

SE 2015-MV-019 – CHARLES COUNTY SAND & GRAVEL COMPANY, INC.

During Commission Matters

Commissioner Flanagan: Thank you, Mr. Chairman. On February 25, the Planning Commission heard testimony requesting approval for a concrete batching plant as a special exception which is split-zoned I-6 heavy industrial and R-1 is on Gunston Cove Road in the Mount Vernon District. Although the concrete batching plant would be located on the I-6 zoned portions of the site, use is not permitted by-right. The lot is one of six lots zoned for I-6 on Gunston Cove Road and is bordered by land on east and west zoned residential next to I-95 and Lorton Market Street. Three of these lots are industrial uses enclosed in industrial/flex buildings. Three lots are vacant, two of which are forest with mature trees. Since the public hearing, I have reviewed the public testimony and three follow on events suggested by the Commissioners. The first was a request that the South County Land Use Committee and Federation reconsider their 2015 resolution recommending denial since it was adopted nine months before the staff report was published. You have received the recent South County Federation resolution reaffirming that prior recommendation of denial but now based upon the staff report and testimony during the public hearing. The second Commission suggestion was that the South County Land Use Committee and the Federation recognize that a potential by-right junkyard would be worse than a not by-right concrete batching plant. I have since been informed by the South County Land Use Committee and the Federation that there are now two junkyards in the same Comprehensive Plan Sector LP-2, Unit F, land bay which is along Richmond Highway, south of the proposed concrete batching plant. Both sites are screened by 8-foot high fences. One is also attractively landscaped. Junk at neither site is visible from the highway since junk or equipment in junkyards are not high enough or easily seen as are concrete batching plant facilities. No constant dust is generated. No constant noise is generated. No existing residential buildings overlook these two junkyards. The reason? Junkyards are better regulated than concrete batching plants. Zoning Ordinance Section 5-605.4 states “In addition to the regulations of this Ordinance, junkyards shall be subject to the provisions of Chapter 21 of The Code, Automobile Graveyards.” Also, few of the thirty-two I-6 by-right uses are heavy industrial. Twenty-two, such as child care centers, churches, contractors’ offices, et cetera are commercial. Only six, such as junkyards, recycling, open storage, et cetera are industrial; and the remaining four for recreation facilities, bus terminals, barns, repair shops, and public utilities are public uses. The Federation has no objection to using the applicant’s site for any of these thirty-two by-right uses, neither do I, nor does Supervisor Storck. Finally, there was a Commission question about text in the Comprehensive Plan that lists concrete batching plants as a current planned use. It is true that text mentions a concrete batching plant as an existing use, but it is equally true that the plan does not recommend concrete batching plants as future infill, redevelopment or development. The third paragraph on page 22 (sic) also plans the area with the existing concrete batching plant as a mixed industrial/office park defined as two or more industrial buildings. The existing concrete batching plant is now planned for only those industrial uses that can be enclosed in buildings. In any event, the above considerations are somewhat moot since any special exception request may be in harmony – must be in harmony, the operational verb there is “must”, must be in harmony with eight general standards in Zoning Ordinance Section 9-006, the first three of which say – the first three of which require – the proposed use shall be in harmony with the Comprehensive Plan. Second requires the proposed use shall be in harmony with the purpose and intent of the Zoning Ordinance standards. And the third one requires the proposed use shall be harmonious with neighboring properties. Standard

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one above requires “the proposed use at the specific location shall be in harmony with the adopted Comprehensive Plan.” So what does the Comprehensive Plan say? The Comprehensive Plan on page 66 for LP-2 Sector is crystal clear. To be in harmony with the Comprehensive Plan, any special exception industrial use application for infill – “infill, redevelopment and new development in this area should be industrial flex/office and related commercial uses.” A concrete batching plant is none of these planned uses. Industrial/flex, as only defined in the Zoning Ordinance, is “any structure occupied by two (2) or more of the following uses: contractor’s offices and shops, establishments for production, processing, assembly, manufacturing, compounding, preparation, cleaning, servicing, testing, or repair of materials, goods or products, warehousing establishments, wholesale trade establishments and offices.” In addition, the Plan on page 92 once again clearly requires that any special exception “uses envisioned for this area include industrial/flex space uses, retail and other related business and employment uses.” After legal advice, I am satisfied that the use of the word “include” does not weaken the definition – the definitive plan recommendation on page 66 of the Comprehensive Plan that infill, redevelopment and new development in this area should be only industrial/flex, office, and related commercial uses. Plan page 92 also states industrial uses adjacent to residential and other non-industrial uses should be enclosed, effectively buffered and set back to minimize use conflicts. There is also un-rebutted testimony with subsequent photos that clearing – clearly show residential neighborhoods overlooking the proposed concrete batching site. The vacant I-6 treed lot providing a summer buffer will eventually be clear-cut when developed, thus exposing all the industrial buildings in that area to the residential developments that are in a higher elevation next door. Further, the applicant is asking for waivers of several transitional screening requirements, as well as a barrier requirement. It is abundantly clear to me that the proposed concrete batching plant isn’t in agreement with the Comprehensive Plan text on page 66 and the zoning laws of Fairfax County. The Zoning Ordinance is law which Commissioners are sworn to uphold. The Commission isn’t supposed to make decisions based upon the likes and dislikes of people. We make recommendations based upon the law and the Comprehensive Plan. The applicant has also met with Supervisor Storck at their request. He has offered to help the applicant find a site that complies with the Comprehensive Plan. In summary, the application for a special exception is:

