

Albemarle County Planning Commission
April 9, 2019

The Albemarle County Planning Commission held a public hearing on Tuesday, April 9, 2019, at 6:00 p.m., at the county Office Building, Room 241, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Tim Keller, Chair; Julian Bivins; Jennie More; Daphne Spain; Bruce Dotson; Pam Riley, Vice-Chair; Karen Firehock; and Luis Carrazana, UVA representative.

Other officials present were Leah Brumfield, Senior Planner; Amelia McCulley, Director of Zoning/Zoning Administrator; David Benish, Interim Director of Planning; Rebecca Ragsdale, Senior Planner; Kevin McCollum, Planner; Carolyn Shaffer, Clerk to Planning Commission and Andy Herrick, Deputy County Attorney; and Stephanie Banton,

Call to Order and Establish Quorum

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

Public Hearing Items

ZMA201800017 Woolen Mills Light Industrial Park

Mr. Benish introduced the item, which was a proposal to amend the steep slopes overlay zoning district to change the designation on a 19,000+ square feet area of steep slopes that are designated as preserved slope.

Mr. Benish stated that the property is located on the corner of Franklin Street and Broadway Street and is an industrially zoned property. He said there was a previous request for amendments to the slope designations on the property. He added that the bullet he displayed on the screen indicated that this was a request for one piece of slope on the property, and that there are two other areas that would not be affected by this proposal.

Mr. Benish displayed a map of the site and said it was a map from the 2015 rezoning application that showed the three areas that were under review at that time. He said Area A and Area B on the map were not under consideration with this rezoning because there were not requests for changes to those preserved slopes. He stated that the current request was for Area C, which is a larger area than before. He said the map he had displayed showed about 27,000 square feet that had been looked at in the previous proposal. He noted that the map showed several small green areas which were determined not to be a 25 percent slope.

Mr. Benish indicated on the map the area that was being looked at with this rezoning. He said the boundary for the property had expanded and he indicated where the new boundary was. He said the map previously showed several small divots in that area and that the area being

requested for the change from preserved to managed slopes was approximately 19,600 square feet.

Mr. Benish said the Comprehensive Plan recommended as Parks and Green Systems, an area typically used with areas of natural resources or active parks, playgrounds, trails and other proposed public spaces. He said a designation change was made in the 2015 Comprehensive Plan in the Southern and Western master plan that was part of the adoption. Mr. Benish said the change was made there because the property contains land that is in the flood plain of Moores Creek. He said the Comprehensive Plan identified that if in the future there were different land uses, that would be the recommendation for a rezoning.

Mr. Benish said the Master Plan also identified all critical slopes in the area and designated them for protection, but he said the plan did not identify which slopes should be managed and which should be preserved. He stated that it was his understanding that when the steep slopes ordinance was adopted, it was not clear in the designation for this property that the slopes were to be managed. He said the determination was made at a higher level. He said in some locations it was known whether slopes were man-made, but in this case, staff did not know whether they were or not.

Mr. Benish displayed the site on the map and said it was at the corner of Franklin Street and Moores Creek Lane, which goes into the Moores Creek Wastewater Treatment Plant. He also showed the portion of the property that is within the flood plain.

Mr. Benish said that in the assessment of the slope area, staff had found that the slopes did have characteristics of both managed and preserved slopes. He said in the ordinance, managed slopes were ones that can be graded and developed upon, but there were certain design standards that control how the development takes place. He said one of them is that retaining walls were limited to six feet in height and another is that there were landscaping requirements for replanting. He said two-to-one slopes are required for planted areas and if they were to be regularly maintained or mowed three-to-one slopes would be required. Mr. Benish said there were other technical requirements for bays and for containment of stormwater runoff.

Mr. Benish said that in evaluating the site, staff realized on a field visit that some of the slopes designated as preserved were probably not 25 percent slopes. He said there was no field analysis but the observation was based on walking in and seeing them. He said staff had a very general ballpark of what the area was and said it was about 5,000 square feet to 6,000 square feet, but that was an eyeballed figure based on the GIS system. He said it still had resulted in an area of disturbance greater than 10,000 square feet in size.

Mr. Benish said staff found that most of the steep slopes were man-made and resulted from fill from a railroad bed. He said staff did not know the exact source of the fill material. He said staff was not sure if the slope contained cut-and-fill materials from the site, or whether some of it was imported. He said it was likely a combination of both, but with a fair amount of imported material. He said it was not a naturally occurring slope.

Mr. Benish said staff's assessment is that the slope area is unstable with a mixed quality of vegetated cover. He said there had been some erosion and there was a lack of deep-rooted vegetation that would protect the slope area.

Mr. Benish said the slope band, the length of area, ranged in size between 70 and 20 feet. He said it was connected to other slope areas that abut streams, and those connections were by the narrowest portion of the slopes but ranged in size of around 20 feet. He said the slope areas ranged from 130 to 240 feet away from the Moores Creek floodplain.

Mr. Benish displayed a map showing the requested area of change, stating that it was a band that was approximately 20 to 30 feet in width and that it connected to a critical slope system around the treatment plant and the floodplain. He said he did not put the floodplain limits on the map he was displaying but indicated it on the screen.

Mr. Benish displayed another map that showed the general area and said that by looking at it in the field, staff found there were not 25 percent slopes within the area. He said there was not a field run analysis but that staff felt fairly confident.

