. Tori Kanellopoulos, Lead Planner, presented the staff report. She said this is a public hearing for a request for a Special Use Permit for an auto service station or gas station, convenience store, and eating establishment not served by public water in the C1 Commercial Zoning District. She said she would begin with the background and context of the site; move on to the development proposal; discuss staffs analysis, recommendation, and conditions, including a condition the applicant has not agreed to; and the possible motions.

Ms. Kanellopoulos said there were other County staff present that could also answer questions including Transportation, Architectural Review, Engineering, and Zoning staff.

Ms. Kanellopoulos said the proposed development is located on State Route 616 (Black Cat Road) between Route 250 and 1-64. She said the site is approximately 3 miles driving distance from the

nearest development area, which is the Village of Rivanna. She said Keswick Hall is less than a mile across the interstate.

Ms. Kanellopoulos said the site is across the street and slightly south of the Mechunk Acres subdivision. She said there is an adjacent property to the west that has residential and agricultural uses. She said the adjacent properties to the north and south are undeveloped. She said the interchange with 1-64 at Exit 129 is just north of the property.

Ms. Kanellopoulos presented a picture showing the view of State Route 616 from the approximate proposed entrance of the development. She presented another picture showing the view of the Exit 129 interstate interchange with State Route 616 and 1-64.

Ms. Kanellopoulos said the property is current undeveloped. She said there is a wooded area along the front of the property, with the rear of the property consisting of a field.

Ms. Kanellopoulos said this property is split zoned CI Commercial and RA Rural Area. She said approximately 3.28 acres is zoned C1, and the remaining 9.21 acres are zoned RA. She said the CI Commercial Zoning District allows auto service stations, convenience stores, and eating establishments referred to as a "restaurants" in the Zoning Ordinance, not served by public water or by a central water supply system, by Special Use Permit.

Ms. Kanellopoulos said the property was rezoned in 1970 from AI Agricultural to B1 Business. She said these zoning districts no longer exist in the County. She said at the time of the rezoning, the proposed use was Auto Service Station. She said an additional portion of the property was rezoned to B1 in the same year.

Ms. Kanellopoulos said in 1979, an additional portion of the property was rezoned to B1. She said two Special Use Permits were also approved. She said these actions allowed for an auction house on the property.

Ms. Kanellopoulos said that in the following year (1980), a portion of the property (being the same portion previously rezoned to B1) and the adjacent property were rezoned to CI Commercial by the County as part of a comprehensive rezoning. She indicated to this area on the map. She said both properties, and others in the immediate area, are within the Rural Area, as designated by the Comprehensive Plan.

Ms. Kanellopoulos said the County has not initiated a rezoning since 1980 to rezone any properties that are outside of the development areas, but are zoned with Urban zoning designations.

Ms. Kanellopoulos said the appropriateness of the CI Commercial zoning designation on the property is not under consideration. She said the property was comprehensively rezoned by the County in 1980, and no action has been taken to amend or modify the zoning of the property.

Ms. Kanellopoulos said the proposal is for a gas station with a convenience store and eating establishment. She said the required community meeting was held on May 22, 2019 as a special meeting for the Village of Rivanna Community Advisory Committee. She said the major concerns heard were groundwater availability, traffic and related noise, visual impacts (including lighting), and effects to the character of the area.

Ms. Kanellopoulos said the site is reliant on well and septic system, as public utilities are not available to the site. She said the applicant submitted a Tier 3 groundwater study with the application. She said the key findings of the study state that groundwater availability is favorable, and that hydrological conditions are favorable to the proposed use. She said both County staff and the Virginia Department of Health reviewed the groundwater study, and both entities rely on the expertise of licensed professionals (hydrologists) for the studies.

Ms. Kanellopoulos said there is also a proposed condition to limit the proposed use to a maximum water usage of 700 gallons per day by using a water restriction device. She said this device has been used for other gas stations in the County, and it only allows a certain amount of water to flow through each day (in this case, limited to 700 gallons per day). She said both Zoning and Building staff would conduct an on-site inspection to ensure the device was installed properly prior to the issuance of any zoning clearance or building permit.

Ms. Kanellopoulos said the Virginia Department of Health approval is required for any site plan on any property not served by public water and sewer. She said VDH would need to approve permits for the well and septic systems, and no site plan would be approved prior to VDH approval of the permits.

Ms. Kanellopoulos said there are several conditions related to the visual impacts of the proposal. She said these include limiting hours of operation, with all lights turned off outside of hours of operation; requiring the building architecture and gas canopies to conform to the proposed architectural guidelines submitted by the applicant, which have been reviewed by staff and found to be consistent with the architecture and form of country stores; a limit of five total fuel pumps, with two of those pumps being relegated behind the building; and a three-board fence and screening landscaping along the frontage of the site.

Ms. Kanellopoulos said the annual average daily traffic (or AADT) of State Route 616 is 8,300 vehicle trips per day. She said Transportation Planning staff estimate that the majority of trips would be existing pass-by traffic on State Route 616. She said the applicant would need to construct turn lanes compliant with VDOT requirements at the site planning stage, which would reduce potential delays for State Route 616.

Ms. Kanellopoulos said review of historical crash data does not show identified safety issues in the area. She said that as stated in the staff report, the applicant's trip generation calculations appear high for the proposal, and appear to be based on a previous submittal. She said the applicant has indicated that they will provide updated trip generation estimates at this meeting.

Ms. Kanellopoulos said staff also recommends that the "No Parking" area included in the proposal be expanded to include the outer edges of the paved area of the site, except for the parallel parking spaces. She said this is to ensure that tractor trailers do not have parking and access to the site. She said the site needs to accommodate fuel delivery vehicles, but should not accommodate tractor trailers. She said additional signage to prevent tractor trailers may be required with a site plan.

Ms. Kanellopoulos said if the property were zoned Rural Area, the applicant could have applied for a Special Use Permit for a country store with fuel sales. She said that since the property is in the Rural Area of the Comprehensive Plan, but is zoned Commercially, staff used the regulations of country stores in the Zoning Ordinance as guidance for evaluating the scale and impact of the proposed use.

Ms. Kanellopoulos added that the 2019 Zoning Text Amendment change resulted in all auto service stations, convenience stores, and restaurants not served by public water or a central water supply system to need a Special Use Permit, regardless of the water usage. She said these uses were determined to have potential impacts that are inconsistent with the Rural Area designation, including traffic, extended hours of operation, lighting, building design, and water usage. She said therefore, the Special Use Permit analysis of these uses in the Rural Area may include analysis of these potential impacts, and a recommendation may include reasonable conditions to address the impacts.

Ms. Kanellopoulos said review of the uses is compared to the scale and impact of country stores, as these are allowed by Special Use Permit in the Rural Area Zoning District. She said Class B country stores are non-historic country stores, which permit the sale of gasoline and other fuels. She said country stores permit a maximum of six nozzles, not including nozzles for diesel fuel.

Ms. Kanellopoulos said the application is proposing a total of five fuel pumps and ten nozzles, with two nozzles for diesel fuel. She said that while staff has found that the three pumps and six nozzles visible, and relegating the other pumps behind the building, is consistent with the scale of country stores, the Planning Commission may make a different finding based on the scale of country stores and the potential additional traffic resulting from the two additional pumps.

Ms. Kanellopoulos said country stores are limited to a maximum of 4,000 square feet, which is a condition of the proposed use. She said country stores also permit the accessory sale of food and other restaurant uses with interior seating.

Ms. Kanellopoulos said there is also a condition that the proposed canopy and building architecture must be consistent with the proposed design submitted to staff in the Architectural Design Details Guidelines (Attachment E). She said staff has found that the proposed design is consistent with the architecture of a country store, including having a porch and a larger transparent facade area.

Ms. Kanellopoulos said the zoning of the property, C1 Commercial, is inconsistent with the Comprehensive Plan land use recommendation, which directs development into the development areas. She said as has been previously stated, however, the decision to zone this property C1 Commercial has been made, and the County has initiated no actions since 1980 to change the zoning designation.

Ms. Kanellopoulos said Strategy 1A of Chapter 3, "Growth Management," reads in part, "...only approved new development proposals in the Rural Area that are supported by Rural Area goals, objectives, and strategies." She said the scale and design of the proposal has been analyzed with consistency with the Rural Area chapter of the Comprehensive Plan, and with the scale and design of similar Rural uses (especially Class B country stores).

Ms. Kanellopoulos said the preferred land uses in the Rural Area are agricultural and forestry uses. She said other uses should be supportive either of agricultural and forestry uses, or of existing residents in the Rural Area. She said new structures and uses in the Rural Area, when permitted, should be of appropriate scale and character for the Rural Area. She said that while staff has found that the proposed scale is consistent with country stores, the Commission may make a different finding.

Ms. Kanellopoulos said the Rural Area chapter of the Comprehensive Plan includes guidance on interstate interchanges, stating in part, "...interstate interchanges in the Rural Area should not be used as tourist

destinations or tourist stops along Interstate 64." She said the rural chapter also includes guidance on supported uses in the Rural Area, and that they are intended to provide services for existing residents in the immediate area. She said that while staff has found that the ratio of pass-by trips to new trips is consistent with the Comprehensive Plan recommendation that rural uses serve existing residents, the Commission may make a different finding.