1. Not in harmony with the Comprehensive Plan text recommendations that “infill, redevelopment and development should be industrial/flex, office or commercial uses”;
2. Not in harmony with the Zoning Ordinance definition that industrial/flex uses be in a structure;
3. Not in harmony with the neighborhood properties to the north and south that are all industrial/flex, retail or other related commercial uses in enclosed buildings; and
4. Not in harmony with neighboring residential properties not being “enclosed, effectively buffered and set back to minimize use conflicts.”

Therefore, Mr. Chairman, I’m left with nothing but to MOVE THAT THE PLANNING COMMISSION RECOMMEND THAT THE APPLICATION BE DENIED BY THE BOARD OF SUPERVISORS.

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Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant. Is there a discussion of the motion?

Commissioner Hart: Mr. Chairman.

Chairman Murphy: Mr. Hart.

Commissioner Hart: Thank you. As should be apparent to everyone, we're not all going to agree with each other on every case. And I think that – that the planets have been aligned the last couple of nights. I'm going to support the staff recommendation rather than Commissioner Flanagan's motion. This is a very challenging site. It's already zoned I-6 which allows for, I think, some of the worst or least desirable uses in the Ordinance as a matter of right and those include things like junkyards and storage yards, manufacturing facilities, lumberyards, heavy equipment repair and servicing, and generally things that people don't want to see or don't want to be near. We have a site also that is bordered on one side by I-95 and the railroad tracks on the other and, I think, knowing everything that we know, it's unrealistic to expect that there would be many upscale type uses or even, perhaps, office flex uses that would be on a noisy site like that, in a location like that. We instead have an applicant that seems to be reputable corporate citizen in Maryland that wants to come here and build a facility, and pay taxes, and employ people, and have this use that would support construction and redevelopment and other things that we need in the County. Sometimes we have to use our common sense in making recommendation to the Board and part of our overall mission, I think, is to advise the Board where and when industrial uses are appropriate. Many times when we see industrial uses these days or we see the topic of industrial use, it is a plan amendment to delete industrial use. We have less of it and there – there is pressure sometimes from neighboring residential areas to delete the industrial. We also have the Comprehensive Plan I think that contemplates in makes of commercial, residential, and industrial to support the tax base and that becomes more acute a problem every year with the budgets. And every time we delete industrial, and don't have industrial puts that much more pressure on everything else. We have a site also that's adjacent to this where the Board approved a similar but somewhat larger concrete batching plant just a few years ago. In my view, the staff recommendation, the staff analysis is correct. This is appropriate use of this site. I think also it's more likely that if an SE use is denied on a site like this, a by-right use would go in, whatever that may be, and that's less likely to support the goals and objectives of the gateway language in the Comprehensive Plan. If we can't put a concrete batching plant on an I-6 site in Lorton between I-95 and the railroad tracks, we're not going to find a place in the County where it can be supported. I think that staff is correct and I'm not going to support the motion. Thank you.

Commissioner Flanagan: Mr. Chairman.

Chairman Murphy: Yes, Mr. Flanagan.

Commissioner Flanagan: Yes, I would just like to comment upon a couple of the observations of a lawyer who does this very well. And that is that – the – the heavy industrial... I was really shocked. I read the I-6 thirty-two uses that aren't heavy industrial because in any other jurisdiction those are the light-industrial. I come from, you know, the Chicago area and heavy

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industry in Chicago is a steel mill or an oil refinery, or a foundry or something that really is heavy industry. The – these – there is only six heavy industry uses that are permitted in the I-6 area. Only six. All the rest are commercial or public uses. So there really is nothing to fear. The community is not afraid of allowing any of those uses, you know, to – to be there. The – there was just one comment that you made that I'd like to comment upon.

Chairman Murphy: Ms. Hurley.

