

August 4, 2011

The beginning of the minutes are taken from notes due to difficulty with the cassette tape.

The Ellettsville, Indiana Plan Commission met in regular session on Thursday, August 4, 2011, in the Fire Department Training and Conference Room located at 5080 West State Road 46. Phillip Smith called the meeting to order at 6:00 p.m. Dan Swafford led the Pledge of Allegiance.

Roll Call: Members present were: Phillip Smith, President; Don Calvert; Phillip Rogers, Dan Swafford, Ron Wayt and Sandra Hash, Secretary. Clayton Sullivan was absent. Connie Griffin, Director of Planning, was also present.

Approval of the Minutes – June 2, 2011

Phillip Smith entertained a motion for approval of the June 2, 2011 minutes. Dan Swafford so moved. Ron Wayt seconded. Roll Call Vote: Phillip Smith – yes; Don Calvert – yes; Phillip Rogers – yes; Dan Swafford – yes; Ron Wayt – yes; and Sandra Hash - yes. Motion carried 5-0.

New Business

Preliminary Plat and Final Plat Approval for Mitchell Subdivision (property to be split into 2 tracts, no development); 5466 W. Woodyard Road, Petitioners; Steve & Larry Mitchell and Sue Ann Robinson, Represented by: Phillip Tapp, Surveyor for the Petitioner.

Connie Griffin, Director of Planning – The project address is 5466 W. Woodyard Road, Bloomington, IN 47404. The Petitioner's are seeking preliminary plat and final plat approval for property to be split into two tracts – no development is planned, as well as a waiver to construct sidewalks and plant street trees. Any development would require the land owner's to come back before the commission. One lot is 17.67 acres, and lot 2 will be 35.29 acres. The Preliminary Plat has been paid (\$175.00, plus 2 lots = \$225.00, check number, 2835, receipt number 10558). The legal notice was published on June 15, 2011 in the Ellettsville Journal. A copy of the public hearing notice to adjacent property owners was presented to the department along with the certified mail/return receipts.

The petitioners: Steve and Larry Mitchell and Sue Ann Robinson are not changing the current zoning of agriculture; this subdivision request is the result of estate planning. Surveyor, Phillip Tapp stated, "We are not here to develop the property. If any development were to take place it would need to come back before the plan commission."

Phillip Smith entertained a motion to approve the Preliminary Plat and Final Plat Approval for Mitchell Subdivision (property to be split into two tracts, no development); 5466 W. Woodyard Road, Petitioners; Steve and Larry Mitchell and Sue Ann Robinson. Represented by: Phillip Tapp, Surveyor for the Petitioner. Don Calvert so moved. Dan Swafford seconded. Roll Call Vote: Phillip Smith – yes; Don Calvert – yes; Phillip Rogers – yes; Dan Swafford – yes; Ron Wayt – yes; and Sandra Hash - yes. Motion carried 6-0.

Phillip Smith entertained a motion for waiver of the street trees and sidewalks. Dan Swafford so moved. Don Calvert seconded. Roll Call Vote: Phillip Smith – yes; Don Calvert – yes; Phillip Rogers – yes; Dan Swafford – yes; Ron Wayt – yes; and Sandra Hash - yes. Motion carried 6-0.

Landscape Ordinance Discussion – Rain Gardens and Natural Habitat Areas

Connie Griffin, Director of Planning – Introduced Robert Lowers of 1119 Main Street.

Robert Lowers, 1119 Main Street, Ellettsville, read a story about "A Man and His Yard" a parable between having freedom to maintain your yard as you choose to not being able to get your favorite food at your favorite restaurant. He spoke on the landscape ordinance, more specifically, rain gardens and natural habitat areas.

Lowers provided statistics concerning modern lawns and reasons why choosing not to mow is becoming more palatable to homeowners. Some of Lowers arguments for natural habitats include: the average cost of maintaining a true grass yard for 10 years is \$50,000; what makes a plant a weed is only a matter of opinion; a yard is a natural habitat, a large part of an eco-region; we need to get to know our watersheds; the best pesticides are insects; and Johnson Grass is considered an invasive species which most yards consist of because it controls erosion. This grass must tassel for it to control erosion and it tassels at about 9 inches which the current Ellettsville ordinance forbids. During Lower's presentation, plan commission members were shown pictures of his current yards/natural habitats.

Ron Wayt asked Mr. Lowers what was in the 55 gallons drums stored on his property. Mr Lowers replied he used the drums for recycling glass and plastic. When they are full he takes them to the recycling center.

Connie Griffin, Director of Planning thanked him for his remarks and explained this would need some further discussion and consideration.

Planned Unit Development Petition – Roger and Patricia New & Chad Stephens, PUD with all Commercial 3 uses and the following uses: existing residential and truck and trailer parking on the parcel owned by Roger and Patricia new; warehousing and distribution; mini warehouses; heavy equipment sales and services; truck sales and service; truck and transportation companies; recycling and salvage operations; building trade shops.

<u>Company Name</u>	<u>Tax ID</u>	<u>Property</u>	<u>Acres</u>
Burch Enterprises, Inc.	0090029001	53-04-10-200-63.000-013	3.09
Roger and Patricia New	0090029002	53-04-10-200-209.000-013	4.21
Pip Jay Properties LLC, Chad Stephens, Member	0090969000	53-04-10-200-031.000-013	2.42

Connie Griffin, Director of Planning - Pip Jay Properties, LLC, Burch Enterprises, Inc., Roger New and Patricia New Planned Urban Development ("PUD") Creation Petition- #7122011, (Michael Carmin's file number: 21457-2)

PUD Application materials were turned in on July 12, 2011 and July 20th. Fees paid for PUD and development plans- \$554.00, check number 2682, receipt number: 10623

In accordance with Town Code Chapter 152, PUDs are a four step process:

- Step 1. Pre-design Conference.
- Step 2. Outline Plan Approval.
- Step 3. Planned Unit Development district ordinance approval.
- Step 4. Development plan approval

The petitioner has met with the Planning Department and three Plan Commission members for the pre-design conference, and they have submitted their outline plan. Therefore it is the Plan Commissioner's responsibility, as an Advisory Board to the Town Council, to review the outline plan, hear the petitioner's case, and the Planning Department's Findings of Fact.

After their review they will send a recommendation to the Town Council as: favorable, not favorable or no recommendation. If the petitioner is granted the PUD by council, the zoning map will be revised by ordinance,

and then the petitioner would then come back to the Plan Commissioners with their development plan, which at that time the petitioner would introduce their hydrology studies.

To develop a better understanding of PUDs I would like to review from the Indiana American Planning Association some PUD basics.

PUDs

- Allow flexibility in the zoning process to encourage innovative land use and development.
- May include varied and compatible land uses.
- A PUD involves both a plan with development standards and a zone map amendment or (rezoning).
- PUD's encourage: a mix of land uses, generally with at least one non-residential land use.
- The clustering of residential providing public and common open space.
- Quality site planning and design.
- Implementation of the community comprehensive plan or vision.
- Aesthetically pleasing environments through architecture and landscape improvements.
- Preservation of natural areas.

PUD Requirements

1. The land designated in the PUD request must be under single ownership or have written permission from the land owners within the proposed PUD area.
2. The PUD plan must show the different land uses and provide development standards that will regulate those land uses. PUDs should comply with or surpass the development standards established for zoning districts with similar uses in the community.

Ellettsville does not have Industrial 2 Zoning, which is required for a Salvage Yard Land Use.

The majority of the proposed PUD properties are located within the identified Special Flood Hazard Area.

FEMA Definitions

Floodplain: Any land area susceptible to being inundated by flood waters from any source.

- A "Regulatory Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. Communities must regulate development in these floodways to ensure that there are no increases in upstream flood elevations. For streams and other watercourses where FEMA has provided Base Flood Elevations (BFEs), but no floodway has been designated, the community must review floodplain development on a case-by-case basis to ensure that increases in water surface elevations do not occur, or identify the need to adopt a floodway if adequate information is available.