Ms. Kanellopoulos presented the proposed conditions for the development, noting they were the same conditions (with some minor wording changes) as found in the staff report. She said she had discussed most of them on a previous slide, such as conditions on lighting, building architecture, building square footage, hours of operation, and the flow restriction device.

Ms. Kanellopoulos said since the staff report was published, there have been a few recommended wording changes for Conditions 1, 4, and 7. She said the intent of changing the wording is to make enforcement simpler. She said the intent and purpose of the conditions have not changed and, for example, the phrasing of Condition 4 has changed, but the proposed hours of operation remain the same.

Ms. Kanellopoulos said there is one condition that differs from the applicant's proposal. She said the applicant is proposing that fuel sales be permitted 24 hours per day, which would likely necessitate some lighting overnight for the fuel pumps and generate some level of traffic during that period. She said the applicant finds that the hours of operations for the store are acceptable, but is requesting that fuel sales and some lighting be permitted outside of hours of operation.

Ms. Kanellopoulos presented staff's recommended conditions, which limit lighting to the hours of operation. She said the ending time of 10:00 p.m. is consistent with other rural uses and uses adjacent to residential and rural districts. She said County Code prohibits amplified music for farm brewery and farm winery events, which are both rural uses, after 10:00 p.m. during weekdays, and after 11:00 p.m. on weekends. She said this is to limit potential negative impacts nearby and neighboring residential and rural properties. She said that as another example, drive-thru windows that are within 100 feet of a residential or rural district must be closed by 10:00 p.m.

Ms. Kanellopoulos said staff believes it is important to maintain a scale and design consistent with Rural Area uses, using country store Class B regulations for reference. She said staff finds that the extended hours of operation are not consistent with these characteristics, and recommends no changes to Conditions 4 and 2. She said staff and the applicant will welcome Commission guidance regarding this issue.

Ms. Kanellopoulos said based on the findings described in the report, and the factors identified as favorable, staff recommends approval of the Special Use Permit, with conditions. She said staff also recommends that the applicant increase the area designated as "No Parking."

Ms. Kanellopoulos presented the possible motions for the Commission's consideration and offered to answer questions.

Mr. Bivins asked the Commissioners if there were questions for staff.

Mr. Randolph said he had questions for staff, but wanted to hold them to see if other members of the Commission wanted to pose questions first.

Ms. More asked if the notification was sent to adjacent property owners and what the radius was for notifying.

Ms. Kanellopoulos replied that the policy is, for the Commission, notify adjacent owners. She said she has also kept a running email list that was started with the May 22 community meeting, which includes about 30 people. She said this list continues to be updated and was sent the staff report, once it was public.

Mr. Clayborne asked what is allowed by-right. He noted that the staff report said if the water was under 400 gallons per acre, per day, that one wouldn't need a Special Use Permit. He asked if it would be fair to say that a Dollar General or Advance Auto Parts, if it fell within that threshold, could come in without needing a Special Use Permit.

Ms. Kanellopoulos replied yes. She said the auto service, convenience store, and restaurant are the CI uses that need a Special Use Permit, regardless of water usage. She said the other CI uses only need a Special Use Permit if they are above 400 gallons per acre, per day.

Mr. Dotson said the Commission was provided with a handout about country stores. He said he was interested in that this project might be different from a country store. He said, for instance, he saw the phrase, "Historic country store buildings," and asked if this meant that country stores would only be within an existing building, or if they could be a new building.

Ms. Kanellopoulos replied that there are two types. She said the Class A country stores are in existing historic buildings, which are by right in the Rural Area. She said the Class B country stores are new building, which are by Special Use Permit in the Rural Area.

Mr. Dotson said in terms of the number of pumps, he was looking at the third page of the handout, which talked about sale of gasoline and other fuels, and that it refers to no more than six nozzles, including nozzles for diesel fuel. He asked how many nozzles the current proposal contained.

Ms. Kanellopoulos replied that there are ten nozzles, but that two are reserved for diesel, which would equate to being two nozzles beyond the six.

Mr. Dotson asked if there was a reason in the condition that staff didn't use the term "nozzles," but used "pumps," noting he found this to be very confusing.,

Ms. Kanellopoulos replied that when these particular regulations were written, there was likely a different setup at that time. She said her interpretation was that one pump is two nozzles. She said staff used the term "fuel pumps," as they have used it for other conditions for other gas stations, and that they were trying to keep consistent wording. She offered to look into changing the wording to make it clearer, if needed.

Mr. Randolph urged members of the public to look at page 6 of the staff report, under Section 3 "Harmony," whether the proposed special use will be in harmony with the purpose and intent of the chapter. He read directly from the staff report, "Section 18-22 of the Zoning Ordinance outlines the intent of the C1 Commercial Zoning District. C1 districts are hereby created, and may hereafter be established by amendment to the zoning map to permit selected retail sales, service, and public use establishments, which are primarily oriented to central business concentrations." He asked staff to tell him where the central business concentration is on Black Cat Road and 1-64.

Ms. Kanellopoulos replied that the actual zoning designation was not under review at that time. She said this was the intent of establishing the district, but that the district has already been

established. She said that since the district is already there, staffs review is if the proposed use is consistent with the scale and intent of other rural uses.

Mr. Randolph asked if this therefore meant that if the use is permitted, it helps create the central business concentration that they are discussing within the CI area. He said currently, there is no central business concentration. He said this piece of property is stale zoning. He said it is an artifact of the past where the County has never, as with 87 other properties that are not conforming within Albemarle County, sought to bring those properties in conformity with the Comprehensive Plan. He said if the Commission and the Board of Supervisors permit this to be a C1-zoned business, then that becomes the marker that establishes the start of a central business concentration in this location. He asked if he was correct.

Ms. Kanellopoulos replied that staffs interpretation is that this language would be used if they were looking at an actual rezoning, or looking at rezoning one of the other RA properties to She said they would then look at the intent of the C1 district. She said the district is already established there.

Mr. Randolph said this was true for one single piece of property. He said one piece of property, therefore, automatically becomes a district. He said he would revisit this point later.

Mr. Randolph said his second question was about page 7, uses permitted by right in the district. He said the decision to zone this property commercially was made in 1970 and upheld in 1980, and no action has been taken by the County to amend the zoning. He asked if Ms. Kanellopoulos could cite any example of the other 86 properties that are also nonconforming, where the County has taken any action to amend the zoning.

Mr. David Benish (Director of Planning) asked Mr. Randolph if he was referring to other like properties not in the development area.

Mr. Randolph replied he was referring to other properties in the Rural Area under the Comprehensive Plan, and are yet nonconforming uses. He asked if, other than this case, there were any other uses where the County has urged a rezoning of that property. He said the sentence makes it look as if the County has not taken any action to amend the zoning. He pointed out that the County has not taken any action to rezone any of those nonconforming use properties.

Mr. Benish replied that the corner of Georgetown Road and Hydraulic Road is in the Rural Area and was rezoned from a gas station use to an office use.

Mr. Randolph said he stood corrected because one out of the 87 uses were rezoned. He said otherwise, the existing 86 have not been changed. He asked if this was correct.

Mr. Benish replied that to his knowledge, the example he cited was the one he could recall doing most recently.

Mr. Randolph stated that the rest were still, then, nonconforming uses.

Mr. Randolph said page 8, regarding scale, it states, "Country stores are considered small-scale, supportive uses in designated crossroads communities." He asked staff to identify where the crossroads community is at Black Cat Road and 1-64.

Ms. Kanellopoulos replied there is not a crossroad community at that location- She said staffs interpretation was that country stores do not only have to be in crossroads communities. She said the language in the Comprehensive Plan is that they are small-scale, supportive uses.

Mr. Randolph asked if a gas station with 10 gas nozzles considered "small-scale."

Ms. Kanellopoulos replied that staff's interpretation was that having three pumps equivalent to six nozzles to be visible, and then having two relegated and not visible, was consistent with the scale. She noted that the Planning Commission could also make a different finding on that.

Mr. Randolph said there is some question as to whether gasoline sales are a primary or ancillary use. He said on page 9, "Discussion of Proposed Conditions," the applicant originally was proposing 24 hours a day gasoline sales. He said to him, this doesn't square with an ancillary use. He said the applicant has now voluntarily elected and agreed to cut back to only operate 17 hours out of 24 hours a day with gasoline sales.

Mr. Dotson commented that he didn't think the applicant had agreed to that.

Mr. Randolph said the applicant has proposed this, and have agreed to consider that. He raised the question of whether 17 hours a day was an ancillary use in terms of gas sales, noting staff thinks that it is.

Ms. Kanellopoulos replied that the ancillary uses are listed with more specific percentages, such as 51% of the gross floor area for country stores for food sales. She said there is not a square footage, hours of operation, or other regulation for the sale of gas, and that it is only listed as an additional use. She said staff interpreted this to be within the same hours of operation as the store. She said the end time operation of the store was looked at with other Rural Area uses, like farm wineries, farm breweries, and with those having an end time of 10:00 p.m.

Ms. Kanellopoulos said the applicant is requesting 24-hour fuel sales, and that staff is recommending against that. She said this is still a condition that needs to be discussed by the Commission.