Mr. Benish displayed another map that showed the distances of the slopes from the floodplain. He showed where the distance from the slopes to the floodplain limit was about 240 feet and showed the closest point was about 20 feet.

Mr. Benish displayed a table with the actual criteria for the ordinance for evaluating whether the designation of a slope should be managed or preserved. He said that was the rule of thumb number used for preserved slopes is 10,000 square feet and said the subject property was over 10,000 square feet in area.

Mr. Benish said the fill slopes were not associated with abutting water features, such as rivers, streams, reservoirs and ponds. He said that staff found that because of the distance and the narrowness of the band that connected it to the other slopes abutting the flood plain, the subject property was more disconnected section of preserved slopes. Mr. Benish said there were no hard and fast rules in the ordinance that indicated what distances were right or wrong. He said generally county staff looks at 100 feet for stream buffers or 200 feet in areas that were in the water supply watershed. He said the subject slopes seemed to be in excess of 100 feet from the flood plain .

Mr. Benish said the slopes were not natural but were manufactured. He said they were fill areas that were primarily from construction of the railroad bed. He said the slopes were significantly disturbed prior to 2012, a criteria that was used in the 2012 update of the ordinance.

Mr. Benish said the criteria for preserved slopes was contiguous areas of 10,000 square feet and staff estimated the subject area were over 19,000 square feet and potentially more in the 14,000 to 15,000 square feet range. He said the slopes are identified for research protection in the

Comprehensive Plan and that the future land use recommendations are for Parks and Green Space, with that designation made because of the continuation of the resources on the total 36 acres of the property.

Mr. Benish said staff had found that the slopes had characteristics of both preserved and managed slopes. He said the characteristics were strong for preserved slopes given its size and that it was connected to abutting floodplain, and because of the Comprehensive Plan recommendation for open space. He said the primary characteristics for managed slopes were that they were manmade slopes, and staff felt the slopes were poor to moderate quality and relatively unstable. He said there was erosive activity and a lack of stability in the existing vegetation.

Mr. Benish said staff's opinion was that the area is best served as being designated for managed slopes and that the conditions for managed slopes could better address the development conditions on the site, and staff's recommendation was approval of the request to managed slopes.

Mr. Keller asked Commissioners if they had any questions of Mr. Benish before the public hearing was opened.

Mr. Dotson said he had been confused about the Comprehensive Plan designation. He said at one point it was designated as Parks and Greenspace, but at another it was indicated for Industrial Service. Mr. Benish said that had been an error related to an effort to stay consistent with a nearby rezoning on Franklin Street, and he had used that previous staff report as a basis to keep the discussion points similar. He said that when that rezoning was approved, staff had just adopted the Comprehensive Plan and it had changed the land use designation. Prior to the 2015 Comprehensive Plan, the land had been designated for Industrial Service. Mr. Benish said he had failed to make the correction before it was initially advertised, and the accurate designation was Parks and Greenspace.

Mr. Dotson noted that in another point of the staff report, it was stated the slopes review was not related to a development proposal, but he understood through public comment that there was an approved site plan. He asked for a slide showing the site plan and how these slopes would fit in.

Mr. Benish said he could not find an electronic version of the site plan to upload because of computer problems. He said there was an approved site plan for 113,000 square feet of building area on the site, and he was not sure if he had a plan that showed the entire property but the area that would be developed is the entire area not part of the preserved slopes. He said the plan also had a road through the development, and he indicated where this was on the map. He said there was a pad for development that came off of the Yves Delorme property that would access this property.

Mr. Benish said the applicant has also submitted a major site plan amendment that showed revisions, and the applicant could speak to that proposal. He said this was only the third rezoning application after the steep slopes ordinance was updated. He said that from a staff perspective, they had been trying to focus more on the criteria for how the ordinance was developed and looking more on the merits of criteria rather than the development potential of what might happen if the slopes were changed. He said staff's first step was to look at the criteria. Mr. Benish noted that they had not asked for a lot of depth of analysis about the site. He said staff could get further direction from the Planning Commission and the Board of Supervisors on how to address future applications.

Ms. More asked if all of the 19,000 square feet area was recommended to be considered as manufactured slopes, or if only a portion were manufactured. Mr. Benish said most were manufactured but there were some areas that were based on natural topography or old changes to the land, and the tight bands on the map were those associated with the fill area. He said the volume of the fill is high, as the slopes were tall because they were stacked for the railroad. He indicated on the map where the areas believed to be natural and that they were borderline around 25 percent. He said he did not want people to see the 25 percent figure as a hard science number, and they came up with that number as a ballpark. He said the area was above the 10,000-square-feet threshold that is one of the criteria.

Ms. Riley asked a question about the characteristics of preserved slopes. She said that the second criteria was that the slopes were part of a system of slopes associated with abutting water features. She asked for the definition of "associated with." Mr. Benish said there was not a fine-tuned definition, but it could relate to distance or the significance of the linkage. He said that was the gray area in the analysis. He said the system of slopes was connected to another system of slopes that did abut the flood plain. He said they could be "associated with" by that definition, but there was a break in the critical slopes. He said that in staff's judgment, they were not abutting but there was no clear guidance on what "associated" meant, and that was a work in progress.

Ms. More asked for clarification that the approved site plan does include the area in question.