- Flood hazard areas identified on the Flood Insurance Rate Map are identified as a Special Flood Hazard Area (SFHA). SFHA are defined as the area that will be inundated by the flood event having a 1-percent chance of being equaled or exceeded in any given year. The 1-percent annual chance flood is also referred to as the base flood or 100-year flood. SFHAs are labeled as Zone A, Zone AO, Zone AH, Zones A1-A30, Zone AE, Zone A99, Zone AR, Zone AR/AE, Zone AR/AO, Zone AR/A1-A30, Zone AR/A, Zone V, Zone VE, and Zones V1-V30.
- Moderate flood hazard areas, labeled Zone B or Zone X (shaded) are also shown on the FIRM, and are the areas between the limits of the base flood and the 0.2-percent-annual-chance (or 500-year) flood. The areas of minimal flood hazard, which are the areas outside the SFHA and higher than the elevation of the 0.2-percent-annual-chance flood, are labeled Zone C or Zone X (unshaded).

Code Violations Town of Ellettsville Municipal Code, Salvage Yard Case

- Prohibited land use in a C-3 zoning classification- per Ellettsville Town Code 1966 through current Town Code zoning (Code requires Industrial 2 with BZA special Exception 152.085).
- 2010 New businesses added: Salvage business, & Recycle yard.
- Filled in floodplain- No grading permit issued by the Town of Ellettsville Site Improvement Permit 152.104 (B) (1) or DNR permit Construction in a Floodway under IC 14-28-1, the Flood Control Act, requires that any person proposing to construct a structure, place fill, or excavate material within the floodway of any river or stream must obtain the written approval of the Department of Natural Resources prior to initiating the activity.
- State of Indiana License Required for operation of a Salvage Yard- I.C. 9-22-4, 152.084-all permits required by law have been secured.
- Ellettsville Town Code- Drainage site plan: 152.145, Code stipulations under 152.296(i)(j)

Process Forward

- Petition Plan Commission for a Planned Unit Development for existing uses.
- Prepare plan(s) for development of property per Ellettsville Municipal Code 152.125.
- Submit grading plan to DNR for construction in a floodway permit- after the fact.

Plan Commission Rezoning Criteria and Comprehensive Plan Review and Thoroughfare Plan Review

In accordance with Indiana Code Sections 36-7-4-603, in considering a proposal for rezoning, the plan commission must pay reasonable regard to the following:

- Criteria 1: The Comprehensive Plan- See questions below.
- Criteria 2: Current conditions and the character of the current structures and uses in each district: We are building a trail and working on revitalizing the downtown area- a salvage yard is not a compatible use with this goal.
- Criteria 3: The most desirable use for which the land in each district is adapted- A salvage yard should be located with other heavy industry, with buffering. This location, for a salvage yard, is too close to the downtown area and residential properties.

- Criteria 4: The conservation of property values throughout the jurisdiction-
- Criteria5: Responsible development and growth- The salvage business never contacted the Plan Commissioners or Town Council or Planning
- Dept. with expansion and development- Violated Indiana Code, Town Code, and DNR/Secretary of State permit requirements.

Ellettsville Plan Commission - Comprehensive Plan Review

1. The proposed rezoning (is) (is not) consistent with the land use policies contained in the Comprehensive Plan because:

- Industrial areas are to be located west of Ellettsville for light industry.(Page 22- Industry)
- Code shall prohibit heavy industries that would likely create a known health or explosive hazard for nearby residents. (Page 22- Industry)
- Encourage pedestrian style commercial development along and between the one-way pair of S.R. 46 with special attention to Sale and Vine Streets. (proximity to this commercial area- 700 to 1,000 feet) (Page 22- Commercial)
- Support the Heritage Trail using old rail beds as a linear pedestrian pathway. Salvage yard not a good adjacent land use for a trail. (Page 23- Transportation and Traffic Plan)
- Redevelop Sale and Vine Streets as well as nearby street fronts to attract shopping. (Page 23- Tourism)
- Improve the environmental quality of Jack's Defeat Creek. One reason why code prohibits salvage yards next to floodways. (Page 24- Environmental Issues and Trees)
- Seek guidance from similar communities concerning codes- (Page 31- first paragraph) Indiana community's municipal codes: Salvage yards (junkyards).

Town of Munster, Indiana - Prohibits salvage yards in Commercial-1 areas.

Laporte, Indiana - Restricts salvage yards from being located within 1,000 feet of residential properties, they also require a minimum lot area of 5 acres, fire proof fencing six feet in height, 15 feet in depth buffer zone.

City of Bloomington, Indiana - The proposed use must be consistent with growth plans, will not create a nuisance by reason of noise, smoke, odors, vibrations, Will not have an undue adverse impact upon adjacent property, the character of the area, or the public health, safety and general welfare, the proposed use will not result in the excessive destruction, loss or damage of any natural, scenic or historic feature of significant importance, the proposed use and development complies with any additional standards imposed upon that particular use by the chapter.

South Bend, Indiana - No license shall be issued to any proposed scrap or junkyard, recycling operation or transfer station for a location within 1,000 feet of any lot being lawfully used, entirely or in part, as a single family or two family or multifamily dwelling or any of the following zoning use districts as defined by the zoning chapter of this code, covers single and multi family, central business district, community business district, mixed use districts . . .

Minimum lot area 5 acres

For complete code information request information from Planning Dept

2. Conditions have changed in the area since the original zoning was established because:

Conditions have changed in the area; additional uses have been added to the site, which has strayed away from original intent of the code. More residential development as transpired on McNeely (Stoneview Condos-PUD R-3, more residential).

3. Community facilities are not available to support the proposed development because:

The area is serviced with Town water and waste water services, and McNeely is a Monroe County road.

4. The proposed rezoning will not establish a desirable precedent in the area because:

The comprehensive plan states light industry zoning should be developed west of Ellettsville (pages 22, 31 & 36). Zoning shall prohibit heavy industries that would likely create a known health or explosive hazard. (page 31) Restrict areas within the 100-year flood plain hazard area to parkland use. (page 31) It will be mandatory to control pollution from entering streams by stopping unclean discharges of storm water at or near their source. (page 32) Soil erosion control measures should be carefully planned, implemented and monitored. (page 32).

5. The proposed rezoning not compatible with surrounding land uses because:

Land Use Recommendations for Ellettsville- 3 Considerations for good land use- (page 26).

Planning, Compatibility, Value and Image

"Ellettsville should measure each and every one of the land use recommendations on the basis of these three considerations."

Does each and every lot in town or parcel of land near Town have utilization compatible with its neighbor? Heavy Industrial uses are not compatible with residential and commercial development or revitalization of the downtown area.

Is each land use the highest and best land use possible given the present market economics?

In what way can Ellettsville land parcels attract additional investment? Locate like uses together.

What needs to be done to upgrade the value of surrounding property?

Finally, what kind of image does the visual scene portray? Does the built environment give a good first impression?

Thoroughfare Plan Review

Mathews and McNeely are both classified as Minor Collectors:

Chapter 6 System Definition- INDOT 2030 Long Range Transportation Plan- Jurisdictional responsibility usually follows functional classification. Indiana, like many other states, has assigned the responsibility for the highest levels (arterials and most major collectors) to INDOT, while local governments generally have been given the responsibility for the lower level roads falling into minor collector and local road systems.