Mr. Randolph said he would raise the question that if the applicant wants 24-hour fuel sales, he fails to see how staff could look at this as an ancillary use.

Mr. Gordon Sutton, President of Tiger Fuel Company, said Tiger Fuel is a locally-owned and family-operated company that was started in 1982. He said a core tenant of the company's identity is supporting the communities that have done so much to support it. He said they are actively engaged in a multitude of philanthropic efforts, of which they are very proud. He said they have 270 employees and treat them like family members. He said they have recently built a primary care facility that is dedicated only to the use of their employees and gives them same-day concierge-level health care. He said Tiger Fuel was recently voted one of the top three places in the Charlottesville Albemarle area to work.

Mr. Sutton said he was sharing this information with the Commission because he was proposing to offer a location that he believes will be an asset to the community. He said the company feels that the stores (such as Bel Air and Mill Creek Markets) will do much to support the agriculture and rural nature of the area.

Mr. Sutton said they would provide a place for members of the community to receive healthy meals, items such as milk and eggs, fuel to run their farms, and well-paying jobs. He said they also generate tax revenue and keep those dollars local.

Mr. Sutton said the company is also extremely environmentally conscious and responsible. He said the proposed site, much like the last two the company built, will have solar panels on the roof and on the gas canopies. He said they have proposed EV chargers as part of the site plan. He said they are actively promoting reforestation efforts at existing pumps at other stores.

Mr. Sutton pointed out that they are the only site that is commercially zoned in the area, and that it has been that way for 50 years. He said they have been actively trying for three years to get the site approved. He said there are some fears, perhaps on the Commission and with some neighbors, that this is the tip of the iceberg and will lead to much broader development in the area. He assured that this was simply not true. He said it was the only commercially-zoned piece of property in the area, and even with it being commercially zoned, the company has been burdened with three years and close to \$100,000 in fees in an attempt to get the project approved.

Mr. Sutton stressed that Tiger Fuel is a locally-owned, family-operated business. He said he was born on Woodbound Road and grew up across the street from where the site will be. He said it matters a great deal to the company to be good members of the community. He said they have listened to feedback from the neighbors and staff, and at every juncture, they have accommodated those requests and scaled back their proposals greatly.

Mr. Sutton said Tiger Fuel has an economic model they have executed in the County that is economically viable. He said some other country stores that have been referenced throughout the process that are of a smaller scale are simply not economically viable. He said they supply many of them, and they are routinely going out of business, which is not good for the community or neighbors.

Mr. Sutton said if he is at the store and actively running it, neighbors can call him, and he will be there to remedy whatever the issue is. He said if they are run off in a national outfit with deep pockets and a team of lawyers come in, they will be forced to call a 1-800 number and talk to someone who doesn't care about the community. He said he genuinely cares, which has why his company has worked so hard to accommodate concerns from the community and staff.

Ms. Kelsey Schlein (Planner, Shimp Engineering) said she would dive in deeper to the design iterations they have gone through with the proposal. She said as Ms. Kanellopoulos stated, the applicant has made some commitments on the site, and that Tiger Fuel has the ability to do that partly because they are local and invested in the community, and have the autonomy over their site design to make the commitments to scale and intensity.

Ms. Schlein presented a reiteration of many of the conditions that specifically relate to design details stated in the staff report. She said she also included an exhibit about the full cutoff lighting, noting this was a term often thrown around, and is a technology that has been developing over the past few years. She said they were now at a point where they could concentrate light directly where it is needed.

Ms. Schlein said one of the conditions of approval is that all lighting fixtures must be full cutoff. She presented an exhibit to demonstrate what full cutoff means. She said if they are thinking about a standard football stadium built in the 1970s through the 1990s, they are looking at a non-cutoff orb. She said now, the conditions in the ordinance call for full cutoff on all fixtures on the site, and presented a picture of what that would look like.

Ms. Schlein said additionally, there have been a few changes to the site as proposed. She presented the original proposal for the Special Use Permit concept plan. She said this was based off of the conditionally-approved site plan on the property, which was approved in 2019. She explained it shows the traditional gas station orientation, with six pumps, noting that it is very familiar to Tiger Fuel customers. She explained how customers pull in to get their gas, pull up to the market to buy food items like sandwiches and coffee, and head out. She said this was something that works for the company and that they have established it in other locations.

Ms. Schlein said the applicant has worked with staff to scale the design to be specifically catered to the site, and provide something different for this area. She presented the change to the orientation to the store, enhanced architecture, and added requested features. She said they redesigned the canopy and the architectural design details. She said there is a canopy that looks much more like a pole barn proposed for the site rather than a typical fascia with a flat roof, which is more typical to see for gas station uses. She said they removed parking from the frontage so that headlights from parked cars wouldn't shine onto adjacent properties as people pull into the site, and tried to keep it more internally located.

Ms. Schlein presented the updated proposal, noting that Tiger Fuel is agreeable to staff's conditions to reorient the design, which brings the facade more forward and focuses on having interaction with the street and visibility of the market, rather than the visibility of the fuel pumps.

Ms. Schlein said she would go back and forth between the designs to show the revisions that have been made to the application. She said in addition, quite a bit of landscaping has been proposed, such as a double-staggered row of evergreen screening trees, enhanced landscaping across the front to be consistent with the Entrance Corridor guidelines, and trees planted 35 feet on center with staggered shrubs.

Ms. Schlein thanked staff for working with the applicant on the design. She expressed hope that the Commission would consider the design iterations that the applicant has gone through in making the proposal consistent with the scale of the area.

Mr. Bivins opened the public hearing.

Mr. Hays Lance, Jr. (4640 Vista Court, Troy) said he would center his comments on the Tier 3 water study. He said staff has reported that there is sufficient supply of ground water in the area to support the project. He said he was baffled by this finding. He said he has done two years of research on this topic. He said they have databases and research findings going back 40 to 50 years that clearly demonstrate that this is an area of low-level yields, and no water. He said that, in fact, in the area, they have had to frack wells to get water. He asked how one would refute these 40 to 50 years of research findings.

Mr. Lance said as a result, he had a number of questions he wanted to propose that were still unanswered. He asked why the Tier 3 study document was the only one used to justify the factors favorable conclusion. He asked who actually reviewed the document. He asked who among the hydrologists reviewed it, and what their comments were.

Mr. Lance asked what protocol was used to select only 11 domestic wells, which were the foundation of the study. He said they were only within 2,000 feet of the proposed location. He said there were hundreds that could have been selected, and that he wanted to know how and why the 11 were selected.

Mr. Lance said he posed these questions to the County Planning staff, and that he had a list of people who could perhaps answer his questions. He said he followed through and the response he received was that they did not know how to get the answers to the questions, and that he would need to contact the author, whose information was listed on the front page of the document. He asked if the sample of 11 wells was randomly chosen, and why it was the only sample chosen, as they could have used multiple samples. He asked what statistical significance there is when 11 are chosen among hundreds that could have been.

Mr. Lance asked who actually visited the sites to see where they were located. He said topography has a major impact on well yield. He asked if anyone spoke to anyone in the community about their wells and well yields, *and* that the answer was no.

Ms. More acknowledged that the Commission had emails from Mr. Lance.

Ms. Nancy Smaroff (4640 Vista Court, Troy) said the proposed Tiger Fuel Exxon is an interstate hypermart to her, and others who are categorizing the proposal. She said that according to VDOT's AADT data, 45,000 cars travel 1-64 daily.

Ms. Smaroff said water usage data are moving targets in the two proposals that were given. She said in the first proposal, water usage was based on two Tiger Fuel hypermarts (Mill Creek and Bel Air). She said Mill Creek is 2 miles from the 5th Street exit, and an interstate traveler would be hard-pressed to find the hypermart. She said the Bel Air station is 3 miles from an interstate. She asked why data from the Ruckersville hypermart now used in the proposal when Tiger Fuel owns the Exxon interstate hypermart three-tenths of a mile from 1-64 at 5th Street exit She said to keep in mind that this hypermart is three exits from the one proposed in Boyd's Tavern.

Ms. Smaroff asked how many Tiger Fuel hypermarts are built in residential, rural communities where the water source is from individual wells. She said July and August tend to be the hottest months with the least precipitation. She said at her residence, she tends to be very conservative during these months because there are microclimates and topographic features that impact precipitation in Albemarle County. She said it could be raining in Charlottesville, but not raining in her area.

Ms. Smaroff said last summer, they had 7 inches of water deficit that have not been replenished. She said it is difficult for her to accept that while she conserves water during these months, Tiger Fuel will be using and giving away their water resource in order to sell their products.

Ms. Smaroff said they didn't have to look any further than Zion Crossroads (one exit east) to see how rapid growth and poor planning created the water issues residents and commercial establishments are experiencing now. She said she noticed recently another water tower currently under construction there.

Ms. Denise Young (4650 Vista Court, Troy) said she has three major concerns with the proposal, including the limited water resources in the area. She said the homes in that area are all well-dependent, and that many residents do have borderline water supply. She said one of the houses directly across from the property has two wells in the front yard, and that she assumed this was because one of them wasn't working well enough.