Commissioner Hurley: Thank you, Mr. Chairman. Again, I will be brief. I concur with the comments of Commissioner Hart. The two lots to the south are zoned industrial I-6, as are the three lots to the north and, as noted, to the west is Interstate 95, to the east are the CSX rail tracks. This is an appropriate site for this use and I will vote against the proposed denial.

Commissioner Flanagan: Mr. Chairman.

Chairman Murphy: Yeah.

Commissioner Flanagan: I just want to point out, those industrial uses to the south and the north are industrial flex that do comply, you know, with the Comprehensive Plan. This use does not. Concrete batching plants are not a permitted use.

Chairman Murphy: Mr. Sargeant.

Commissioner Sargeant: Thank you, Mr. Chairman. A couple of comments. Commissioner Hart's comments about the obvious likelihood of locating a concrete batching plant in – in this area presupposes that Lorton remains the only site for that type of use or one of the few sites left. I understand that and that's part of the challenge that community residents have – community residents have when we plan for the future of this area. It is mindful that when it is considered at a construction debris landfill to remember the special exceptions and amendments that have been considered or needed because it was zoned residential. So it is an interesting challenge that the community faces as it decides its future and how to plan for its future. The community through its – as you see in the – in the Comprehensive Plan language did not completely rule out any sorts of industrial use but it did say and suggest strongly that, as it transitions to the future, industrial flex would be preferred. I think that's rather significant in what they envision. The previously approved concrete batching plant is not there. So, and, as we talked a lot about transition last night and about the strength of the Comprehensive Plan, we give that credence here tonight in terms of what's envisioned for that site and, going beyond the usual discussion of gateway, it does reference industrial/flex, and that's what the community has referenced as a possible preference for this site. Thank you.

Chairman Murphy: Further discussion? Oh yes, I'm sorry. Mr. Ulfelder.

Commissioner Ulfelder: Thank you, Mr. Chairman. I plan to vote against this motion as well. I visited the site earlier on. It's been some time since we first had this on our plate. And the fact is it's over half a mile from the intersection with Lorton Road. It's on the road that is now a dead-end road because of the fact the bridge over the rail tracks is gone. At the – further on beyond this site is a rather large distribution center with semis and trailers parked there and going, I

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assume, in and out on a some regular basis and I also drove over to the other side of the tracks and, frankly, a number of the residential buildings over there are angled in a way where you're not really looking directly at the site. They are over 400 feet away many and even further for some of them. And – and, as I say, the railroad tracks are in between, plus some other land on both sides of the tracks. And I – I agree with my colleagues comments that if you couldn't put this kind of facility there, where could you put it? And it is zoned I-6, it's - and it's an appropriate use and it will be entirely sited on the I-6 portion of the property as it has to be. And for that reason I can't support the motion.

Commissioner Flanagan: Mr. Chairman.

Chairman Murphy: Yes.

Commissioner Flanagan: Yes, I appreciate the comments made by Commissioner Ulfelder. The distinction here, in this application, is that there is uses that are by-right. In this particular case it's a special exception application which requires that it conform to the text in the Comprehensive Plan. The text in the Comprehensive Plan does not recommend concrete batching plants. So in order to be – that's the law and I swore when I took my oath of office to uphold the law and that's why I'm taking position that I take tonight in my motion.

Chairman Murphy: Mr. Migliaccio.

Commissioner Migliaccio: Mr. Chairman, I'm going to support Mr. Hart's motion. Mr. Flanagan, I think throwing that language that you've just threw out to fellow Commissioners is not helpful to your cause or moving forward cause we all took the same oath, we all interpret things differently, we all are here to vote the way that we see fit and we're agreeing with staff, those that do not support your motion, so... Thank you, Mr. Chairman.

Chairman Murphy: Further discussion? Yeah, I looked at this from all the sides. As a matter of fact, I went down there twice after the public hearing was deferred. And the part that bothers me is the Comprehensive Plan language. It – it specifically states "concrete batching plant." Now, if I wanted to put a concrete batching plant in in Fairfax County where I can best serve the construction needs of the County and I looked in the Comprehensive Plan, and I read that on the I-6 site which has several I-6 sites near it or abutting it, and I read that a concrete batching plant was in the Comprehensive Plan as an accepted use, and I filed an application for a concrete batching plant as a special exception with development conditions that would make it a better concrete batching plant than just putting a concrete batching plant in, and then someone made the motion to deny it, I don't think that's the way the Comprehensive Plan should work. I understand that the citizens in the Lorton area, you know, we had a prison, we had a burned facility. We had all those things and we've gotten rid of – we still have the burned facility and a lot of improvements have been made down there and I was on the cusp of making some of those improvements with the first really upscale development in the Lorton area, which was Crosspointe back in the early 90s which gave that community an uplift with – with residential and then – now we have a town center, we have this, we have that. So it's really quite an effective community now, well planned, well thought out. But still we have these industrial uses down there. And I think that the conception that these – these sites are going to be for flex office is a dream. I just don't think that's going to happen. I think it's going to stay I-6, something else

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is going to go in there, it's not going to be good for the community. This will be good for the community because at least it has development conditions that ameliorates the impact and it is in the Comprehensive Plan as an accepted use on this site. So I intend to vote against this application cause I don't think, you know, it would be in conformance with the Comprehensive Plan.