§152.080 PURPOSE

(A) The light industrial district designates areas for manufacturing, processing and assembly operations that produce very little or no smoke, dust noise, or other environmentally objectionable byproducts. Warehousing and distribution are acceptable uses in the I-1 district. Due to potential heavy truck traffic, location along a well-constructed industrial or collector street with access to an arterial street, or along an arterial street, is important. Residential should be prohibited, and all but light commercial uses should be discouraged. (Ord. 03-05, 824-05, passed 5-27-2003)

(B) The heavy industrial district provides areas for manufacturing, processing and assembly operations that require access to heavily-built truck routes or rail services. Storage and warehousing are incidental uses in the I-2 district. Location along an industrial street with access to a principal arterial is important. Residential should be prohibited, and most non-industrial uses are discouraged. (Ord. 03-05, 824-10, passed 5-27-2003)

Mike Carmen – Explained the map of the rezone petition area. They have also applied for an after the fact permit for the fill placed on both the recycling center and the vacant lot on the east side of the creek. There are no planned additions to the PUD in the way of structures. It is currently zoned C3. He talked to Roger New. Mr. New says that in 1983 he came before the Town Council and they assured him that he could do what he needed to do to run his business in a C3 zone. Mr. Carmen believes there is a misunderstanding about what his client's "salvage" conjures up "rows and rows of beat up rusted hunks" and that is not the case with his client. This is not a junkyard. He wants a PUD to legitimize what his client is doing with the property. The Indiana Secretary of State's office has issued a license for salvage operations. He has obtained the hydrology report only recently from MS Consultants. Also, he has obtained letters from neighbors who have no objections to how Chad's is operating its business.

Ron Wayt – Asked Mr. Carmin what evidence he had that the Town council approved anything other than C3 use. They have gone through the minutes/records and can find little or nothing on this issue. Mr. Carmin commented well, if they want to call Roger New a liar. Note taking at meetings and the technology for taking notes has improved greatly over 30 years. Mr. Carmin confirmed his client is currently violating Town code and the whole point of the PUD is to address that issue. Mr. Wayt asked about the laches issue. Mr. Carmin responded that a municipality can always argue laches. His point is that since Chad's has been operating the business for so long without complaints from the Town, that is some evidence that the Town approved of his use of the property.

A few members of the Plan Commission accompanied Connie Griffin on an inspection of Chad's recycling Wednesday, August 3rd. There was a discussion on fluid spills and dumpsters they saw during the inspection.

The minutes from this point forward are verbatim from the cassette tape.

Sandra Hash - Asked Mr. Stephens if he shovels the lime and disposes of it properly. Mr. Stephens said that's correct. They bag it up and put it in a Hoosier Roll Off container that's at the north end of the property and Hoosier Disposal is an authorized handler of contaminated materials.

Dan Swafford – Asked Mr. Stephens to explain tire disposal. Mr. Stephens stated every tire is on a rim. So, there is not water in the tires. If the tires are off the rims they are inside a container that Connie Griffin didn't take a picture of. Ms. Griffin stated she did have a picture. Mr. Stephens continued stating if they're off the rim they are inside of a white van. Those rims coming off the tires – the tires will still have rims on them also because the tire changer is under a shed (referring to a photograph). Those tires with rims on them – according to IDEM that's okay. Tires are a big nuisance because they are an expense. They cut them off in threes and Hoosier Disposal will also take the tires. If they are off the rim, they go into a box van so they don't get any water in them. With cars coming in, tires pile up real quick. They're looking for a way to simplify that down to maybe a set of shears and just cut them off instead of using a saw. Mr. Swafford, referring to a picture of a spill, asked what happens when they get a spill like that. Is it just left or do they try to clean it up? Mr.

Stephens asked if it's oil, water or transmission fluid. Mr. Swafford stated he smelled it and it smelled like oil to him. Mr. Stephens continued, if a spill like that happens, yes, those spills like that, those guys will come along with a bobcat or shovel and pick it up. Sandra Hash asked on the piece of metal (referring to a photograph), there was a little red pooling liquid in that blue piece of metal. They didn't know what the red liquid was. Mr. Swafford asked Mr. Stephens if that would be transmission fluid. Phil Rogers commented there's that much transmission fluid in front of every convenience store in Monroe County. Mr. Stephens responded yes sir. Mr. Swafford commented he was looking for the run off pictures Mr. Stephens was talking about that went over towards the creek area.

Chad Stephens – Commented to Mr. Wayt on the stuff that he had seen across the creek, that tub had just gotten delivered that morning and had engines in it. They do their best. Like Mr. Wayt said, they can't possibly get all of that out. When they left, that tub had come in from Columbus and dropped over there and when everyone was gone, in 10 minutes they were shuffling containers around. That was back across the creek or back over on the pad where they set all the containers to collect the engines or transmissions. One thing he is working on is trying to get are sealed containers for the transmissions and the engines. As a matter of fact he meets with a lady from T-Pac Containers on Tuesday of next week. Those are two of the things he's trying to get to seal containers so the stuff doesn't leak out or doesn't allow the rain to get in them. Mr. Wayt asked if it is refilled back up with engines and how many days does that take. Mr. Stephens stated usually about once a week they haul engines. Mr. Wayt stated so they're sitting there for five business days and a rain event comes along and all that gets rushed right off that truck. Where does it go? Mr. Stephens answered most generally all of those containers – what they do is the one that's leaning forward, if any of that rain is held it is in there. They take oil dry, three, four or five bags and they pour it in the bag. So all the rain and residual stays in the container and once it's lifted on the oil dry will block that and soak it all up. Up there in Indianapolis, the facility they take it to, they don't care. Mr. Wayt stated his concern is that it's setting there for that many days with nothing to protect it from going into the water way or into the ground. Mr. Stephens stated he also needs to understand that – into the ground – he can understand that and can't really comment on that. The whole pad when that's setting there it spills out of that container and runs to the center from north to south, into that container. Mr. Wayt asked with no lining. Mr. Stephens replied with no lining. But, Fields Environmental also said that whatever that ground is filtering out is okay. He, personally, wants a liner in there and they're working with IDEM on that.

Dan Swafford – Guessed the question right here is how they plan on addressing this (referring to a photograph) because when it rains it's obviously going in to the creek area here. How would they address that area or has anyone ever looked at it? Mr. Stephens stated nothing is ever kept to that edge. Mr. Swafford asked (referring to a photograph) if that's where he was talking about where the water was flowing over. Mr. Stephens said he will back up and say that IDEM has been down there twice in pretty recent times and they walked up and down the same areas that he's just talking about on that edge. As he can see, there's nothing on that edge. Even that edge is the highest point in all the runs, to the center and back to the pond. No car destroying, no nothing takes place over there. Actually, what they do at that edge is they'll lay out long iron and they will cut it down. Mr. Swafford (referring to a photograph), stated an area did run down into the creek and looked like someone, at one time, was crossing the creek or something. It's hard to see with the picture. This is one of his concerns. He asked if there isn't going to be any kind of wall that stops that if it would seep out into the creek or anything. Mr. Stephens stated there are no walls. Mr. Swafford asked if they didn't suggest that. Mr. Stephens replied IDEM didn't have a problem with it and there were no suggestions. Sandra Hash asked Mr. Swafford to go back to a picture and one thing they wanted to show was, they had a gentleman stand down there at what seemed to be closest to the natural lay of the land to show there's has been about four feet, at least, of fill put in there to raise that property up. Mr. Stephens stated, just like Mr. Carmin said, there's no denying there but the DNR is doing the hydrolic testing on it now. As far as IDEM, they are the ones that said after the fact the

permit will be approved. Don Calvert asked where there was four feet of fill. Dan Swafford referred to a photograph which showed the natural slope of the land. It looks like it was raised up four feet.