Ms. Young said she was not sure how the company would procure enough water for the thousands of customers that will pass through that area to use the restrooms, the restaurant, and how it would accommodate the cooking and cleaning going on there.

Ms. Young said she was concerned with traffic in the area. She said from the east side of town, there are two ways to get to the area: Route 250, and 1-64. She said Route 250 already is heavily used, with daily delays in the early morning and evening from the Glenmore area onward. She said approximately 9,000 cars pass through the intersection at Route 250 and Black Cat Road every day, according to VDOT. She said most of the traffic is headed towards Charlottesville, and that with the completion of Rivanna Village and Breezy Hill, hundreds of additional vehicles will be traveling in the area every day.

Ms. Young said there seems to be no plan or no ability to expand Route 250 to more lanes from that area, as they are limited by the railroad bridge that was replaced years earlier. She said traffic from the developments is diverting to Exit 129 to get onto 1-64 to get into town, and if 1-64 is blocked by accidents, everyone routes onto Route 250 to try to get past the accident. She said as more traffic comes into the area, they will experience more issues.

Ms. Young said access to 1-64 is right at the interchange. She said it is a small road with two lanes, and is in a curve. She said she didn't know how they would keep tractor trailers from wandering off the interstate and trying to get in there. She said trying to get back to the interstate across that small lane in a curve is going to be dangerous. She said she was very worried about the traffic and the increased problems getting in and out of the area.

Ms. Young said she feels very sorry for the people who own the homes directly nearby. She said she was sure that when they purchased their properties, they didn't anticipate this would be in the front yard or side yard. She said she worried about their property values and what they will be able to do with their land, in the future.

Mr. David Valecki (4900 Mechunk Road) said he wanted to reiterate much of what had already been said. He said he has two wells on his property, with documentation about them. He said one gets about 3 gallons per minute after fracking, and the other gets 2.5 gallons. He said water is a major concern for him as well.

Mr. Valecki said he was also concerned about traffic. He said his son, who lives with him, was driving in the area and was T-boned as he was pulling out towards 1-64.

Mr. Valecki expressed that the proposal was out of place in the area. He said Mr. Randolph was correct that this was something that should have been dealt with a long time ago. He said he didn't think having a gas station there would enhance the rural character of the area.

Ms. Pat Young (4770 Mechunk Road) said she lives directly across from the proposed site. She said she has a problem, safety-wise, with the proposal, explaining that tractor trailers already pull off on the side on the on-ramps and park there. She said there are "No Parking" signs there, and they still park there. She said they will not pay attention to any parking signs that might be put off in relation to the project.

Ms. Young said she has been in the area for over 30 years and that she has never been afraid to walk the road or had concerns about the safety of her home. She said she has never had problems there, but that the project would bring about unanticipated problems.

Ms. Young said fumes from benzene gas is something she is told would be emitted from the pumps. She said the breeze always blows from the west, right down Mechunk Road, so any of those fumes will come directly over all the residents who live there.

Ms. Young said she believed this was a totally inappropriate place for a gas station. She said she was happy that this was a quiet area without much going on there, and that this would change her feelings about it. She asked the Commission to take her points into consideration.

Mr. Carlton Brooks (4649 Vista Court) said he is a lifelong resident of Charlottesville and Albemarle County. He disclosed that he is a friend of the owner of the parcel and that he hoped he would still be his friend the next day, as he was opposed to the granting of the Special Use Permit.

Mr. Brooks said he was not bringing forward any new points to the discussion, but that instead, he would state the obvious in the hopes that they do not lose sight of the "forest for the trees." He said Albemarle County has seven 1-64 interchanges and that three of them are fed by US divided highways (Shadwell, Route 29, Route 250 Bypass in Crozet). He said one is fed by a Virginia primary divided highway (Scottsville), and one is fed by an Entrance Corridor divided highway (5th Street). He said that two are fed by State secondary, non-divided rural routes (Ivy and Keswick/Boyd Tavern).

Mr. Brooks said the five interchanges fed by divided highways currently have commercial development, while the two interchanges fed by Virginia secondary rural routes have no commercial development. He said this is unless the Commission recommends approval, and the Board of Supervisors also approves.

Mr. Brooks reminded the Commission of the current traffic problems being addressed at the Shadwell Store. He said VDOT has had to erect pile lines to restrict entrance to the service station from eastbound 250. He said this station has the luxury of entrances on two primary State routes. He said sadly, if approved, the station in question would not have these.

Mr. Brooks said that as he lives approximately three-quarters of a mile from the station, he will be accused of NIMBY (Not in My Back Yard). He said his real concern was for those families that will literally have the station in their front yards. He said he would hate to see their property devalued and their safety compromised as a result of increased traffic congestion.

Mr. Brooks said he believed he was correct in saying that this property is the only property zoned C1 on either the Keswick/Boyd Tavern or the Ivy interchanges. He asked why. He said this parcel was subdivided years ago from a larger rural parcel. He asked if this set a precedent for future rezoning from Rural to Commercial at both of the exits.

Mr. Brooks said the bottom line was that he believed that the Board of Supervisors, years ago, made a mistake in rezoning the property. He said they now have the opportunity to remedy the mistake, or cement it in history and forever change the rural character of the roadway.

Ms. Karen Johnson (4460 Richmond Road, Keswick) said her property borders the subject property on the south side and the west side. She said perhaps she was most impacted by the project.

Ms. Johnson commended her neighbors, stating they spoke eloquently and that she appreciated this. She said her concerns were not different from theirs. She said her primary concern is safety. She said she thinks that the view site coming out of the site is very dangerous, especially if one is going to cross traffic. She said adding more width to the road is not going to improve this.

Ms. Johnson said her second concern was about water. She said she has a well that, in the late 1990s, almost failed. She said her neighbor (a cousin) had a well that did fail. She said when she built her new home in 2009, she wanted to increase the flow from her well, and asked the person putting the new pump in to do that. She said the response was that there is not enough refill, so it could not be done.

Ms. Johnson said she has horses on her property. She said there are several perennial streams that flow through the property. She said when it is dry out, the streams are dry. She said in the spring, or in the past winter when there was lots of rain, the streams gushed. She asked what would happen when there is a drought, and where her horses would get their water. She said she has a well and she uses it for the horses, but that most of the time, she does not have to because of the stream. She said in the summertime, she does have to use the well. She said she is concerned about this, and that she didn't know where the reports came from that say there is adequate water. She said if one lived there, they wouldn't feel that way.

Ms. Johnson asked the Commission to consider this very carefully. She said most of the neighbors do not want the business there. She said they don't need it, and the people who drive past them don't need it. She said they didn't need the added concern about traffic, and frankly, she liked the nighttime sky and resented that after so many years, that would be compromised.

Mr. Morgan Butler (Southern Environmental Law Center) said that Tiger Fuel Markets are likely his personal favorite among gas station restaurants. He said he will go out of his way to stop at the Bel Air Market to get a sandwich, and that it is often a popular lunch destination when there are old college friends visiting him in town. He also acknowledged some of the commendable features being suggested with the proposal, such as solar panels and the EV charger.

Mr. Butler said in short, in many ways, this would be a very desirable proposal if it was the right location for it, but the Comprehensive Plan is clear that it is not. He said first, Strategy 6C of the Rural Areas chapter states that the County should permit uses at rural interstate interchanges that support agriculture and forestry. He said the paragraph below that strategy then explains that some uses allowed by Special Use Permit in the Rural Area Zoning District may be appropriate at rural interstate interchanges because they, "...provide a unique opportunity for agricultural goods to be transported to markets outside of the County."

Mr. Butler said in thinking back to when the discussions on the Comprehensive Plan were happening during the last update, that statement was referring to uses such as packing plants. He said certainly, it means something far more than a gas station and restaurant, where farmers who live nearby might stop to fuel up and grab a sandwich or cup of coffee.

Mr. Butler added that Strategy 3B of the Rural Areas chapter is clear that building new structures for restaurants is not considered appropriate in the Rural Areas, but that this is what the project would require.

Mr. Butler said the staff report seems to hint, in a few places, a line of reasoning that the impacts of the proposal are comparable to a country store, and since new country stores can be allowed in the Rural Areas with a Special Use Permit, this proposal can be considered consistent with the Rural Areas section of the Comprehensive Plan. He said this indirect path for arguing consistency with the Comprehensive Plan proves too much when there are far more specific strategies and statements in the Rural Areas chapter explaining the types of uses that are appropriate at rural interchanges and limiting new restaurants in the Rural Area to existing historic buildings. He said

this use is directly at odds with those provisions and, therefore, clearly inconsistent with the Comprehensive Plan,

Mr. Butler said the Rural Area consistency argument seems to boil down to the assertion that this development would support existing Rural Area residents because it would be a more convenient location for them than other comparable businesses located in the vicinity. He said this becomes the test for Rural Area approvals, then the County's growth management strategy is dead.

Mr. Sean Tubbs (Piedmont Environmental Council) said that like Mr. Butler, he thinks the markets are a great place to go. He said like Mr. Butler, he would also ask the Commission to recommend denial of the permit.

Mr. Tubbs said granting the permit would change the rural character of the interchange, and that the rural character is called for in the Comprehensive Plan. He said it was well within the Commission's purview to deny the use because it would clearly be against the Comprehensive Plan for reasons that Mr. Butler stated.