Mr. Benish responded that the site plan included all the preserved slopes being maintained – preserved and undeveloped. He said because the slopes could not be used under the ordinance, the applicant had put open space and forest easements as a way to manage stormwater requirements, and there are easements for the areas that are preserved slopes. He said if the applicant were to buy additional offsite credits, they may not need the easements and could abandon them. He said the site plan shows them undeveloped and protected as preserved slopes.

Ms. More asked for clarification about an item in the staff report that said slopes had been preserved by a prior county action. She said it was not a county action that showed the slopes as preserved, but rather the site plan that indicated they would be preserved.

Mr. Benish said that was a tough one for him to grasp and that there were easements on them that protected the slopes because they were unusable areas that need to be preserved. He said the applicant took advantage of the fact they could not be used and placed preserved slopes on them. He said if it were determined that they should be managed, they would have the option to do something else and they could eliminate those easements. He said those were not easements put on for conservation purposes to protect cultural resources or a stream buffer but utilized to address stormwater management regulations. He said it was like a person had been convicted of a crime but the DNA exonerated them, but the judge then stated the guilty verdict still has to be taken into consideration. Mr. Benish said he had to take into account the easements because they were designated as preserved.

Ms. More asked for clarification for the action taken in 2015. She said the staff report had indicated that there were 27,731 square feet that had been part of the 2015 request that were denied but were not part of this. She asked if that was what was considered as the prior county action.

Mr. Benish responded that staff's assessment had been based on the general map without looking at the rest of the area in great detail. He also said the staff report stated that further information and analysis of the area would be needed to make a finding but because it was shown as preserved, those areas should be treated as such. He said staff took it that the 19,000 square feet request was a new request.

Mr. Keller asked Ms. Taylor if there was something about the timer for the public hearing.

Ms. Taylor replied that there were three minutes for the public and that at 30 seconds before the end, the yellow light would go off and the red light would go on at the end of that time. She said the applicant would have 10 minutes.

Mr. Keller opened the public hearing and invited the applicant to approach the podium.

Mr. Kevin O'Brien introduced himself and said he was one of the partners developing the site. He said they were hoping and have a site plan to build a series of pad sites that end users could buy and build upon to place businesses in a light industrial zone. He said they had a site plan that worked around the preserved slopes and likened the plan to a jigsaw puzzle. He said it would be more efficient if they did not have to preserve the slopes in question. He said they were committed to preserving the slopes around the edges and that the site had a ton of green space and more than any other on the Broadway light industrial corridor.

Mr. O'Brien said that he was hoping the Planning Commission would agree that the community zoned this land for light industrial because there was a need for a place for light industry to happen. He said the community elected to make an ordinance that said naturally occurring slopes steeper than 25 percent should be preserved and if the Planning Commission recommended approval of this zoning amendment, both of those things would be exactly true.

Mr. O'Brien said the main points were hit in the staff report and the application letter. He said the slopes were built as a railway siding and it was not naturally occurring. He said it was a green space but there was no significant timber but instead there were invasive species. He said in reading the ordinance, he felt preserving the land would not further the purposes of the steep slopes ordinance. He said it would be a squiggle of land in a light industrial park where zoning permits buildings. He said he hoped the Commission would see the application as correcting an error where the slope was preserved when the ordinance was updated. He said the county looked at a lot of land in a short period of time but boots on the ground showed that the slopes were manmade and a lot of the land is not 25 percent. He said the by-right zoning all around it makes it not contribute to the stormwater management because everything is going to be curbed and guttered.

Mr. O'Brien said if the amendment were approved, the county would have a light industrial parcel that was being used and there would be no naturally occurring slopes that would be disturbed.

Mr. Bivins invited members of the public to speak to the matter and read the rules for speaking.

Mr. Travis Pietila of the Southern Environmental Law Center said he hoped the Commission had received the written comments. He thanked Mr. Benish for meeting with him and other SELC staffers to discuss the proposal and visit the site. He said he appreciated the updated analysis provided by staff before the public hearing, he said there was some key points in which SELC disagreed.

Mr. Pietila said a similar proposal was brought for this site in 2015 and at that time, staff evaluated a portion of the same slopes and had recommended keeping them in the preserved category. He said as far as the SELC could tell, the only change since then related to the county's ordinance was that the slopes were determined to be manmade. Mr. Pietila said when it came to erosion and runoff impacts that disturbing the slopes could have on Moores Creek, it made little difference to how the slopes were formed.

Mr. Pietila said the other obvious change was that the applicant had begun clearing and grading in the areas of the site around the slopes. He said the SELC urged Commissioners to not let that influence their decision for two main reasons. First, he said doing so would encourage developers to disturb sites to improve their chances of getting slopes re-designated. Second, he said it was not relevant to the factors outlined in the ordinance to guide the county's review of preserved and managed slopes.

Mr. Pietila said the SELC believed that to the extent to which the preserved slopes criteria was met for this application is reflected in the staff report. He said of the four preserved slope factors that staff had found to apply, two of them are related to how the slopes are designated in the Comprehensive Plan and had been answered by a qualified yes in the staff report. He said the SELC saw no need for qualification and that the slopes were clearly designated and called out for preservation in a number of ways in the Southern and Western Neighborhood's master plan, including a specific call to preserve steep slope systems adjacent to Moores Creek. Mr. Pietila

also said that SELC believed that two factors staff had said did not apply should be counted in the YES column. He said the currently approved site plan designated the slopes for preservation under forest and open space easement, which seemed to clearly satisfy the factor related to slopes being preserved by a previous county action.