Connie Griffin – Asked Mike Carmin if he had submitted something to the DNR. Mr. Carmin provided a copy of MS Consultants Sonar and Hydrolic report. This hydraulic report has been prepared following the requirements of the DNR and the Federal Emergency Management Agency for use by the applicant, which would be Chad, in obtaining an after the fact permit for the work performed to date as well as to obtain

approvals for additional fill placement yet to be performed. Ms. Griffin asked if it was to the DNR. Mr. Carmin answered yes. Darla Brown asked if the petition was on file. Mr. Carmin said that was right and asked if she was referring to the after the fact permit. Ms. Brown answered yes. Mr. Carmin said that will now be filed because they wouldn't accept it until the report came in. Now they have the after the fact permit, the application requires the study of the impact. This will now be the next step. Ms. Griffin asked under what name the permit will be submitted. Mr. Carmin stated it should be under Pip Jay Properties, yes. Ms. Griffin said because of today's date, they have not submitted anything. Mr. Carmin stated John, can't think of his last name, from DNR, talked to him about a week ago and he was asking where they were on this because he was, frankly, waiting to - because they have enforcement advance spending this and the anticipated release date of MS Consultants. He said he talked to Sean Arden and got a directive from him if needed to but they will be submitting the full application now. Sandra Hash asked who they got the report from that said they were within a quarter inch. Mr. Carmin said this report is from MS Consultants. That's the engineering firm on this one. Ms. Hash asked Mr. Carmin to explain that statement just a little bit. She meant, if someone puts in several feet of fill on both sides of the creek how does that come down to only a quarter inch of impact. Mr. Carmin stated the hydraulic analysis for the project indicates a post project rise that means after the result of the fill activity. In base flood elevation with Jack's Defeat Creek, about 0.04 feet, four-hundredths of a foot. When they do that, they are not measuring just at that site. They're looking at the flood basin and the length of Jack's Defeat Creek to see what the impact is. Not just at a particular location. They had to go back to part of the work – the flood plain modeling to be done first. Why it takes longer to do this – they had to go back and establish what would have been the elevations before the fill activity, measure the amount of fill activity put in there and then do the analysis and study after that to see what the impact was and to see what the change was on the flood base for Jack's Defeat Creek. It takes awhile and that's why it has been a little slow getting to this point. Ms. Hash asked if a ¼ inch in their opinion has no effect. Mr. Carmin stated it's basically four-hundredths of a foot so between ¼ and ½ inch, about .4 inches. She's right. The IDEM tolerance level for an after the fact permit is that it can't be more than fourteen-hundredths of a foot. So, this is less than one-third of that. For the DNR, they can't have over fourteen-hundredths of a foot or more and this is four-hundredths of a foot so it is well within their guidelines. Carla Frownfelter, Journal reporter, asked if they paid \$7.50, did they get the license. Mr. Carmin stated there is a little bit more to it. Chad Stephens said someone has to sign off on it and the Secretary of State to a President can sign off on it. And, then he gets a form and it's actually out in his van – then they get a form and it says they have signed the permit and you need to send us back \$7.50 in a cashier's check or money order and we did that and they sent us the license. He knows that doesn't look like a very good copy but he actually has the letter in the van. Sandra Hash asked what the criteria on the license were. Mr. Stephens asked what she meant. Ms. Hash further asked on the application what questions did they ask him. Mr. Stephens stated he thinks the biggest thing that they would ask, that pertained to this, is what is going to go on there. They had four things: they had salvage rebuilding, hulk crushing, used auto parts and there's one other one on that license he can't remember.

He applied for three of them out of the four. He thinks that's the biggest thing they're asking for. The Plan Commission members have all seen the permit at one time. Ms. Hash asked if he meant the permit application. Mr. Stephens said he had it "up there". In the middle it says, salvage recycler, hulk crusher and used parts

dealer. The last one was a salvage rebuilder which he is not. Phillip Smith asked if there were any other questions for Mr. Carmin.

Phillip Smith – Adjourned the meeting for a 10 minute break.

Phillip Smith – Called the meeting back to order at 7:47.

Don Calvert – Just based on paperwork, he has a letter from the Secretary of State, April 5th. He told Chad Stephens he appreciated his demeanor, he had done a fine job. Mr. Stephens said he had a good teacher. Mr. Calvert said yes, Mr. Taylor. Mr. Calvert stated Chad's Recycling has been operating a facility without a proper salvage license.

The business is engaged in business activities and must be properly licensed to carry out such activities. In bold and underlined, *"you're required to cease and desist any and all business activity in the operation of a salvage facility without a salvage license."* If you don't then you're going to face all kinds of monetary fines and this sort of thing. Then they gave Chad Stephens an email, a phone number to contact somebody at the state level. Then he has a letter dated the 23rd from the DNR to Chad Stephens. In bold, *"there is to be no further construction, excavation or filling within the floodway without approval from the DNR. In order to resolve legal public safety the project site must be restored to its original condition. Contact the DNR Division of Water Compliance and Enforcement and Enforcement Section within 30 days."* This was dated May 23rd. Failure to restore the project site to its original may result in a notice of violation. He has a letter dated today. He asked if Mr. Stephens had a license issued or an application yesterday. Mr. Carmin said this is the license. Mr. Calvert reiterated he said an application or issued. Mr. Carmin said license issued. Mr. Calvert stated according to the DNR they can find no record of Chad or Pip Jay Properties applying for any sort of permit. Are they communicating at all? Mr. Carmin said he's talking about two different offices with two different issues. Mr. Calvert said to educate him. Mr. Carmin stated the license comes from the Secretary of State's office and that's the salvage yard issue. That's the license issue and that it is issued by the Secretary of State's office. The first letter he read was April. Mr. Calvert stated April 5th. Mr. Carmin asked who it was from. Mr. Calvert responded it was from Tony Bell of the legal services division. Mr. Carmin provided a letter dated May 16, 2011 from the Secretary of State's office, Dealer Services Division. From that letter he read *"This division received information from the Director of Planning for the Town of Ellettsville, Connie Griffin, that Chad's Recycling is not properly zoned for business as a salvage yard. I am able to verify that your client has begun the application process with out office and that you are seeking placement on the Plan Commission's meeting agenda for June or July to request a zoning variance. As with all of your client's efforts, we are certainly happy to support Chad's Recycling to become a properly licensed salvage dealer in Ellettsville. As such, we agree not to pursue enforcement action against Chad's Recycling until the Ellettsville Planning Department issues a final decision regarding the variance matter."* Despite the letter to him, they went ahead and issued the license anyway. This has nothing to do with the DNR. DNR deals with any change in the ground disturbing activity within a flood plain. That's the permit for the work he has already done where he talked about leveling it out and moving some fill around. The activity would require a permit from the DNR that he did not apply for. That's the second letter that he's referring to about enforcement action on that. They also put that in advance of enforcement pending the flood plain modeling and hydraulic report depending on the results of those and waiting now on the application for the after the fact permit. Now they have the hydraulic report and that permit application it will go into the DNR now and that will address whether or not there's any enforcement action to be taken with DNR whether they approve the after the fact permit. So really, two different issues. The Secretary of State deals with just the license to operate a salvage yard regardless of how it's done. The DNR deals with the ground disturbing activities in the flood plain and what permits are required to do that. So that one is yet unresolved. They do have to follow-up with the application for the after the fact permit.

They do not have it on file yet because they wouldn't accept it until they got the report done that just came in, finally, today. So, they will be filing the after the fact permit now. That's what they're waiting for. Connie

Griffin asked if the Town were to actually find this to be an unfavorable recommendation is there a possibility that the license would be revoked based upon their zoning. Mr. Stephens said no. Mr. Carmin said actually the zoning is not a requirement for the license. That's why he called Ashley Humphries who authored the letter and asked her what does zoning have to do with her level. He told Ms. Humphries it is a local issue as opposed to the state issued license. Her answer was simple. She stated it really doesn't, they just like to know. They put it on their application form and they like to support local units if they can. Generally, they wouldn't issue a license if they're not zoned for it. They'll wait to see if they get the zoning worked out and he's to let her know. He didn't know they decided to issue the license anyway. Ms. Griffin asked why it was so long to bring this forward to the Plan Commission. Mr. Carmin responded to do the hydraulic report, which has taken about 45 days, they first had to do the flood plain modeling. It's a slow operation. It's taken awhile and Chad can't do that work. He hired Bledsoe Riggert & Guerrettaz to do what they can do but they don't do that type of work either. So, he had to hire two other engineering firms for different aspects of this, it has been a slow process to get everybody on board and get the work done.