Mr. Tubbs said there was a specific topic that wasn't included in the staff report the extent that he believes it could have been. He said he has never used the interchange, and that he has lived in the community since 2002. He said much of the reason was that there is nothing there, and that is by design and over years of planning. He said it is also because of things like Objective 6 of the Comprehensive Plan and of the Rural Areas chapter, which outlines and describes the interchange, and the limitations of its access.

Mr. Tubbs said ultimately, the Commission should measure the application against one sentence in that section: "Interstate interchanges in the Rural Area should not be used as tourist destinations or tourist stops along Interstate 64." He said there is much talk about how the vehicle trips generated by this are on Black Cat Road, but that there is a very large highway that is within proximity of the site. He said though he hadn't yet confirmed the numbers he received, between 22,000 and 23,000 vehicles travel in both directions. He said there will be people stopping at this destination.

Mr. Tubbs mentioned the request for the pumps to be on 24 hours a day. He said this request will be received again in two years, or at some point potentially to expand the area. He said the Commission did not have to go down that road.

Mr. Tubbs said the Commission was hearing from many people about the water use, and that he had questions about this as well.

Mr. Tubbs said the traffic is something that must be addressed, as well as the purpose of the site. He asked if it is a country store, as it didn't seem like an existing crossroads community and that the Commission would have to take a careful look. He said incompatible uses can cause a lot of headache and heartache.

Mr. Neil Williamson (Free Enterprise Forum) said the Forum does not take position on projects. He said they have questions about process, and that in this particular case, the question was about zoning and the Special Use Permit, and about what exactly was being measured.

Mr. Williamson said having attended planning school, the Special Use Permit is designed to be something that should be allowed in the area, provided that the impacts are mitigated. He said there has been discussion of this being stale zoning, and that he didn't see that anywhere in the

zoning code. He said it is zoned Commercial, or at least a portion of the parcel. He said he would appreciate a discussion on what this is being measured against and how the actions of the applicant may or may not measure up to allow for the Special Use to be allowed on the commercially-zoned property.

Mr. Greg Duncan (Mechunk Road) said he lived directly across Black Cat Road from the proposal. He said the geographic area of the community has been discussed, but that one thing had been omitted. He said not only is this an agricultural, residential, and rural area, but it is also a historic area. He said directly across from Route 250 on Black Cat Road sits the old Watson's Ordinary, which is commonly called the Old Boy Tavern, which was frequented by Thomas Jefferson, Daniel Boone, the Marquis de LaFayette, and others. He said just to the west on Route 250 is Limestone Farm, which is a 600-acre parcel that is on the National Registry of Historic Places. He said just north of the site is another historic place called Poorhouse Farm, which is owned by Mr. Johnson.

Mr. Duncan said the Commission has several things it has to consider, and that one is the Comprehensive Plan. He said Mr. Butler and Mr. Tubbs spoke to his points on the plan, but that they had forgotten to mention a few of the overarching concerns. He said one is that the plan provides that growth should be in the growth areas. He said this site was not a growth area. He said it provides that there should be a clear line of demarcation between the Rural Areas and the Development Areas. He said if the Commission approves the project, they will destroy that line, and it will cease to exist.

Mr. Duncan said the Commission also has to decide whether or not this will change the character of the neighborhood and if it is in harmony with it. He said after hearing the discussions, he would ask that the Commissioners use their common sense on those.

Mr. Duncan asked if this project would be a substantial detriment to the community, and answered that clearly, it will be. He said he would only mention water and the effect it will have on him. He said he lived his life every day in fear that his well will go dry. He said he owns five vehicles and doesn't wash any of them at home. He said he doesn't water his lawn. He said he has a nice dishwasher but doesn't use it. He said he takes sponge baths several days a week to avoid using the shower. He said this is a real issue to residents.

Mr. Duncan said staff tries to support the project by claiming it is a country store with a gas accessory use. He said this is, at best, backwards. He said this is a gas station with a convenience store as an accessory use. He said the Commission should deny the request, regardless. He said the country store statute mandates that the applicant can only have one dispenser, and that they want five. He said the statute mandates that they can only have six nozzles, but the applicant wants ten (or eight, if considering the diesel).

Mr. Duncan said under the traditional aspects the Commission has to consider, it must disapprove the request, and that under the Zoning Ordinance itself, they must disapprove it. He said they do not have the right to disregard the mandate of the ordinance.

Mr. Cole Peyton (2140 Fox Hunt Drive) said he lives about 1.5 miles from the proposed site. He said he has lived at his address for about 15 years, and has adopted the highway. He said he has walked those roads for 20 years with a pickup stick and an orange trash bag. He said the amount of trash in the area is absurd and yet, he continues to pick it up and clean up after others.

Mr. Peyton said many of his points had already been spoken to. He said water is a serious issue, as well as traffic and safety. He said this was not a growth area, and that Glenmore and Rivanna Village are a couple miles down the road. He said this was at Exit 129, and that there is full service available at Exits 124 and 136. He said the business is not needed at Exit 129. He said there was not a single person there (except the applicant) that advocate for the establishment. He said there was no one within 10 miles of the exit that thinks this is necessary. He encouraged the Commission to keep the County green.

Ms. Jill Farrell (4785 Mechunk Road) said she has lived at her address for 13 years. She said she moved there because it was a quiet, country, dirt road and she has chosen to never pave the road. She said when she goes to work in the morning, it is very difficult to get out. She said she has to zoom out in between cars because it is a very busy road. She said she used to walk her dog on the road, but she doesn't anymore.

Ms. Farrell echoed Mr. Peyton's point that there was trash everywhere on the road. She said people stop at the top of her road to eat their food and dispose of it on the road. She said they dump diapers, heroin needles, and all sorts of things there.

Ms. Farrell said the residents there want to live in the country. She said when staff talks about this being in support of the local community, the residents are the local community, and that this project would be for the people traveling from Lake Monticello and Richmond, and from Crozet to Richmond. She said the residents don't need it, as there is a full service market nearby. She said she didn't mind driving to Giant to get a gallon of milk and that she buys in bulk.

Ms. Farrell said the water was another issue that had already been spoken to. She said her biggest concerns were safety on the road, trash, and lighting. She said there is a lot of traffic on the road. She said she loves Tiger Fuel Markets as well, but that people were going to come off the interstate to go there because they would have easy access to get their breakfast. She said it will increase traffic coming off of 1-64 traveling both east and west.

Ms. Farrell urged the Commission not to approve the request, emphasizing that it would ruin the road.

Ms. Linda Sprouse (4714 Mechunk Road) said she lives directly across from the property where they want to put the station, on the corner. She said she does not want a gas station across the road from her.

Ms. Sprouse said many times, she comes home and cannot even get into the driveway. She said she used to have a small driveway, like a farm road, and now they have a big, wide driveway where everyone pulls in, parks, and she cannot even turn to get into the driveway. She said she has to let down on her horn and that hopefully, someone will move to let her in. She said this is scary because you don't know what those people are there for, and she cannot get into her driveway. She said she is the first house there.

Ms. Sprouse said she picks up trash on 616 all the time.

Mr. Bill Johnson said he was one of the older people who lives in the neighborhood, as he arrived there in 1971. He said his farm, Poorhouse Farm, is on Black Cat Road and that it has the longest property frontage on that road.

Mr. Johnson said regarding traffic on the road, he has had a horse killed, a dog hit, a neighbor hospitalized, and two other members of his animal family who got in trouble there. He said they have had fences broken because people race down the road. He said the traffic will not get any better and will only get worse. He said people say there are perhaps 10,000 cars, but that the numbers will become much bigger with the traffic the business would draw in.

Mr. Johnson said he was not against the stores, or the Suttons. He said the Suttons used to live right nearby. He stressed that the site was the wrong one for a property like this. He said this was a money-marking venture and not a convenience for all the neighbors. He said there are plenty of conveniences right down the street at different exits. He said where he lives, no neighbors are really for it, but close their doors and eyes to the matter.

Mr. Johnson said there was a judgmental mistake made of going too far with the application. He said common sense would deem that the business is not needed, so the question was why to be for it.

Mr. Johnson said with the water situation, he has new wells. He said they ran dry in the 1970s. He said he has a wife, three daughters, and a farm. He said they ran out of water, and [Landy Moore] got them 2.5 gallons a minute at 240 feet. He said there is not much excess water around for anyone.

Mr. Johnson said he hoped the Commission would use common sense, and that most people in this part of the County would vote against this, as there are plenty of opportunities to shop at the Shadwell Store and others.

Mr. Bivins called the applicant forward to speak again.

Ms. Schlein said this is a CI -zoned property and has retained that designation since 1970, when it was originally rezoned from AI to B1. She said there are a number of by-right uses in the CI district that would be allowed on the property, limited to about 1,300 gallons of water usage per day, including department stores, drug stores, food and grocery, sporting goods, offices, laundromats, and dry cleaners. She said these by-right uses would be contingent upon limiting to the 1,300 gallons per day.

