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# THE WHISTLE

THE VOICE OF WESTERN ALBEMARLE

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## ONLINE

WWW.CROZETWHISTLE.COM

- ❁ THIS MONTH: EPA'S LATEST WORD ON CROZET'S TESTING
- ALSO, SOME NOTES FROM THE CROZET COMMUNITY ASSOCIATION MEETING



VDOT's Chuck Proctor (l) and Matt Grimes look for answers on their laptop at the CCA meeting.

## Ivy Residents Fight Falconer

*Community says 'no' to dynamite, monster trucks, toxic waste*

Falconer Construction is planning to relocate its operations from Charlottesville to Ivy. Christopher Hyland and his wife Denise are leading their community's fight through Albemarle County hearings and the courts to stop the corporation from moving into Ivy, citing dangers from explosives, toxic chemicals and large, heavy vehicles.



Ivy residents say Falconer's multi-ton equipment would endanger children and damage a vital road.

Falconer is a major construction corporation that has contracted with states, counties and the University of Virginia to build roads, landfills, golf courses and stadiums from Pennsylvania to Georgia. It plans to move its offices, heavy equipment and maintenance facilities from Old Ivy Road to Ivy Business Park, off Morgantown Road. The company's site plan indicates significant grading of almost 27 acres. Most of its buildings would reside in a strip of land 200 feet wide and 1,000 long.

Chris, the vice president of the Ivy Community Association (formed to combat the move) showed *The Whistle* county documents supporting his claims that county staff violated state law by arbitrarily erasing zonal boundaries. The same documents also depict contradictions between county officials about their duties and the zoning status of that crucial ribbon of real estate.

### History of Ivy industry

In 1960s, the county designated Ivy as a heavy industry corridor. Hyland said his interviews with longtime residents indicated the corridor was the only one in county, because Ivy had been a predominantly black since the Civil War.

In 1970, William Dettor purchased 60 acres, most of which is presently Ivy Business Park. The county spot-zoned the eastern half to M-1—a practice now illegal—and the western half rural (A-1), creating an industrial zone in the middle of a rural area.

“Essentially, they created something like the Vatican,” Hyland said.

Hyland said hundreds of signed a petition in opposition to the proposed rezoning. Then Dettor proposed to residents—most of them poor—that he would build a recreation area with a fishing lake in the middle of the property. Hyland said Dettor's sketch showing a lake is still on file with county. Hundreds then signed a new petition reversing their stand on the rezoning.

“Of course, the lake never went in,” said Hyland.

Hyland said he has minutes of the 1975 rezoning hearing detailing how Dettor

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## Falconer from page 1

requested industrial (M-1, at the time; LI, for light industrial, now) zoning for the entire property. Instead, the Board of Supervisors followed the planning commission's recommendations.

Hyland said although it is unclear, the 1975 rezoning granted Dettor a conditional use permit for an industrial parcel in the southeast corner in exchange for a 10- by-50-foot, adjacent, undeveloped buffer. Also, the commission established a 200-by-1,000-foot strip of undeveloped area explicitly exclusive from the conditional use permit.

Although the strip was not explicitly zoned as rural area (A-1, at the time; RA-1 now), the county told Dettor he could develop up to it but leave it untouched. A small RS-1 parcel granted at Dettor's request to build four houses.

### Danger, Will Dettor, danger

Hyland said the community association objects to Falconer's relocation, because the company poses dangers to residents (especially children), the environment and travelers along Route 250.

A parcel zoned B-1 (sold by Dettor between 1970 and '75) contains two businesses and—most importantly—Millstone of Ivy, a day care and preschool. The sketch indicates explosives would be lying within 800 feet of Millstone and about 1,000 from Virginia L. Murray Elementary School.

Hyland appealed to Amelia McCulley, Albemarle County zoning administrator, who told him she has no discretion in determining the difference between light and heavy industrial zoning. She also said the placement of dynamite and explosive caps on the property constituted accessory use, not storage (prohibited by county zoning code).

However, Albemarle County

Community Relations Manager Lee Catlin told *The Whistle* that McCulley's job is to interpret the definitions of light and heavy industry and apply them to matters such as Falconer's site plan.

Hyland said McCulley's interpretation of "storage" is incorrect, according to a Virginia Supreme Court ruling in a relevant case. The Court ruled "storage" must be defined according to its common meaning.

"The American Heritage Dictionary," defines storage as "1.a. The act of storing goods." It defines the verb store as "1. To reserve or put away for future use. 2. To fill, supply or stock."

Plus, the county's zoning code explicitly prohibits the storage of explosives and volatile chemicals in light industry zones.

Hyland maintained, therefore, explosives left for five minutes or five days would technically be in a state of storage and, therefore, prohibited in Falconer's light industry zone.

Ivy residents also fear large trucks would endanger car and schoolbus drivers taking children to day care and elementary schools, as well as travelers on nearby Route 250.

Hyland said Morgantown Road could not withstand the weight of multi-ton construction vehicles. Ironically, Falconer, a major contractor with the Virginia Department of Transportation, would be paid by the agency to repair the very road it broke. And at taxpayers' expense.

Finally, Hyland said solvents used in Falconer's maintenance shops would be stored and used dangerously close to Ivy Creek, which feeds the South Fork Rivanna Reservoir—Charlottesville's and urban Albemarle County's primary water supply. Falconer's site plan revealed intentions to level most of the land (eliminating natural drainage) and a request for a critical slopes waiver. A county engineer has recommended opposing the waiver.

Ivy residents' strongest defense

came from the most unlikely source: McCulley. Late last year, the Ivy Community Association attended a site review and requested a written opinion from the zoning administrator about the rezoning of the narrow, rural strip created in 1975. In a letter dated October 2, 2002, McCulley wrote, "The records you requested do not exist, because it was never rezoned."

The five-acre strip was still rural area, off limits to industrial development.

McCulley's determination contradicted county attorney Larry Davis' Nov. 2001 assertion in a letter that a 200-by-1,000-foot "buffer" and adjacent M-1 parcel were rezoned LI (light industrial) with the 1980 Comprehensive Plan. Davis also claimed that particular buffer disappeared with the expiration of the 1975 conditional use permit. But county records show only the small buffer in the southeast corner was tied to the permit.

Hyland said he has e-mails and internal memos proving in 1980 county staff arbitrarily and illegally annexed the rural strip into the adjacent industrial parcel. Hyland said he has memos between Jan Sprinkle, zoning administrator, and Rick Carter, Falconer's attorney, stating Robert Keeler, a county planner, approving the merger. It was then grandfathered into the 1980 Comprehensive Plan.

"Under state law, you can't change a specific enactment by the Board of Supervisors like that," Hyland said.

The zoning of the strip is a deal-breaker for the relocation. Hyland said if Falconer was prevented from building on that strip, the company would be forced behind a 50-foot setback from the area. But because of the topography and configuration of the parcels, there would be no room for most of the facilities.

***Next month: courtroom skirmishes and civic firefights.***