Dan Swafford – It's clear they have to submit within 24 hours any thing that is going to be used at the Plan Commission level for this meeting. They have 24 hours to submit any kind of paperwork. But, seeing the impact of this paperwork, he really feels they are going to have to have some extra time to look over all of it. Mr. Carmin said he fully expected that. When they talked at the pre-design, pre-petition meeting they knew that report was not going to come in as quickly as everybody wanted it. They had some discussion there, do they go ahead and go on the agenda with the very distinct possibility or probability that it could turn into a two meeting process. Because they would not have received this timely to get to the Plan Commission and that it would need more time as, frankly, do they. He fully understands it is very likely that this could be tabled at some point to appear at the next meeting when they've had more time to digest it and Rick would have had more time to digest it and make any recommendation. Mr. Swafford stated he doesn't really want to table it right now because he wants to hear what the public has to say. Phillip Smith asked when he received the report. Mr. Carmin said he received it and printed it at the office today at about 2:30 p.m.

Ron Wayt – Regardless what the reports say, this property is still in violation of Town code. There are five different items that they're in violation of. But, it's prohibited land use in a C-3 zoning classification. A new business was added in 2010. There was no attempt to even notify the Town of this coming in to even give the public a chance to voice their opinions. There have been some after that. No grading, nothing like that. The residential part being 1,000 feet away – they're less than being 1,000 feet away from downtown right at the center of down town. That's a violation of Town code. The violation of the code is that they also cannot be within a flood way with this business. Regardless of what the report says, those are in the Town code. They would have to change the Town code to allow them to operate that business or a Board of Zoning Appeals. Ms. Griffin stated they could not go to the Board of Zoning Appeals because they are not zoned Industrial 2 to begin with. The Board of Zoning Appeals can only hear that to grant a special exception if they are already zoned an Industrial 2. A PUD is the only option. It was either to cease and desist or to apply for a Planned Unit Development. Those are their two options. Mr. Carmin noted the PUD addresses all of the violations being referred to. Mr. Wayt asked before they can change a PUD do they have to have all of the violations corrected. Darla Brown stated the issue for the Plan Commission to resolve is whether or not this PUD promotes the general welfare of the Town. The point of a PUD is to allow flexibility in zoning but the broad issue for the Plan Commission to consider is does it promote the general welfare of the Town. One of the things for the Plan Commission to consider is it responsible development growth. The pass violations that weren't corrected come under that. Mr. Carmin stated he questioned her statement and can fully answer. Are there zoning violations right now? Yes. If the PUD would get approved by the Town Council that cures the zoning violations and doesn't undo that in the past there have been zoning violations and whether the Town would chose to do anything about that is actually a different question. The act of rezoning to the PUD, with an approved development plan would cure all of those violations. Mr. Wayt stated there are other violations such as tall

grass, that's another one; it's over 9 inches tall. There are horses in a residential property. That's another one. They cannot have the horses on the property even if it is changed to PUD. That's something that would have to be removed. That's in violation now and wasn't even listed on the violations regardless of whether it is a PUD or not. Mr. Carmin stated he must be talking about Roger and Patricia's property. Mr. Wayt stated which is part of this. Mr. Carmin doesn't have any idea of how long they have horses there and doesn't know anything about their horses. Ms. Griffin asked if the News also seek a salvage license since they repeatedly claim to be a salvage yard. Mr. Carmin replied no. Ms. Griffin stated that would also be considered in violation. Mr. Carmin asked if this is a game of gottcha. What is going on here folks? He doesn't understand this and they're commenting on Chad and his demeanor and he doesn't want to spoil that but he honestly doesn't understand what they're talking about right now. There are zoning violations and they understand that. Phillip Smith stated what they are talking about is the betterment of Ellettsville. Mr. Carmin stated absolutely and they may disagree on what the path is to get there. Mr. Smith stated what it boils down to is, does this Council decide whether or not they want to allow salvage within less than 1,000 feet from downtown Ellettsville. Mr. Carmin stated he understands that – absolutely. That's exactly and there are a lot of things to consider in that – he understands that. Mr. Wayt stated it's not the Plan Commission making the decision. They're finding out information and they'll forward that to the Town Council so everybody understands. They are not the ones making the decision. They could say yes or they could say no. Town Council can change everything that they do. Mr. Carmin stated absolutely. Mr. Wayt stated so that's what they're trying to figure out. He doesn't consider a container full of sludge and oil spills and all of this other sort of stuff better for the Town. Mr. Lowers was speaking of the environment and such earlier during this meeting. This is a major environmental hazard. A salvage yard is an environmental hazard if there are cars setting on the property that have not been tended to yet. Say Saturday he takes in 10 cars and that could possibly happen. A rain storm comes in on Sunday, battery acid, washer fluid and all of this sort of stuff is flowing down the creek and going into the White River and spreading throughout there. That's his issue. Chad Stephens stated isn't that potentially every car that's setting outside though. Mr. Wayt responded could be but when they have crushed cars setting there it can happen if they're concentrated in one area. Mr. Stephens stated if they're taking in the 10 cars he said and they're setting back there and they don't process them they're no different then the cars setting in this drive or the cars setting in his driveway. Mr. Wayt stated volume is the issue. Mr. Stephens stated it's no different than all the cars setting at IGA. Mr. Carmin stated a lot of things have been discussed and are legitimate issues of concern and he understands. He does not mean to diminish that or discourage that at all. A lot of it will be dealt with at what would really be the last stage, the development plan. The development plan is where they also have some oversight and approval authority for such things as what's going to be part of the setback, what screening do they need to be improved whether it's a fence or additional tree planting, what's the traffic flow from entrance on-site, do they need rip rap along this one edge they looked at to keep anything from washing down into it. Those are development issues not outline issues. The outline plan is the big picture. Is the use compatible? Does it meet these various things they've talked about? There are a lot of criteria. He'll be honest. His experience with zoning – he hasn't done a whole lot up here over the years – they know that. Most of his has been in Monroe County. Years ago it was all in the City of Bloomington and now it's all out in Monroe County. It depends on where the activity is right now. In his experience with most zoning decisions when they have a list of criteria whether it's five or 15, if they want to approve a petition they can't find it in there to do it. If they don't want to approve a petition they can find a justified reason to say no. He understands that. He could point to that list of the things that Connie's reading off and say well it doesn't meet this one and this one and for the Plan Commission they may say that's good enough for them. They're not going to recommend approval on this. Somebody else could look at that same list and say yea, it does 5, 7, 12 and 13 of those and those are good enough for them and they'll recommend approval based on that. That's the nature of this kind of business. He understands that. My frustration earlier was that they're raising questions about things to some extent now that have been ongoing issues for years. There are other properties in Town that weeds over nine inches tall or they wouldn't have had the discussion they had earlier. It's not unique to Chad's. That's not a basis to approve or deny a PUD. That maybe a different enforcement issue but it's not a basis to

approve or deny a PUD because it really has nothing to do with the overall use. That's the general problem. The Town's had the problem with cars parking in the front yards and they had that problem. People wanted that stopped and then they get Frank issuing so many tickets. Then they had people complaining he's issuing too many tickets. He means those kind of things happen and they're always going to happen. They have to do it. The PUD request tonight is to focus on these tracts, if they're issues that are really user issues, things that happened during the use. Open containers are a concern. It can be a condition of approval that those have to be sealed containers or closed containers. The question is those things are of concern if those can be addressed with a requirement, with a condition of approval and say, they know, if that was dealt with, that they didn't have these open barrels, this would be acceptable to them for the jobs it creates and with what it does. Those are positive, they could live with that but they need these things to be done to. Then they set those up as a condition of approval and he either comply or he doesn't. But it becomes part of the process. They're not there yet, that's the last step and that would come later. For now it's the bigger picture. Can't these things be done within this area? Can they be done in a way that would be compatible? What's compatible? They have neighbors out there now and there maybe some of them here tonight. It's going to surprise him. They've not received one complaint from a neighbor about noise. They've received no complaints from neighbors generally. There is also an understanding that the neighbors have been supportive of keeping it there. They're fine with it. That was the reason Marion Jacobs called from 621 Main Street. What's there now is a whole lot better when it wasn't there and it had overgrown, they had varmints there and animals living there that he didn't want there. He likes what's there instead. It's a good use of the property and he supports it. There are people that feel that way and there will be people that won't feel that way. He understands that and that's why that have to make the tough decisions. It is a recommendation of the Town Board and if they can make that recommendation tonight, one way or another, fine. If the Plan Commission needs more time because of reports coming in late and they need more information and need a chance to have their engineer comment on that, they would like to move on but they also understand that they were slow in getting here, much slower than they would've liked and they need whatever time is appropriate for them to work to. It's part of it and they appreciate that. He didn't mean to get carried away there.