Mr. Pietila said the slopes were part of a system that extended from Broadway into the Moores Creek floodplain which should qualify them as slopes associated with a water feature. He noted that the criteria did not refer to a system of steep slopes. He said in SELC's view, the slopes clearly met five of the seven criteria for preserved slopes under the ordinance. He said the preserved designation should not be taken lightly and should not be given short shrift based on the slopes being manmade or ongoing grading activities occurring elsewhere on the site.

Ms. Robin Hanes of 1709 East Market Street in Charlottesville said she was part of the community response to the owners' efforts to re-designate zoning at an earlier time. She said the community gathered in large numbers to try to dissuade them from doing that in the past. She said it was too bad that it had come back up. She said she believed the slopes did interact with each other to make an important protection of the way the water drains in the area. Ms. Hanes said the slopes were steep and they might have some manmade element to them but the whole area had been totally manipulated. She said to stir up what had been fought for as protection for the way the water drains in the area seemed like an ongoing fight that the community, a hilly community, was forced to revisit too often.

Ms. Hanes said builders don't seem to believe it but that trees were needed to slow rainwater down, soak water up and cool the climate. She said if this was an area where there was less tree growth because the soil was bad, the soil could be improved. She said the land still needed to protect the water. She asked the Commission to recommend not changing the zoning because the builder had totally reconfigured so much of the lot. She asked the builder to use a planning technique that sought balance rather than filling in every inch with buildings and pavement.

Mr. Bill Emory of 1604 East Market Street in Charlottesville said he hoped the Commission would strongly recommend retaining the preserved slopes for all slopes on the property. He said in the five years since the steep slopes overlay zoning district was adopted, the status of the slopes on the Franklin Street hills has been challenged twice. He said the hillside was being threatened a second time despite the existence of an approved site plan for the construction of 113,000 square feet of light industrial space on the site. He said that site plan respected all existing preserved slope areas.

Mr. Emory said at the time of the Commission's discussion of this property in May 2015, it was well known by the presenting planner J.T. Newberry that the slopes in Area C continued onto the adjacent crescent-shaped lot then owned by Yves Delorme. He said that it was known and stated by Mr. Newberry at the time that the railway siding existed and yet the recommendation was to retain the managed designation because it met the majority of the criteria shown in the ordinance. Mr. Emory asked what had changed. He said that there were many defined preserved slopes in the county that have been augmented by human agency on which the preserved

designation has been kept. He asked why these slopes should be the exception. He said planning and vision could make Albemarle better for all of its residents.

Mr. Emory said during the 100 year existence of the Woolen Mills as a going concern, there was no Comprehensive Plan but a vision that industry could improve the life of residents and that happy residents were good for industry. He said that was a time before Euclidean zoning and that the Woolen Mills village was an example of new urbanism before the term existed, with work, residences and recreation woven all together. He said this was an enduring vision that was beginning to return as seen in the designation of this hillside in the Comprehensive Plan as being Parks and Green Systems.

Mr. Emory said we were in an architectural epic which sees bottom-line structures of steel buildings constructed on slabs. He said on the outside they were hard to read and lack fenestration, and they floated in expanses of asphalt. He said it was ironic that we have the knowledge of global warming but are still building Euclidean industrial neighborhoods that no one would want to inhabit and that no one would want to reuse. He said he could imagine a hillside village that allowed light industry but also allowed second-floor tenancy for those who ran the businesses.

Mr. Emory said it was the time to implement the vision of the Southern and Western Neighborhood Master Plan and time to build places worth caring about.

Mr. Mark Kavit of Charlottesville said he wanted to echo what the previous speakers had said. He asked why it was needed to make changes to the property as far as the slopes and taking down the trees. He said it seemed to him that the trees helped stabilize the land and to redo it could make erosion worse. He said even the manmade parts had been there for many decades. He said he was concerned about how close this was to the flood plain of Moores Creek.

Mr. Kavit said that in January of this year, there was a steep slope off of Avon Street going into 5th Street and he wanted the Commission to know that there had been a collapse of the approved slope that slid down into the road bed that had to be built back up. He said he talked to a person who had built that hill and that person said it was way too high and steep. He said that was a manmade slope approved by the county that slide down in three locations after heavy rains.

Mr. Lonnie Murray of 5643 Sugar Ridge Road in Albemarle County said there were two precedents that he found disturbing. He said he was present when the decision was made to separate land into preserved and managed slopes. He said that was a hard-fought collaboration between environmentalists and developers to come up with that solution. Mr. Murray said the deal had been that preserved meant preserved. He said the preserved slopes in this case were getting a lot of attention because there was development potential and there was scrutiny on whether they were manmade and thus should not be preserved. He said there were a lot of areas around Fontaine that are natural slopes that should have been listed as preserved that got listed as managed. He said if there was to be a reevaluation of slopes, this reevaluation should be on a larger scale and not done piece-meal.

Mr. Murray said the other thing that troubled him is that there was a conservation easement on the property. He said he sat on a board that managed conservation easements specifically for stormwater. He said easements are supposed to be permanent and last forever. He said if the county were to vacate the easement, it would set a terrible precedent. He said if there was a local mitigation bank for stormwater, that might be different. He said stormwater credits would be purchased well outside the region.

Mr. Murray said both the Rivanna and Moores Creek had an active TMDL on them for contamination so anything that happens in the area must make conditions better and not worse. He said this should be the ultimate criteria. He said there should be things done like managing invasive species, planting native plants and improving stormwater conditions. He said that does not seem like what was being proposed.