Ms. Schlein said in response to the water data that has been provided in the past, in conjunction with the review of the site plan in 2018, there was data submitted from the Mill Creek location as well as from the Bel Air location. She said since then, the Ruckersville store has opened and has similar (if not the same) fixtures as would be proposed for the site. She added they used the Ruckersville store because there were concerns about traffic, and the traffic that may be captured from 1-64.

Ms. Schlein said the Mill Creek and Bel Air locations don't have the same amount of traffic, so they pulled data from the Ruckersville store for water usage because there are 19,000 trips on Route 33 from Amicus Road to the intersection of Route 29, and there are 29,000 trips on Route 29. She said the intent was to pull water data, for comparison purposes, from a store that is heavily traveled, and that this was the reason for including the additional water usage data.

Ms. Schlein said regarding trash concerns, within the bounds of the property, it is in every interest of Tiger Fuel to keep that area clean and looking nice.

Ms. Schlein said she hoped some of the support letters that were sent in to staff were also forwarded to the Commission. She said many of those individuals couldn't join them that evening, but that there were quite a few support letters that were forwarded along.

Mr. Justin Shimp (project engineer) said Mr. Nick Evans (the author of the Tier 3 groundwater study) was present and could shed light on the specific questions.

Mr. Shimp said a grocery store could use 1,300 gallons of water per day and be deemed by right. He said the applicant is limited to 700 gallons per day (about half of that). He said this approval actually takes the water usage down from the by-right use, coming to about half a gallon per minute over the course of a day.

Mr. Shimp said the site is about 3 acres, and in the Mechunk subdivision, many of those lots are about 1.7 acres, with wells and septic on those lots. He said they are roughly the size of two of those lots, and that 700 divided by 2 is 350 gallons per day, which is about two three-bedroom houses. He said the equivalent water usage is two three-bedroom houses on a similar-sized acreage. He said they were not taking more water or a larger share than anyone else. He said that, in fact, there is additional 10 or so acres behind them that is not proposed for development that contributes to the site's groundwater recharge. He said as far as scale of water usage, it was not different than residential, and was half of what could be allowed by right without any of this discussion occurring.

Mr. Evans (Barboursville) said he is a consulting geologist who has been working in the area for 30 years. He said his agenda, if he has one, is to encourage and foster informed decision making on the basis of water. He said he brings in his knowledge of science to whatever the project is and has stood at the podium many times over the years for different Commissions.

Mr. Evans said in listening to the concerns of the neighbors, it is important to have a better understanding of what the science is behind the groundwater situation. He said there is no conceptual river there that everyone is "sticking their straw into" that is all connected. He said if someone puts a well in south of Black Cat Road and starts pumping water out of it, they will not be taking water from someone down the road, as it doesn't seem work that way. He said they model this and cannot look at it directly, but can experience it through drilling holes and seeing what happens there.

Mr. Evans said he is a licensed driller and has drilled wells in the area, and so he has direct experience from that standpoint. He said he has walked the property and all the land around there in the process, both for this application and for other clients of his who have had trouble with their water and needed advice on what to do in terms of drilling wells.

Mr. Evans said the recharge for the wells in this type of geology tends to be very local. He said that in other words, the water that is feeding many of these wells is coming from likely the parcel that the well sits on, and not the James River or some far-off place. He said the reason the yields on the wells are so variable is that they are not well interconnected in terms of the fractures that they tap down beneath the surface.

Mr. Evans said this was why, in the report he wrote (noting it follows the ordinance the County has required to look at the wells within a certain amount of feet of the parcel), there is a lot of variability of the wells that are in the database, which have yields that range from 20 gallons per minute to 0 gallons per minute. He said they are not all interconnected or else, they would have the same yields.

Mr. Evans said that, in terms of putting a well on this site of the application, it was not implicit how much water the applicant is going to be able to get by drilling a well there, as this was a different matter. He said his point was that in this geology, on average, there should be enough water if they drill a random hole in the ground to suit the applicant's need. He said that with pulling water out of the ground through that well and then returning most of it into the ground, through the drain field, it was very unlikely this would have any measurable impact on existing users in the neighborhood (i.e. nearby wells).

Mr. Evans said one of the main missions of writing a Tier 3 report is to evaluate the potential negative effects of the proposed use to existing users. He said the science, combined with his experience and that of his colleagues, have come to this model of the situation where there does not appear to be a great deal of connectivity between wells in this type of geology, on that type of scale such as where water being pumped on the proposed site would have any impact on a well that is even a few hundred feet away.

Mr. Evans said the other main reason behind conducting a Tier 3 report is to determine if the proposed use will likely have a negative effect on the resource over time. He said in this case, they are not pulling the water out of the ground, putting it off in water bottles, and shipping it off. He said they are pulling it out of the ground and putting it back into the ground, on the site. He said this is the type of water usage termed "non-consumptive." He said his analysis of that is that it is very unlikely that this will have any deleterious effect on the resource over time.

Mr. Shimp said he had points to make about traffic, and that the County Transportation Planner likely did as well.

Mr. Bivins said he would close the public hearing and if staff needed to refer to the applicant, he would defer to them.

Mr. Randolph asked Mr. Evans if, during his preparation for the report on the application, he looked at the Groundwater Exploration Report done by Golder Associates, submitted to the Timmons Group in May 14, 2014 for Keswick Hall's application before the Board of Supervisors for expansion of Keswick Hall.

Mr. Evans replied that he has read that report.

Mr. Randolph asked Mr. Evans if, in his determination of water supply, also utilize (as Golder Associates did) electrical resistivity imaging procedures.

Mr. Evans replied that he does this process all the time.

Mr. Randolph asked Mr. Evans if he did so for the subject site.

Mr. Evans replied that this costs money and that he has not been asked to do that. He said this would be an excellent way to determine where best to drill a well on any parcel.

Mr. Randolph asked if this was not done on this site.

Mr. Evans replied no.

Mr. Randolph said the reason he raised these questions was that the Timmons Report clearly identifies that the mine-run complex of Gambian rock formations to the east of the Everonna complex (where the limestone array that Keswick Hall was drawing water out of) have poor water producing characteristics, with typical well yields ranging from 15-40 gallons per minute. He said in terms of the location of the proposed gas station, it runs right into the mine-run complex and is therefore identified as having low water yields, compared to the formations to the west. He asked if his understanding was correct.

Mr. Evans said this was correct. He said he didn't know if he would use the term "mine-run complex," but that the important point was that it was a fault zone. He said the Everonna limestone is within the fault zone, but the implications for water are more to the extent that the fault zone is very fractured. He said those fractures extend beyond the fault zone, into the mine run to the southeast and perhaps onto the property, and beyond, which may be why there are some wells in the area that show 20 or more gallons per minute yields and have not been so subject to drought. He said they either hit the fractures, or they don't.

Mr. Randolph said Mr. Evans just cited, and provided for the record, that he thought the recharge for the wells in the area is primarily local and yet, Timmons identifies the source of recharge in the Keswick area as being from the eastern slopes of the Blue Ridge Mountains to the northeast. He said this would indicate that when there is a time of drought (which the area experiences extensively in 1999), the recharge capabilities, with less precipitation in the Blue Ridge Mountains, would adversely affect all the wells in that location. He asked if this was correct.

Mr. Evans replied this was correct.

Mr. Randolph said another thing from the Timmons report that he wanted cited in the record was Section 3-4, which cites that the work performed by Schnabet provides significant evidence that the development of additional wells in the Everonna, just to the west, would impact only wells located within a small radius, and that even those impacts would be minimal. He said outside of Keswick Estates, the areas development is anticipated to be confined to low density (i.e. large lot residential uses). He said the report therefore concludes that, "It is highly unlikely that Keswick Estates would either impact, or be impacted, by additional development in the area." He said at the time the report cited, they weren't anticipating a gas station coming into the location.

Mr. Evans said he has shied away from going into a complex geological explanation, but that briefly put, the Keswick wells are part of a major aquifer that runs along the axis of the fault zone he referred to. He said he had written a paper about the recharge for this coming primarily off of the east flank of Southwestern Mountains and down into the Mechunk River Valley that the limestone and fault run in. He said the wells he referred to that are challenged, relative to recharge, are not interconnected with that aquifer. He said it was possible that fractures do extend from that out into the mine run, and it is possible to hit those.

Mr. Evans said one way to determine if they are there is to run geophysics, and so there are ways to locate that. He said this is hit or miss on most residential lots, as it would likely be on the proposed site. He said if they drill a well, they do it where it is convenient and take their chances. He said they may hit a fracture that is well-connected with the major aquifer to the northwest of the site, or they may not and may just have their own small pocket of water. He said he has imaged these things with geophysics and seen it, and has drilled the well.

Mr. Evans said they can recharge some of those pockets at a rate that will sustain a gallon to two gallons per minute, which is fine for most residents, but that it is vulnerable to the droughts. He said

it is not likely vulnerable to one's neighbor pumping his well dry, and that it was not implicit at all that him drying his well up will have any impact on the neighbors.

Mr. Randolph said one thing Mr. Evans helped identify, for the record, is that he can say there is a possibility there is no impact on neighbors, but that he cannot say scientifically and definitively that in this location, it would work that way, because there is no quantitative data such as in the Timmons report. He asked if there could possibly be adverse impacts.