Chad Stephens – There are a few things to that he wants to say. Dan Swafford told Chad to come to the microphone so he could be on the record. A couple of things that Mr. Wayt had said – it is within the 1,000 feet of residential but so is the recycling center down the street from him. They may not take any cars there and he's not going to say they do or they don't. But they take in everything else that's the same as him, batteries, aluminum cans, they even take the glass and the cardboard but they take in the same stuff. That is within 1,000 feet of a residential area. Mr. Wayt commented it is also not within the Town's limits. Mr. Stephens said okay, but it is their Town up there and it is within the Town's limits. Mr. Wayt asked Connie Griffin if that was correct. Ms. Griffin replied it is a county property. Mr. Stephens asked but is it within the Town's limits. So, it is within 1,000 feet of a residential use. Mr. Stephens asked Mr. Wayt how long he has been here. Mr. Wayt responded six years. Mr. Stephens stated Mr. Wayt has clearly not seen what this place – unless he goes to Google, or he sees these pictures he's brought up there, what this place looked like 20 years. He grew up down there. He never did like it. Mr. Wayt commented he saw it when he first moved here and he's not disputing that he hasn't cleaned it up. Mr. Stephens asked what he thought the rain did with all of that stuff and the flood water did with all of that stuff. Mr. Wayt stated they're not talking about then, they're talking about now. Mr. Stephens said that's exactly right – they are talking about now. It's 95% better than it ever was. He grew up here, he lives here, his kids live here, his kids will go to school here and they think he wants to do anything to this environment? No, he doesn't. He doesn't want to do anything to this environment. He never would hurt it. That's exactly why when IDEM went down there and he wanted to build that pond exactly like they wanted it. Mr. Wayt stated he's not saying he is purposely going to do something with this. This could be an accident that he cannot foresee. This can be one of those oil drums tipping off of a truck and running right into the creek. It could be a lot of what-ifs happen here. There could be an explosion down there. An explosion could take out

the News' property. It could take out the property that's on the other side of the creek. It could damage a considerable amount of property. That could happen any where. Mr.

Stephens commented it could happen any where. Mr. Wayt stated but when he has vehicles that have fluids, he has barrels of fluids there and he has tanks of fluids there. No matter what he does, a lightening strike could hit and wipe out his whole facility plus part of downtown. There are many hazardous chemicals there. Mr. Stephens said lightening could strike the Bigfoot Station up there. Mr. Wayt commented he's not saying he's purposely going to do it. He's not purposely going to dump oil, he's not purposely going to do it. That's not what he's saying. He lives here too. He has property here too. He has family here too. He works here too. All of us do that's on this board. They want to portray Ellettsville and move it forward into the new century. A salvage yard does not fit in with the Comprehensive Plan. It doesn't fit in with any of the plans within the Town. It's going to have a trail going right beside his property. How is he going to keep children from that and all of these other things? It could possibly be very detrimental to the environment. Mr. Stephens stated okay. The trail is on the east side of the property. There's a whole other parcel that separates that and the creek. It's just like Mr. Carmin said if they want a fence to run down. Mr. Wayt stated that's part of the development plan. Mr. Stephens stated exactly. So it's up to the Plan Commission to tell him what they want to see happen down there. Do they think he wants to see Ellettsville go backwards? No. Do they think his 14 employees aren't helping? The thing of it is my 14 employees are spending money here and helping Ellettsville move forward also. Mr. Wayt stated Mr. Carmin had mentioned he's moving the truck business out. Mr. Stephens said yes. Mr. Wayt asked if that's part of the 14 employees. Mr. Stephens said no he has 21 employees all together down there. Mr. Wayt asked why he's moving the truck business – why not keep it there? Mr. Stephens said because he has overgrown it. He's too busy for four bays. It will actually be expanded to ten. Mr. Wayt asked if there have been any other places he has looked for property in the past and have been told no. Mr. Stephens asked if it was for the recycle yard. Mr. Wayt said yes. Mr. Stephens said no. Mr. Wayt said there has not been. Mr. Stephens said no. Mr. Wayt asked if there's nothing in Monroe County. Mr. Stephens asked for a recycle yard. Mr. Wayt stated for a recycle, salvage, what he has on there, salvage recycler, hulk crusher, used parts dealer. Mr. Stephens asked that he's looked to move to. Mr. Wayt said no, not that he's looked to move to that he has looked into in the past and been not approved for it. Mr. Stephens said no. There is one spot he was going to move the truck shop to and the guy got refinanced and they dropped the plans there. But not this business. They said it was a new land use. He doesn't think it's a new land use. He doesn't think it's a new land use because they've done it there for 23 years. Go back and research who has had permits. He's not going to say names but go back and research some of the other salvage yards or recycle yards that are in Monroe County and see if they had permits all the way back into the 80s and he thinks they'll find that they didn't either only until recently when theft of vehicles being sold to salvage yards became a really big deal.

Phillip Smith – The way he understands right now, he needs to get a motion one way or the other favorable or not favorable. Connie Griffin said or no recommendation. Dan Swafford stated he would actually like to hear if there are any public comments. Connie Griffin stated they actually make a motion first and then they ask for public comment. After the motion was made, Mr. Smith asked for public comment.

Joey and Jackie Gardner, 6473 W. McNeely Street – They are two properties east of the proposed scrap yard. Jackie Gardner stated she first purchased her home two years ago and they have two little boys, ages 6 and almost 8. She grew up, not in Ellettsville, but around Ellettsville. She played softball in Ellettsville all the time and loved where it was. It has a big yard; it was something they could afford and was something they could grow in with their family that is safe. The trucking place has been there the whole time. When she moved in, that's all it was. There were a few cars back there that were crushed up. Over the last year, the Saturday mornings and days they are off have consisted of them waking up to hearing crash, boom, bang, slam, semis backing up, pulling forward and the containers that they bring in on semi beds are dropped off. All of this stuff happens and it not only brings more of a flow of traffic through there but it's really disruptive. For her, all she cares about is the welfare of her children. It's their first home and the property value – who wants to

live near a junk yard. That's not why she moved there. She wouldn't have never have moved there in the first place if that's what she knew was going to happen.