Commissioner Flanagan: Mr. Chairman.

Chairman Murphy: Yeah.

Commissioner Flanagan: I would challenge you to show me the Comprehensive Plan where it says batching plants is an acceptable use.

Chairman Murphy: It says – it's – it's in there. Isn't that right Mr...?

Commissioner Flanagan: No.

Chairman Murphy: Doesn't say Comprehensive – on that site?

Commissioner Flanagan: You raised this – you raised this point on the public hearing and in my – in my motion – I addressed the question that you raised at that time.

Chairman Murphy: Okay, well, I feel it is.

Commissioner Flanagan: The – and I would also like to say that, previously, when we had issues coming up with Tysons Corner, we were greatly distressed on another application that has proposed a dog park in Mount Vernon where the applicant was asking for a special permit that didn't agree with the Comprehensive Plan. And both Commissioner Hart and Commissioner Lawrence, both cautioned the Commission to be aware of not complying, not conforming with the Comprehensive Plan on special exceptions because you once you – you abandon that, it's a slippery slope from later on.

Chairman Murphy: All right. Anyone else? I just go to the staff conclusion that the concrete batching plant is proposed on property located in one of the two recognized industrial areas. It's in the Plan. All those in favor of the motion to deny this application, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed?

Commissioners: Nay.

Chairman Murphy: Nay. Motion fails. Would you like a division? The division start. Ms. Keys-Gamarra.

Commissioner Keys-Gamarra: I support his motion.

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Chairman Murphy: Yes, okay.

Commissioner Strandlie: Nay.

Chairman Murphy: Nay.

Commissioner Flanagan: Yes.

Chairman Murphy: Yes.

Commissioner de la Fe: Yeah.

Chairman Murphy: Yes.

Commissioner Hart: Nay.

Chairman Murphy: Nay.

Commissioner Sargeant: Yes.

Chairman Murphy: Yes.

Commissioner Migliaccio: Nay.

Chairman Murphy: Nay.

Commissioner Hurley: Nay.

Chairman Murphy: Nay.

Commissioner Ulfelder: Nay.

Chairman Murphy: Nay. And the Chair votes nay. And the motion fails. Six to four. Four to six.

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Commissioner Hart: Mr. Chairman.

Chairman Murphy: Mr. Hart.

Commissioner Hart: Thank you. I have a motion but before I make the motion, can I ask Mr. Hanes to come back to the podium.

Grayson Hanes, Esquire, Reed Smith LLP: For the record, Grayson Hanes, firm of Reed Smith.

Commissioner Hart: Mr. Hanes, have you read and reviewed the development conditions dated March 8, 2016, and does your client understand and agree with those conditions?

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Mr. Hanes: I have, the client agrees with this and I agree with this as their attorney.

Commissioner Hart: Thank you. Mr. Chairman, I RECOMMEND THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF SE 2015-MV-019, SUBJECT TO THE APPROVAL OF THE PROPOSED DEVELOPMENT CONDITIONS DATED MARCH 8, 2016, AND APPROVAL OF A MODIFICATION OF SECTIONS 13-303 AND 13-304 OF THE ZONING ORDINANCE FOR THE TRANSITIONAL SCREENING AND BARRIER REQUIREMENTS TO THAT SHOWN ON THE SE PLAT.

Chairman Murphy: Is there a second?

Commissioner Ulfelder: Second.

Chairman Murphy: Seconded by Mr. Ulfelder. Is there a discussion? All those in favor of the motion to recommend to the Board of Supervisors that it approve SE 2015-MV-019, say aye.

Commissioners: Aye.

Chairman Murphy: Aye. Opposed?

Commissioners: Nay.

Chairman Murphy: It's the same division?

Commissioner de la Fe: Same division.

Commissioner Hart: Yeah.

Chairman Murphy: Okay, motion carries. Thank you very much.

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(The motion to recommend denial of SE 2015-MV-019 fails by a vote of 4-6. The motion to recommend approval SE 2015-MV-019 carried by a vote of 6-4. Commissioners Hedetniemi and Lawrence were absent from the meeting.)

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