Mr. Evans expressed that he was lost, asking what Mr. Randolph meant by "adverse impacts." He said there could be an adverse impact if a well is drilled on the site and happens to connect with another well somewhere. He said that even in this case, the amount of water being pulled out is very modest, relative to Keswick Hall.

Mr. Randolph agreed with this point, but countered that Mr. Evans was holding all other things being equal because he was not factoring in the potential of drought conditions. He said one thing he noted about Mr. Evans' study was that there was no mention of drought conditions whatsoever.

Mr. Evans said drought conditions will affect this site, as well as any other site, in addition to the water supply for the City of Charlottesville.

Mr. Randolph agreed, but pointed out that based on the testimony provided by residents, the wells seem to be unusually subject to low levels of gallons-per-minute rates.

Mr. Evans said some are and some are not.

Mr. Randolph agreed.

Mr. Evans said he did not know what the yield of a well drilled on the site would be until it is drilled.

Ms. More asked if there were 11 test sites, and if they were randomly selected.

Mr. Evans replied that he didn't understand this statement in the public comment portion. He said the diagram included in the report may include 11 wells, but that it was simple that the ordinance specifies that the well yields, depths, and casing lengths be looked at for wells that are within a specified radius of the site. He said the database was something the County assembled over a period of years, then stopped due to funding, making it a more static set of data currently. He said he has access to that database and that is where those wells in the report came from.

Ms. More asked if on the chart, it looks at the 11 domestic wells in the database.

Mr. Evans replied yes, adding that those were wells that happened to be in the database. He said as clearly seen, they do not encompass wells on each of those lots, nor are those wells actually georeferenced to where they actually are on the lot itself. He said the database does not have that degree of resolution to it.

Ms. More said directly above that in the report, where it references the table, it points out that dry holes are zero, and GPM wells are underreported in the database.

Mr. Evans said this was correct. He said the statistics there are based on a query of all of the wells that are within that geologic formation. He said someone had referred to the Candler formation and that this is a different formation. He said the averages are based on all of the wells that are in that type of geology

throughout the County that are in the database. He said he believed there were about 1,800 wells in the database for the entire County, and that obviously, there were many more wells out there than that, but that this is what he had to work with.

Ms. More asked Mr. Shimp to again walk through his comparison for the use of the site divided into two residential lots.

Mr. Shimp said that to clarify about the Tier 3 groundwater report, it is not necessarily the job of the report to identify how much water the applicant will have, but to make sure they will not have an adverse impact on the neighbors. He said the geophysics would pertain to where they would put their well, but was not necessarily a representation of if a neighbor would be affected. He said the neighbors would likely not be affected from a well on that property because of the specific geology.

Mr. Shimp said the total use was a major point to consider, as the question was what the density would be if the lot was zoned RA. He said they would have five development rights and could put in two 2-acre lots along the road, and drill two wells rated for up to 450 gallons per day each for each house, which would be 900 gallons per day. He said his point was that they are essentially two small houses worth of water on land that, if zoned Rural Area, would be entitled to that usage. He said with the Special Use Permit's condition, they would actually be going down in water consumption from what it would be if it was RA zoned, and half of what is allowed by right as zoned Commercial.

Ms. More said this was a hard sell for her but that she appreciated Mr. Shimp's perspective. She said she could not see two small houses using that much water.

Mr. Shimp said these were the numbers. He said considering what would be used for a 4-bedroom house, a Health Department permit requires design of 450 gallons per day for the use of the house. He acknowledged they may not use this every day and that it was more of a peak. He said 450 times 2 is 900, and so the comparison is that the applicant's use was similar to that of two houses.

Mr. Bivins asked if there were additional questions for staff, noting that staff from both Zoning and Transportation were present.

Mr. Clayborne asked in terms of character of the nearby area that is unchanged in the recommendation from staff, if there was a conversation with the applicant about site maintenance. He asked how often refuse would be collected on site, when trash trucks would come, and about rodents and pests that could come into the restaurant.

Ms. Kanellopoulos replied that this was not specifically discussed, as it is not part of the typical review.

Mr. Sutton said he could answer questions about the refuse collection schedule. He said they are highly motivated to keep the area clean, as it is a critical component of running all their stores and something they pride themselves on. He said it was important to rid the landscape of the trash that some of the neighbors have encountered. He said they typically get a visit from a refuse pickup once a day, and that it depends on the volume of the store. He said based on projections for this store, it would be a dumpster pickup once a day.

Mr. Dotson asked if Tiger Fuel sometimes sells their stations, referring to the Hydraulic Road location.

Mr. Sutton replied that they lease them to other tenants, and that the Hydraulic location is now a 7-11.

Mr. Dotson asked about Hollymead.

Mr. Sutton replied that the same scenario was there, with a 7-11 at that location.

Mr. Dotson asked in terms of controlling the site, when Tiger Fuel leases it to someone else, if they retain the ability to control the site as much as when they own it.

Mr. Sutton replied that it was to a lesser extent. He said if visiting the Hollymead site, the architecture stays, and that part of the Special Use Permit process was that those restrictions would be placed on the site in perpetuity, regardless of who owns and operates it. He said he could not predict and that he understood the point Mr. Dotson was trying to drive at, but that his desire was not to do this again. He said he didn't think anyone who would be interested in leasing a site would be interested in this site after all the modifications to accommodate requests from staff have been made.

Mr. Dotson said many people (including himself) are making an assumption that there would be a sign of some sort on 1-64 indicating food, gas, or something about the existence of the station.

Mr. Sutton replied that his understanding was that he could not have any signage beyond what is already there, with the blue Virginia logos sign. He said with the signage already there, they would likely have an indication that there is gas and/or food there, but that there would be nothing in excess of that.

Mr. Dotson asked if someone traveling on 1-64 would know that they had a gas or food option at that interchange.

Mr. Sutton replied yes.

Mr. Dotson said on the comparables, several of the neighbors made the point that the applicant has not cited data on water usage from stations at interchanges. He said he believed he read in the staff report that in terms of traffic, the assumption was that there would be no additional traffic, but would be local traffic already passing by the site.

Mr. Sutton replied yes. He said one of the neighbors referenced the 5th Street Station location that he would be more than happy to share that data, as the water usage is well below what is used at the deli stores. He said the reason they did not share that data was that they didn't think it was a relevant operational footprint as compared to the other two deli stores, where they did share information. He said the reason for that is that the deli stores do use much more water in the preparation of food and the washing of dishes. He said at the 5th Street location, the water usage is well beneath what was submitted. He said the only water used there is in the brewing of coffee and the flushing of urinals.

Mr. Dotson said if this were to go forward to the Board of Supervisors, having that data would be useful.

Mr. Sutton replied he would be happy to share it, as it would strengthen his case.

Mr. Dotson asked what the contingency plan would be if there were a drought and the well was not providing adequate water.

Mr. Sutton replied that he didn't anticipate this being a problem. He said he would anticipate having a small cistern or tank that would provide a small buffer, and that they would be restricted by the valve they have agreed to provide. He said they have faced this issue with their carwashes, noting that this was not part of the proposal. He said they would either have to shut down or truck water in for the carwashes.

Mr. Dotson said staff was recommending a 10:00 p.m. closure for all aspects of the operation. He said his understanding was that Mr. Sutton was disagreeing with this, and asked him to respond.

Mr. Sutton said that trying to operate a business like this and have it be economically viable is extremely difficult. He said they have put together a model that they have proven to work in other locations, and have deviated immensely from that model to be a cooperative, collaborative partner in this effort. He said his fear is that if they are not able to generate revenue by selling fuel under the canopy at night with the full cutoff fixtures that produce no light pollution, it will be the "straw that breaks the camel's back."

Mr. Sutton said he was already extremely apprehensive about all the incremental expenses they have encountered in the process, and the reduced capacity that their site has to serve the customers. He said this struck him as a very reasonable ask that, for reference, was recently granted by a court for a restoring station that had a similar restriction put on them via a Special Use Permit. He said it seemed like something that was consistent and recently verified in court.

Mr. Dotson asked how this would operate with no attendant.

Mr. Sutton replied that the fire code has stringent plans which they are required to adhere to. He said with unattended pumping, there is an emergency shutoff valve that needs to be well-lit, well-signed, and available to the customer. He said it is a very common practice that exists throughout the County.

Mr. Dotson asked if there was no staff member present.

Mr. Sutton replied this was correct.

Mr. Bivins said whatever motion they would make, they would allow Mr. Randolph to do so.

Mr. Randolph said he wanted to see if there were other comments from the Commissioners before doing so.

Ms. More said she actually had many questions about the large trucks parking there, and that she knew there was an answer as to how that would be avoided. She said she heard enough about that.

Ms. More said in terms of the ancillary use (to Mr. Randolph's point), the original request was for 12 pumps. She noted the terms about the pumps and nozzles were confusing. She said the request was now for 5 pumps, with 6 nozzles. She said there is the ask for the 24-hour pumps running, and that she understood the reason for asking.

Ms. More said she has been back and forth on the issue and that for her, she respects the fact that they have the right to use their property. She said even though they speak of those properties as "stale zoning," or a legacy property that have zonings that don't fit within the expectations of the Comprehensive Plan, they exist.