Joey Gardner - Had a quick question on going back to someone mentioning how many cars in the lot are leaking fluid and how many cars are here leaking fluid or whatever. He thinks everyone probably attempts to keep their car from leaking fluid because of the obvious price of oil, transmission fluid, antifreeze or whatever. Does anyone in there have a car they're considering scraping that's setting out there leaking oil in the parking lot right now? So, that's been established. His second question would be how do they seal these containers? The question is for Chad, how does he do that. He is a union sheet metal worker and he guesses he doesn't know how to seal a trash haul off. They have Rays do their stuff and there are holes in the side of everything because they just dump quarter plate in and let it go and it gauges out the side, gauges out the bottom so he is familiar with that. How would he consider sealing those? Mr. Stephens replied number one they would keep holes from happening. In the back they have a tightly machined overlapping groove that goes across the back and then they have these cranks that are manufactured on the back of the tail gate. Some of them are even double hinged. Once it's closed and locked they take these latches and screw down tight so once that overlapping takes place there's no way for it to leak out. Mr. Gardner asked if there's never a problem with the hole in the bottom from the loader dumping the car, the motor, the engine, the transmission, the rear-end, the wheel or anything in the bottom. There's never a problem with that? Mr. Stephens responded there could be a problem but that's when they find them and that's when they wheel them back up and fix it. Mr. Gardner asked how thick are the bottoms of those. Mr. Stephens responded quarter inch. Mr. Gardner confirmed it was quarter plate. So none of them are leaking right now because they are sitting within four hundred feet of his property and with a few hundred feet of Jack's Defeat Creek. Mr. Stephens said no but if there is, he's right over there, come see him and he'll come take care of it. Mr. Gardner asked how many people in the room know what's very unique about Jack's Defeat Creek. Mr. Gardner stated it runs north. Yellowstone River also runs north. Does anyone remember what happened to that a month ago? Someone answered an oil spill. That just brought to mind because he's always known Jacks Defeat Creek was one of the few in the nation that runs from south to the north. Then, the oil spill comes up in Yellowstone National Park and he just couldn't help that from popping into his mind. That was due to negligence and greed by the oil companies by not spending money they needed to spend to ensure those pipes weren't rusted, leaking or whatever. Then, just to reiterate on what his wife said about the noise pollution. He never had a problem with the trucking part down there. They moved in fully knowing that was going on. They hear the telephone ringing through the intercom. They are not people to complain about stuff like that. He knows people are out to make a living these days. He's doing the same thing but his concern is the ecological part of it. They can walk down to Jacks Defeat Creek and within five minutes they can pick up 30 crawdads, a snake, snapping turtles, fish and there are all kinds of wildlife that are in the creek. He wouldn't have encouraged her to or participated in buying their house if they had known there was going to be a scrap yard. Mrs. Gardner stated it will be hard to convince someone else later on down the road if they want to move to buy it from them. Mr. Stephens asked when they moved in there. Mrs. Gardner replied they moved in there in May 2009. Mr. Gardner stated he wasn't aware they were scraping and asked when they had scales hauled in. Mr. Stephens responded they started earlier in 2010. They put mufflers on their motors to quiet them down. As far as back up alarms, it's required by OSHA. Mr. Gardner stated but the back up alarms are for the safety of their workers around there not for the neighbors within 1,000 feet to hear. Mrs. Gardner stated she has two kids and if she can get them to sleep past 8:00 then she gets to sleep past 8:00. The noise from the salvage is the first thing that wakes them up. They hear something banging around and crashing around and they come running. Mr. Stephens stated the panel can recommend the hours.

Richard Crider, 5975 N. Matthew Drive – He has been a resident of Ellettsville since April 2010 and lives across the street from the property in question, west. He is not there to object to any of the current operations on the property. From what he's read in the minutes and PUD application, apparently a lot of this has been going on for some time and he doesn't really care to speak to anything that's happened prior to him moving in.

He has read the application and the minutes from the meeting in October 2010. He has some questions. The first question is what is the difference between salvage and recycle operation. Mr. Stephens stated there isn't a difference between salvage and recycling. He thinks the thing Mr. Carmin was saying was that the thing they don't want to portray is a junkyard. It isn't a junkyard. His competitor has salvage in his name and he is also a recycling center. So, he doesn't think there is a difference. He would say it's not a junkyard. A junkyard being a place someone can go to and get a motor that's been setting on a car for 20 years. Mr. Crider stated the PUD application made mention of the salvage operation expanding. He hasn't had a whole lot of time to really study the map. What portion of the property is Asher Fleet Services? Is that the trucking company with the bays and the garage? Mr. Stephens answered yes sir. Mr. Crider stated so he would be expanding north. Mr. Stephens said yes, it would expand up into that building. Mr. Crider further stated the PUD application states that the applicant will add additional screening by privacy fence and/or tree buffers for further screen the current operations from public view. Where will these buffers be located? Mr. Stephens replied there is a tree line there now and there's an old fence there. He made mention at the meeting he hasn't done anything with that fence because what he wants to do is put in a retaining wall with a big tall fence with metal siding. Unfortunately, he knows where Mr. Crider lives and he's up on that hill so it would be hard to get a fence high enough. It will be along side the north-south fence that they see down there. Not the high fence along the road because that's kind of raggedy looking but the chain link fence over there beside the trucks. Ron Wayt stated there's a map of the property that will help him a little bit. Dan Swafford stated there's a laser point if he wants to use it. Mr. Crider, referring to a photograph, stated there is currently an open field, roughly the size of a football field, something like that, and his question, he may have addressed it earlier, is are there plans to expand the operation westward into that open field. Mr. Stephens stated he may have heard Mr. Wayt saying that he talked about buying the whole ten acres and there will not be any from the west and he has no plans to bring it to Temperance Street or Main Street. Mr. Crider stated as he mentioned earlier he doesn't want to sound too hypocritical because when he moved in in April he actually, from the previous owner, had some scrap metal located on his property and one of the residents in the area informed him that the operation was there. So, he took it there. So, he doesn't want to get too crazy about this. His concern is the expansion of the salvage operation west. It wasn't there when he moved in so he thinks he has a valid concern there. He pretty much answered that for him. Mr. Stephens stated as part of the PUD because for one thing they had talked about possibly having this hydraulic model and overflow to just water. So, it would have been nothing more than a retaining pond. There will be no expansion beyond what they see. Mr. Wayt said something about a horse out there and he doesn't know about any of those rules so if the horse has got to be removed then it will or if it can stay, it can stay. Mr. Crider said currently it's a neat little spot there are horses and it's kind of pretty to look at. When he received the certified letter his first thought was oh my gosh this thing is going to be right outside my door step, essentially. So, any way, that's all he had to say. Phillip Smith asked if he heard the noise the other couple talked about. Mr. Crider replied yes he hears noise. He can't identify it. He's way up on a hill and there's not a lot of buffering up there buffering as in visibility or noise. As he mentioned earlier, if this operation was in fact in full tilt prior to him moving in, he doesn't really care to comment on the noise and that type of thing because he kind of feels like it's a shame on him type of situation for not doing enough research of the area prior to moving in. But now if the property in question wasn't full tilt, they know that's a different story. That's why they come to these meetings, to listen to all of this.

Dana Kerr, Attorney – He is attending the meeting in two capacities. He has a client who wanted to remain anonymous. However, he is also attending on his own behalf as having an office just across Main Street from this area. There are a couple of houses buffering them from Main Street. He is very close to it. The last comment was on noise. He can comment there is significant noise that he hears. His conference room is on the street side and occasionally, there will be a big log truck that goes by or a big semi truck that'll make some noise. The amount of noise that has been generated in the recent year is far beyond that. They can hear it in the conference room when he's trying to meet with clients. There has been a lot of talk on soil and ground water. Quick comment – maybe the reason the pond still has water in it is because there's not a liner and ground is