Mr. John Frazee of 1404 East Market Street in the Woolen Mills neighborhood which he said was uniquely positioned to include both the city and the county. He said he was excited about the development that was happening at the Woolen Mill and was glad that the namesake for the community was going to be renovated in a meaningful and respectful way that is adherent to the regulations there to make sure things were done in a way that supports both the economic and the possibility that the landmark is something that would be revived and looked upon people as a model. He said that when he looked at what is going in the steep slopes designation, both in 2015 and in 2019, he said he recognized that the value of the property had probably increased quite a bit due to the Woolen Mills development.

Mr. Frazee said the environmental impact of changing the designation was still the same in 2019. He said the very nature of modifying these things was based on criteria that could be considered, but he said he was concerned about all of the development that could occur in the area. He said there was much potential but if there was not a meaningful respect for previous decisions, it could be very dangerous. Referring to Mr. Benish's comments about DNA evidence, he said this could condemn the steep slopes.

Mr. Sean Tubbs of the Piedmont Environmental Council said if this community were to succeed in growing in a smart way, it will require true collaboration between the city of Charlottesville and Albemarle County. He said that spirit of cooperation was embodied in many ways, such as the memorandums of understanding between the city and the county recently signed. Mr. Tubbs said he was disappointed that the application before the Commission did not live up to the standard of that spirit of cooperation and he wanted to explain why.

Mr. Tubbs said this piece of land was in a critical location for both the city and the county. He said he did not have a specific recommendation on the slopes designation, but it was crucial to remind the Commission of some of the previous planning that had happened at the site and previous cooperation. He said the higher aspirations of planning must be implemented application by application.

Mr. Tubbs said there was a similar rezoning for this land in 2015 and as part of that rezoning there had been a joint meeting with the Charlottesville Planning Commission. He noted that Mr. Keller was at that meeting but Ms. Firehock had been absent. He said there been turnover. He said three of the City Planning Commissioners at that time are still on that and that it would have been interesting to know what they thought of this proposal, and to be informed by the possible impacts that would come with more intense development at the site. He noted that the map being displayed indicated the location of a trailer park on the Charlottesville side of the border, and that those trailers were likely not long for this world given all the changes that had occurred in the area since 2015.

Mr. Tubbs said he was concerned that the Character of the Area section of the staff report did not indicate any substantial changes between the staff report from 2015 and 2019. He offered several examples of what changes had occurred, such as Charlottesville rezoning land at the former H.T. Ferron Plant and that 150 residential units are proposed for that location. He said Albemarle had adopted the economic development strategic plan which called for an economic development planning exercise for the area called the Broadway Blueprint. Other changes included the signing of the MOU's, the Woolen Mills redevelopment and the Thomas Jefferson Planning District Commission's completion of the first phase of the Rivanna River Plan.

Mr. Tubbs said there was a lot of intense activity in the area and both communities must be working together because without communication there would be distrust. He said the only way to get to the parcels in the county were through the city so making sure there would be coordination would be a good thing. He asked why there had been no joint meeting scheduled with the Planning Commission, stating that there had not been a joint meeting since October 2016 and he hoped one would be scheduled in the near future.

Mr. Keller invited Mr. O'Brien to come back up for a summary.

Mr. O'Brien said there were a few points made that he wanted to address. He said there was a lot of difference between this plan and 2015. He said there were different owners and that his group was not the one that put forward that plan. That plan had involved entrance and egress off of Franklin Street and removing all of the buffer between the zone and the residential zone. He said the former plan had involved blasting and building one large 60,000 square foot warehouse. He said the current plan preserves all of the naturally occurring slopes on Broadway, Franklin, and on Moores Creek Lane.

Mr. O'Brien stated that they would only enter through the areas that do not require disturbing the slopes, and the current plan was terraced as opposed to being flat, meaning they will work with the contours of the land. He said the land was perhaps best suited for an idyllic vision of a village where you can live and work, but this town and county has designated it for light industrial and they bought it because it had that designation. He said that they had moved forward in good faith to make the best plan to develop that as a resource for the city and to make a living and to preserve the character of the hillside. They had studied the plan before and found problems with it so they did not put it forward.

Mr. O'Brien noted that Mr. Emory had mentioned that the village of Woolen Mills was created because there was light industry in the region and Belmont was created for the same reason. He said it would be good for the county and the city to have more places close in where people can have light industrial sites so people can walk to work. He said on the whole this property being efficiently developed might prevent sprawl and people having to do work on land that is currently pristine and rural. He said he understood that everyone loves trees and that the site would be five acres under development and nine acres under development. He said the land was a strip of borrowed material and gravel that was dumped there by the railroad that had a bunch of weeds growing on it. He said after all the by-right development was completed, this land would not better function than all the other preserved slopes below it. He said the county's rules required him to put curb and gutter all around it.

Mr. O'Brien said the environmental impact of removing the slope would be close to zero if not nil. With regard to a comment about the visual impact, the land would not be visible from anywhere. He said if the slopes were recognized as a railroad embankment at the time the ordinance was created, they would have been designated as critical slopes.

Mr. Keller asked Commissioners if they had questions.

Mr. Dotson said that it was a fact that there was an approved site plan he asked Mr. O'Brien if he would develop that plan if this rezoning were not granted, Mr. O'Brien responded. Mr. Dotson asked Mr. O'Brien how he thought it might be a better decision to approve the rezoning and what improvements that would bring.