Ms. More said there is an argument being made, however, that she was having trouble with that the project helps the neighbors. She said other gas stations and convenience areas were not very far away, and so she didn't know if she saw this as a crossroads area. She said she didn't think she heard from those who live immediately around the site that this would be something they would enjoy having as a convenience to them. She said more so, it would bring traffic off of 1-64, and those who are just passing through the area to get to 1-64 to work and back to have a place to stop where they have managed to find other places to stop.

Ms. More said if the application were to move forward, she felt that they were in the situation where the applicant would be back to ask for the 24-hour pumping or for more pumps. She said they would be entering into a situation where she didn't know if this would benefit the community.

Ms. More acknowledged that the applicant has tried to make some concessions and that she appreciated those. She said she didn't think there was something she objected to about what the applicant has done, and that they have tried to scale things back to try to make it fit. She said to her, it still doesn't fit.

Ms. More said when talking about property rights, it strikes her that there are people who live and own property in the area who have property rights as well. She said considering noise, light pollution, traffic concerns, and other things that currently exist, and whether or not the matter would be worsened with water usage, she has let go of some of her detailed questions because what really strikes her is that when the Commission often talks about these properties, what is not part of the conversation is the rights of those who live around there who chose to live in the Rural Area for the benefits that it provides. She said this proposal was at odds with this.

Mr. Clayborne agreed with all of Ms. More's points, adding that he continues to go back to the word "harmony." He said a sub-question was if there was a public need for this, and what the impact would be on the quality of life. He said both of those questions were spoken to during the testimony.

Mr. Clayborne said in terms of the program being proposed, if one drives 3.7 miles towards town at the corner of Richmond Road and 250, or Louisa Road and 250, the exact same program exists, even with the wine shop. He said this is less than 5 minutes away and is even closer to Pantops. He said based on what he has heard, he didn't see how this was a public need, and that it seemed to have negative impacts on those in the area.

Mr. Carrazana said he has heard the words "not fitting" a number of times. He said he appreciated the work staff did in working with the current zoning and finding a way this could potentially fit. He said ultimately, they were finding that it is a "square peg in a round hole." He said where he had a challenge reconciling was with the inconsistency with the Comprehensive Plan, and that he was not sure he had heard anything that resolves those concerns.

Mr. Dotson said he thinks the rural interchange policy is very clear in addressing uses like this one at a site like the proposed location.

Mr. Bivins said in 1970, the town's fathers and mothers decided that this piece of property could be a B1 property. He said in 1980, they also decided it could shift from being a B1 to a C1, and now in 2020, the property is still a C1. He said he has wrestled with this and understands it is a wonderful wooded and forested area down the street and then going towards 1-64 across historic farms and properties.

Mr. Bivins said the point he wrestled with the most was that if this was modern iteration of Boyd's Tavern and Boswell Tavern, which were created in the 1700s to do a similar kind of thing the applicant was trying to do, except they had stables, groomsmen and other individuals who provided services to the passers-by and those who lived in the communities. He said he knew people would say that this was in the 1700s and that there were not automobiles.

Mr. Bivins said the thing he struggled with was how to take decisions that were made in the 1970s, the decision to leave the property as C1, and in 2020 to have it remain as a C1 and allow the property to be put to some productive use that may, in fact, be helpful and profitable. He said another by-right use that could be there were a dollar store (noting these are not helpful in rural communities). He said the conversation he has been having internally is what to do. He said the use would clearly change the way of life in that particular location. He said he has wrestled with the question of if this is the time to do this, or if it is the time to ask the Supervisors if perhaps a different use should be put onto the property.

Mr. Bivins said this was the position he arrived to, and that it was not because of Zion Crossroads (referencing the turn lanes there), or what may happen at the Shadwell exit and further into town. He said the question for him was about this piece of property being in tension because the predecessors and leadership in the County decided to leave it one way, and that they had a fair business use that's being asked to turn it into something that it was intended, as an automotive service station, which is what a B1 was.

Mr. Bivins said now, there is a community that has grown up and has a series of expectations, and zoning that has come through that has pushed the use of that piece of property into tension where it sits. He said it was very uncomfortable to him that they, as leaders, are trying to make a decision between a fair and property use of a piece of property and the community that the use would be in.

Mr. Randolph said this was well said. He said the Commission can and should reject conceding this commercial use to this nonconforming property for two reasons. He said first, the Comprehensive Plan, Chapter 7, page 33 notes that interstate interchanges are included in the discussion about distinct boundaries between the RA and the Development Area, as these interchanges possess, "...the capacity to both reflect and retract from the rural nature of the County."

Mr. Randolph said the tension was found there in the Comprehensive Plan, where the Board of Supervisors and Planning Commission (on which he and Mr. Dotson sat 2011-2013) wrestled with this question of, at these interchanges, they possess the capacity to both reflect and detract from the rural nature of the county. He said the Comprehensive Plan recognizes the binary dimension of Albemarle's rural interchanges reflective of the Rural Area, or a distraction to the Rural Area. He asked which is it, and who is the deciding body. He said ultimately, it rests with the Board, but it comes before the Commission because it is the first filter.

Mr. Randolph said there is no way the Commission and the Board, in 2012-2013, intended for a gas station to be viewed along "narrow-winding" Black Cat Road as reflecting the RA. He said they never thought of a Rural Area being associated at the interchanges with a gas station. He said a gas station is a distraction to RA uses, to RA neighbors, and to RA character.

Mr. Randolph added that the Comprehensive Plan clarifies that rural interchanges such as Black Cat with 1-64 are appropriate for by-right or special permit uses involving agriculture and forestry. He said looking at Chapter 7, page 34, it specifies that there should be Ag-Forestry uses that had

to be carefully assessed through Special Use Permits for their size, scale, visibility, and function. He said all of those are enumerated in the Comprehensive Plan.

Mr. Randolph said the application before them contains no Ag-Forestry dimension, as Mr. Butler mentioned, and therefore, the Special Use Permit is incompatible with the uses established by the Comprehensive Plan for rural interchanges and possesses a size and scale inconsistent with the Rural Area.

Mr. Randolph said perhaps a country store would be acceptable in the Rural Area, but the fact of the matter was that a gas station that serves food is still a gas station and is not automatically a country store because it is in the Rural Area.

Mr. Randolph asked if petroleum sales were an ancillary use there. He explained the definition of ancillary being like a maid servant and therefore, is being subservient or subordinate, according to the Latin roots of the word. He said in this location, it is very apparent that the primary purpose of all of the operations is the sale of petroleum. He noted that had this proposal been submitted by Wawa, a company founded as a dairy outside Philadelphia in the 1960s, the applicant (Wawa) could make the argument before the Commission in the 1960s that their primary business would be milk sales and not gasoline. He said this is really where convenience stores started, and in many cases, it was a means by which they sold agricultural produce along with gas.

Mr. Randolph said everyone would laugh because they recognize that a fuel company intends to operate a store, but primarily attracting customers via petroleum sales. He said their primary purpose is not ancillary for petroleum sales, but that it is primary.

Mr. Randolph asked if there was a substantial detriment. He said a hallmark for Special Use Permits in the Rural Area is to ensure the permitted activity does not result in a substantial detriment to neighboring properties. He said the existence of a service station in this rural area introduces increased traffic and could pose a safety risk for Mechunk neighbors because of access to their small road directly across the street from this gas station. He said while the latter is hard to quantify and will be easily dismissed by the applicant and supporters as mere NIMBYism, the reality is that the rural character of this stretch of Black Cat Road will be substantially altered by the gas station outcropping, much to the detriment of the neighbors.

Mr. Randolph said the applicant's hydrologic study presents no awareness to the impact of the 1999 drought in Central Virginia and wells in this area, particularly. He said the projection in the Timmons study was premised on there being only low-density residential uses in the area. He said the increased water demand and expanded Keswick Hall, together with the opening of this interstate-based gas station, will increase the water demand at the expense of strictly rural residential users during drought conditions. He said they will experience drought conditions again in Central Virginia.

Mr. Randolph moved to deny SP201900006 Boyd Tavern Market.

Ms. More seconded the motion to deny, which carried unanimously (5:0).

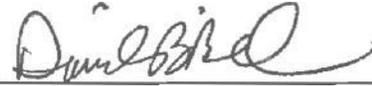
Mr. Bivins informed the applicant that the Planning Commission has denied the Special Use Permit, and that this recommendation would be moving on to the Board of Supervisors where they would have the opportunity to make their arguments.

Mr. Andy Herrick (County Attorney's Office) clarified that it is the Planning Commission that is recommending denial, and that it was up to the Board of Supervisors to ultimately decide on the application.

At 8:10 p.m., Mr. Bivins announced a 10-minute recess.

At 8:24 p.m., Mr. Bivins called the meeting back to order.

At 10:01 p.m., the Commission adjourned to February 11, 2020 Albemarle County Planning Commission meeting, 6:00 p.m., Lane Auditorium, Second Floor, County Office Building, 401 McIntire Road, Charlottesville, Virginia.



David Benish, Interim Director of Planning

(Recorded and transcribed by Carolyn S. Shaffer, Clerk to Planning Commission & Planning Boards)

Approved by Planning Commission Date: 02/18/2020 Initials: CSS