Mr. O'Brien responded that it would eliminate retaining walls that are required at the base and top of those slopes. He said the grades of the whole park would be gentler and there would be less travel way to get around the area meaning less pavement. He said there would be better circulation in the site which would make it more useful to the industry that hoped to locate there.

Mr. Dotson asked what benefits would come from having the site be terraced. He asked if it was because of a line of preserved slopes. He asked if it would be turned into a larger pad if it was not terraced.

Mr. O'Brien said the railroad dropped gravel on an existing slope. He demonstrated how that was a 25 percent steep slope. He said because the land was a hill, it would still be terraced. He said the site plan did not show blasting and level the slopes as the previous plan had done. He said their plan has different elevations at different levels. He said terracing would allow for there to be more efficient use of the land so they could build more buildings with less or the same impact. He said it was a win-win.

Mr. Dotson asked if the rezoning would allow more buildings.

Mr. O'Brien responded that it would.

Ms. More noted that the applicant had owned the land when the original site plan was approved, and she wanted to understand why this was not an issue then and why this had come back.

Mr. O'Brien said the site had been heavily wooded and covered in brambles. He said the maps had told them they would not be able to design anything on a preserved slope and they agreed with that. He said when they got the building and grading permits, they began to clear the land and discovered railroad ties indicating it had been a railroad on a sliver of manmade slope. He said they went to the county and broke the site plan into two phases and that they had proceeded with phase one.

Mr. O'Brien said if the rezoning was not approved, he would proceed with building the site plan on record but if it was approved, they would build something better.

Ms. More said it struck her as odd that the railroad bed wasn't noticed prior to any moving of dirt going on.

Mr. O'Brien responded that they noticed the railroad bed when they were clearing and grubbing the site. He said this had been a long process. He said they had to find a way to keep working.

Ms. Spain noted that a member of the public had said there was a conservation easement on the property.

Mr. O'Brien said that was a misnomer and that county rules allowed developers to offset the impervious area that would be put down by putting open space easements on areas that would be left green. He said when they put in the site plan, they weren't allowed to clear and grub until the site plan was approved. He said it made sense to put the land under an open space easement because if not they would have had to have spent money to do something offsite. He said he believed in keeping the preserved slopes as preserved.

Mr. Keller closed the public hearing.

Mr. Dotson asked Mr. Herrick about the question of vacating easements and a statement had been made that easements were for perpetuity.

Mr. Herrick said the applicant had stated that the term open space easement was a misnomer. Mr. Herrick said the exact terms of the easement had not been presented to his office but if this a stormwater based forest open space easement, that would be a different animal than the typical conservation easement. He said the application did not affect that open space easement and that is why it has not been discussed or before the Commission.

Mr. Dotson asked if the county would hold the easement.

Mr. Benish said the engineering department would review the plans and receive them. He said they would need to achieve certain requirements from the ordinance to attain stormwater approval. He said those could be done on-site or done with off-site credits. He said part of that factor is to preserve open space areas. He said this easement is established with an agreement with the engineering department. He said they could be revised if alternatives were approved.

Mr. Dotson asked if there would be a tax benefit with the open space easement as in with a conservation easement. Mr. Benish said the stormwater management plan would need to be amended to the satisfaction of the county engineer. He said he believed there was a clause that allowed for adjustments of the easements.

Ms. Spain asked when the Comprehensive Plan designation had been changed to Parks and Green Systems.

Mr. Benish said it had happened in 2015 along with adoption of the Southern and Western Neighborhood Plans. He said the recommendation was embedded in that master plan.

Ms. Firehock said she had various credentials including being a certified erosion control inspector, degrees and experience in natural resources management. She said her expertise is in water quality stream buffer management, and so on. She said when looking at the site, the Commission should look at the purpose of the preserved slopes ordinance. She stated it was to protect the integrity of the landscape, to prevent erosion and to protect water quality.

Ms. Firehock said someone in the audience had stated that it did not matter how the slopes were formed and they should be protected. She said she could agree with that to some degree but in this case, she had seen tremendous amounts of bare soil on the site. She said she had pictures showing all of the exposed soil. She said it was unsolidated rough fill and had been a railroad bed. She said the problem with the material was the instability and that a native tree planted on the slope would give way because it would be like planting in a pile of gravel.

Ms. Firehock said the slope was eroding rapidly at a high rate because it is steep due to artificial construction. She said it was made of poor rubble and dump material that did not have any cohesion in place.

Ms. Firehock said if the objective was to protect the water quality of Moores Creek, the best thing would be to disturb and stabilize it by taking out the unnatural and improper fill material, planting it with native soil, and then planting it to stay in place so that the end result would result in a better condition. She noted that the area did have hackberry trees, native species with tremendous wildlife value. Ms. Firehock said these were also not trees you would want in a developed site because they spread their limbs into open space and the berries drop. She said the hackberry was not suitable for this site.

Ms. Firehock said she did not find that the site was supporting a diversity of native species, was not natural, and did not possess integrity.

With regard to a comment about surveying all of the land under the ordinance for a more accurate map, Ms. Firehock said that with a 721 square mile county, it was not possible to do a full field survey of all of that land. She said these kinds of applications would come up again. She said if it was a manmade slope that took on characteristics of a preserved slope and was stable, she would be leaning in the other direction. She said in this case, the Rivanna River and Moores Creek would be better served by reconstructing the slope.

Ms. Riley asked Ms. Firehock if she thought the slopes had more characteristics of a managed slope.

Ms. Firehock responded they were absolutely manmade and that you could see the railroad bed. She said she had picked up coal from the site. She said groundhogs on the site had helped with a soil profile by digging pits and throwing material out around their dens. The material was the same material as on the top.

Ms. Spain said she agreed approving the soil would be the best outcome but that was not the decision before the Commission. They were faced with either allowing the development to proceed or not.

Ms. Firehock said that under the managed slope ordinance, it would not take them out of any slopes designation. She asked Mr. Benish what happened when a slope was changed from preserved to managed.

Mr. Benish said there were design standards and once it was designated as managed, the developer would have to meet certain design standards for retaining walls, which have to be terraced at a maximum height of six feet. He said the cuts and fills need to be two percent slope and vegetated with shade trees. He said if the slopes were to be regularly maintained and mowed, the slopes would have to be three-to-one slopes. He said the slopes associated with the railroad were in the range of one and a half to one slopes.

Ms. Firehock said that meant they were extremely steep. Mr. Benish agreed.

Mr. Benish said there were also certain criteria for how the bottoms of the fill slopes would come together in cut and fill areas. He said there had to be a ten foot separation and that there were requirements for reverse slope benches for drainage purposes.

Mr. Benish said under a preserved slope, the developer would have to leave the slopes alone except remove dead species.

Ms. Spain asked how given conditions of the managed slope, how could that be converted to buildable land.

Mr. Benish said that it would allow them to adjust the slope and regrade it. He said reconstruction standards create sound replacements.

Ms. Firehock further described the conditions of the existing slopes and said the developer would need to reduce the steepness of the slope. She said the existing slopes are not stable and are contributing to erosion.

Ms. More asked for clarification that if it were to stay preserved, there could be no changes. She said there had been a comment about retaining walls and asked under what scenario that would happen.

Mr. Benish said if it remained preserved, retaining walls would be built up to where the preserved slopes are designated, but the slopes themselves could not be touched except for minimal maintenance.

Mr. Bivins thanked Ms. Firehock for her expertise and knowledge on the subject. He also thanked everyone who sent in letters with concern. He said he aligned himself with Commissioner Firehock and believed the slopes should be moved from a preserved slopes to a managed slopes. He said when he visited the site it felt like an abandoned piece of property with tires, concrete and other things that had been thrown away. He said the owner had no sense whether the land had been preserved, not preserved, or managed.

Mr. Bivins said if the property were left like this, it would continue to be a place where people would dispose of unwanted items. He said it is a railroad bed that looked like it had been abandoned. He said the ground felt soft and unstable and did not feel like it was a place that would ensure being left to its own care.

Mr. Bivins said if the county is trying to recreate a space that is open for economic development then leaving the space unchanged would not add to the economics and the livelihood of the community. He said many people calling for the designation to remain the same might be surprised and disappointed about how the strip of land would look if preserved.

Ms. More asked about the question of whether changing the designation would set a precedent. She said when she looked at the charts, regardless of how attractive or stable the slopes were, staff had provided boxes to check. She said she would argue that under preserved slopes, there were boxes she and others would have checked. She asked staff for advice when developers come forward in the future and insist their slopes should remain preserved.

Mr. Herrick said each rezoning is site specific and in cases where the question is managed versus preserved slopes and in each case the Commission looks at characteristics of individual sites. Mr. Herrick said Mr. Benish included within his staff report and his presentation a checklist that analyzed the specifics of this site. Mr. Herrick said it may be helpful for future applicants to look back and see past decisions that have been made but every site is unique as to whether it was created by humans or was naturally occurring. He said the precedential value is limited.

Ms. More said that was part of the reason why she was conflicted, and she appreciated the points about what would be preserved if it stayed in the preserved category but said she felt all of this was part of a bigger contiguous area. She said she echoed public comments that had been made that maybe partners that could have been brought in to weigh in. She said staff had done a good job but she said there were some stakeholders present who had strong opinions. She said she was not an expert on whether this was better for the stream or if it should be left the way it is. She said there were people she would have liked to have heard more from.

Ms. Riley thanked Ms. Firehock for her site visit which she said lent validation to the staff report. She said she thought the finding she was hearing is that overall it was manmade and that it was not stable. Ms. Riley said she was struggled in the staff report with this being a judgment call about what the quality of the slope, specifically related to soil conditions, stability and the usefulness in storm runoff. Ms. Riley said she was convinced these were not stable slopes and she agreed with Ms. Firehock that the Commission should move to relabel them as managed slopes.

Mr. Keller said his initial response from the site visit was the same as Ms. Firehock's. He said he has wrestled with this because of the concern of whether this would set a precedent. He said there had been another slopes application at the last meeting and the public reviewed the vegetation and the hydrology because they are all related.

Mr. Keller repeated a previous comment from another meeting that staff and the Commission needed to talk with Supervisors about how to proceed with the ordinance now that there have been a couple of applications. He said the county is better off with a steep slopes ordinance but that these applications are showing up more often.

Mr. Keller said that if the Commission had seen the site plan for the whole site and saw how there could be other solutions to this modification of the contours that could possibly have remediated or possibly better answered some of the questions that have been heard from the public related to hydrology and vegetation. He said that approach would have been preferable. He said the fact that the Commission did not have the site plan has been an area of question since Mr. Dotson brought it up.

Mr. Keller said managed slopes can have cultural resource value that was significant, and that could even conceivably even be the case with this application. He said there could be a working of a trail that was at grade, but it got all convoluted because of the way these applications are worded right now.

Mr. Keller said he thought these slopes were managed and could be reworked and the design can give a better solution to the hydrology and the vegetation on site than leaving them preserved.

On the subject of precedent, Mr. Dotson said he recalled a time when the county adopted for the development area preserved and managed slopes, it had been pointed out that this was GIS level for prevision and it was expected people would come forward if they had better information. He said this was a good precedent to examine in greater depth.

Ms. Spain said she valued Ms. Firehock's expertise, but she was sympathetic to the resident who said he thought it had been settled in 2015 and with people who wanted the Comprehensive Plan designation of Park and Green System, even though it wasn't zoned that way. She emphasized that it was difficult for people to understand the difference between the Comprehensive Plan and zoning, and there had been neighborhood engagement with the proposal – so people in the neighborhood who may have gone to the site review thought that this had been settled.

Ms. Spain stated that if they decided tonight to change it from preserved to managed, she felt that it would make it hard for the public to trust the government. She said that when they were in the situation, they needed to be aware that they needed more educational effort to say how the managed slopes could be improved over the preserved slopes – and Ms. Firehock had done that. Ms. Spain added that there may be pushback from people who thought it was a settled issue and thought they had contributed to the Comprehensive Plan – but now the Commission was doing something contrary to that.

Ms. More commented that with the 2015 request, there was 2,700 square feet of the current request that was part of the previous request that was denied, and it had been noted that the field run topography had shown portions of these areas as less than 25 percent grade, it was difficult to know if that was a more comprehensive characteristic within the system as observed in Area A, or if it was indicative of only minor modifications along the edges of the system as observed in Area B.

Ms. More said that without additional information, staff found it appropriate to maintain the preserved slopes, and that perhaps should have been a catalyst for them to look at it more closely. She stated that the applicant had not provided more detailed field run information for this area, which she would have liked to see, so there was no specific measurement of area. She added that she appreciated Ms. Firehock's input, but there could have been more information provided and she was wasn't sure if this addressed just the steep slope issue or the stability of the entire piece in question.

Mr. Benish responded that it was primarily regarding the amount of steep slopes, and the additional information was requested by staff and could have been provided by the applicant. He said that after their analysis of the site, staff felt it was a little less essential in this case than in others – and as a general rule, the county strongly encouraged as much assessment as possible by the applicant.

Ms. More stated that with the language provided after 2015, it was a bit misleading to members of the community who participated in that – and it was unfortunate to have it be part of staff's finding at the time but now be revisited.

Ms. Riley **moved** to recommend approval of **ZMA 2018-17 Woolen Light Industrial Park Steep Slopes Amendment** to rezone a 19,660-square-foot area from steep slopes preserved to steep slopes managed on the steep slopes overlay district map and as identified in the application plan found as Attachment B of the staff report. Mr. Bivins **seconded** the motion.

Ms. Firehock suggested adding a clause that as designs for the managed slopes were developed, consideration should be given to use of native hardwood species and native plants.

Ms. More stated that she would not support the application, partly because she did not know if the Commission could require that. She said that she also felt there were community partners and stakeholders who could have helped and may have arrived at a different conclusion.

Mr. Benish said that the best way to treat the condition would be a recommendation to move forward, and that would be brought to the Board of Supervisors and allow staff in the meantime to get with the applicant to see if they wanted to make an adjustment to their rezoning. He said that if they took this as a recommendation moving forward, as part of the action recommending approval, staff will get with the applicant and county attorney and see how it should be codified.

Mr. Bivins expressed uneasiness about opening every decision up to an outside public hearing, and if he were a property owner that had received a lot of input, he might be inclined to leave it as a preserved slope and do nothing. He stated that the motion going forward would help mitigate damage to the environment while also talking about what kind of planting should be there – so there would be a net benefit from the community as opposed to a potential owner not doing anything. Mr. Bivins emphasized that this meeting is part of the public engagement, and he found the letters received to be extremely helpful.

Ms. Firehock pointed out that there was still a water protection ordinance in place, regardless.

Mr. Bivins agreed that it was still there, but if this had taken place in their offices, they wouldn't have had the conversation happening now. He emphasized that the water would still be protected, and the applicant would still have to have the conservation easement. He stated that the developer now knows there are many people expecting the project to need a different level of care, which may not have happened if they had said they were leaving it as is.

Ms. Firehock responded that her issue was whether the slope was part of a system of slopes associated with or abutting a water feature, and they do not have an exact measurement of that – so given the issue of the impaired water stream and confluence with Rivanna, she would have liked to have heard more from the groups that were working to improve the quality of the streams.

Ms. Spain commented that there are excellent groups in the community with great knowledge, but not everyone who wrote a letter to the Commission stood on the slope and looked at the

rate of erosion. She said that they could revisit the conversation as they got more survey data and more information.

Ms. Firehock said that her only point was that there was a missed opportunity for people to go onsite, as well as possible interaction with the City.

Mr. Keller stated that he agreed with Ms. Firehock's points, and obviously steep slopes with this and EcoVillage have risen high on the list, so under New Business he would be making that recommendation.

The **motion carried** 4-2, with Ms. More and Ms. Spain dissenting.