infiltrated. He was an environmental scientist consultant before he was an attorney. As an environmental consultant a lot of times, they dig a hole and can water comes into that hole from the bottom because the ground water, once they relieve that pressure on top the ground water comes up into the hole. So if they talk about heavy metals, lead, chrome and different things that come out of a salvage facility going into that pond, it may be interacting with the ground water directly. So that is a significant issue he has about the way it is run now. Because this meeting is more about whether or not the PUD is right then he has a lot of comments on the environmental issues. He wants to limit it to whether or not this is right for Ellettsville. He strongly believes it is not. This is within a short distance of downtown. Had this facility been in operation when he put his office in Ellettsville, he would have not have chosen that location. Ellettsville is a modern community with a small town feel. They have a great street department that keeps the roads up and the lighting and everything that was done on S.R. 46 is great. The Heritage Trail is going in. It's a nice quaint town that he loves having his office in. His office is an historical structure, it's the Shook House that whole area in there, there is a log cabin, there's other historical areas that is the make-up, the chemistry of that downtown area. This is a just a few hundred feet away from that. It is not compatible to offices. It is not compatible when he is in his conference room and he hears the thuds, thuds, going on of things being dumped into, apparently and he doesn't know exactly what the thud, thud is but apparently an engine or something being dropped into a roll off. That is not compatible with what we, meaning me and others that are locating offices downtown Ellettsville. That's not going to be conducive to clients coming in and asking where are they at – what's all of that noise. Well, he tells them it's the salvage facility across the street that was in operation without licensing, that was in operation without proper zoning and that is going in after the fact to try to remedy things that were done. It's like the Town lets that stuff go on? Well, from his discussions from the Planning Director, they are trying to either make it right or have it closed. So, it is not a conducive use. The storage of trailers is increasing from what it use to be on the New property. It has been enlarged. The activities going there have been tremendously advanced over what they were in the past. Maybe the reason people at the salvage activity was going on was because nobody knew about it. Nobody saw it, nobody heard it. However, now it is a full swing operation that's talking about expansion and they have just been there a year. So if it gets approved then it's a slippery slope to get on and he's afraid they'll continue down that slope and it will ruin the effect of downtown. Maybe a quarter of an inch isn't a problem on the change of elevation but he's seen sandbags in front of Town Hall before to keep the water out. Maybe a quarter of an inch would cause it to go in instead of keeping it out. There are a lot of issues with this. Again, tonight, he would really like to say that it has been in operation and in violation of Town code, it's been in operation in violation of the common use and welfare of the community by having the noise issues, and the truck traffic has increased substantially. He hasn't seen any studies that Matthews or McNeely is equipped to handle that – those aren't really wide roads. It is difficult when they're turning from the highway on to Matthews anyway with big trucks or coming out of Matthews. There have been numerous accidents at that intersection anyway. So, they're increasing traffic flow there, increasing large truck traffic flow there and increasing those who are going to the facility and dropping off their salvage goods. It is not conducive to the proper atmosphere of downtown. So much has been gained in the last since 2003 in downtown. Downtown has come a long way and it is moving in a great direction. He wishes they hadn't of taken the Fall Festival from downtown but that's another story. Otherwise he thinks everything that has been done has been a very positive step for downtown. He thinks this flies in the face of what Ellettsville should be and what Ellettsville could be. So, he is very much in support of the recommendation that this be not favorable to the Town Council because it is not in the best interest of Ellettsville. This operation if it could be located farther from downtown, in another location, he has nothing against recycling. Again, he was an environmental scientist but there are right ways and wrong ways to do things and when they do it and ask for permission later and operate and ask for permission later – he knows sometimes it happens because people make mistakes. It seems to be repetitive in this particular situation. Operating without a permit and filled in a flood plain. He doesn't know too many people that don't know Jacks Defeat Creek is a flood plain and that they're not suppose to operate in it. Maybe that's acquired knowledge he has that's not open to the general public. It seems like everything is flying in the face of what's right and he, honestly is tired of hearing all of the noise and tired of the

additional truck traffic going by his office. He isn't perfect and bets people could find things wrong with his facility too. But, not to where it's going to effect the neighbors. Again, he is at 709 Main Street. His anonymous client has these very same concerns. But this is small town and they just felt uncomfortable coming up here to speak and when they asked him if he would it was kind of easy because he has the same concerns that they do. It's not part of the Comprehensive Plan, it's not part of the chemistry of downtown, it is not conducive to the surrounding property uses and all of those criteria that they look at for a PUD, it doesn't satisfy them at all. It's contrary to them. If it goes further and they have to deal with things like ground water and those issues, he'll be back to argue on that. At this point, for the specific whether or not the PUD is beneficial to Ellettsville, he strongly believes that it is not. He asks that this Commission unanimously send this on to the Town Council with an unfavorable recommendation. Thank you.

Jennifer Harper, Office Manager for Chad's Recycle and Chad's Towing – Asked the Plan Commission when they started to make plans for the Heritage Trail. Connie Griffin responded that was over nine to ten years ago. Ms. Harper said that was just a general question. As an employee of Chad's Recycle and Refuse, she wants to express her favor to keep Chad's Recycle, obviously, and she supports her job. She has worked at Chad's for over one year, now. She is very happy there. Chad is great to her. She lives in Greene County, actually Salisbury. So she drives to Ellettsville every day to work. She now buys her groceries, gas and spends an awful a lot of money at the local eateries, gas stations and she banks here in Ellettsville. A lot of her employees do that as well. A lot of Chad's employees do that as well. Not only are they helping, she guesses the Plan Commission doesn't think they're helping, but not only her employees spending money here because they have employment here, there are 13 people, that if they take this and tell us no, that are going to lose their jobs. That's not good for the economy let alone the Town of Ellettsville. As far as some of the concerns tonight, she knows Mr. Kerr is concerned about traffic noise. She personally thinks that truck traffic is a lot better because they have people going through Ellettsville which makes them stop in Ellettsville to purchase gas and eat. Chad does a lot in the community. She knows tonight it doesn't look as though he does a lot in the community but they participate in the Fall Festival every year. She is a former resident of Ellettsville. Her 13 year old and 9 year old had gone to school here. Her 13 year old had gone to school in Ellettsville since kindergarten. CJ, her oldest, has pointed out to her that he was taught in school, in 5th grade, by one of his teachers that there's a lot of what-if's in life and when they come to a what-if they leave it alone and they let it take its course and they don't question it. She understands there are a lot of what-ifs tonight. What if they shut it down, what if something happens or what-if that happens and she agrees completely but she doesn't predict the future and she doesn't think any of the Plan Commission predict the future and she's sure there's one person upstairs that does and they have no control over that. As a Christian, as an employee and as a former resident of Ellettsville, she is going to ask that the Plan Commission allow them to keep the business here, let them work with the Town, not against them, to help get what the Plan Commission would consider them okay to stay here in Ellettsville. She guesses that's all she has to say. She wanted to make it short because she has two kids that want to go home and she's sure the Plan Commission does to. Thank you.

Phillip Smith – Asked Chad Stephens if he's moving the trucking company so he can expand the salvage, what happens if he needs to expand again. Mr. Stephens said that's a good question. Mr. Smith said because basically he's going to double the size of his operation with the trucking company. Mr. Stephens said he has something to say but he doesn't want to say it at the meeting because he doesn't want to jeopardize the Plan Commission's feelings on this. The flow that he has now in order to increase it, BIM would have to go out of business, JB Salvage would have to go out of business, he means something major would have to happen. Everybody has their own amount of flow. His has pretty much stabilized. Moving the truck shop is because it's overgrown. It has outgrown those four bays and he needs more room. He needs more room for mechanics and more room for tool boxes. He's trying to position himself for I-69 because it's going to be a major thoroughfare for trucks and increased traffic. So, he's trying to position himself for that and that's not the place. Like he said, he grew up here so he wants jobs here. He doesn't know where money comes from to do some of these

improvements but he would say they're probably from taxes. He will still pay taxes there, have jobs there and people spending money there. The roll off business will stay part of this in that building. It will give a place to park trucks inside and it will have a place to work on the equipment. Like the loader and the trucks if they have maintenance issues they can use that garage. So to say it's going to expand from 70 customers a day to 140 a day, he doesn't know if that will happen. Mr. Smith hasn't personally been down there, but the others have. It is cramped back there and what they're working on. Basically, moving up into the north side, it would just be able to make some breathing room. They've addressed some concerns of working close to their customers with machinery and the backup alarms to keep them identified that something is coming through there. It just needs to spread out a little bit. The cars, the tin and anything that would lay on the ground stays up there in the back part, up out of the flood water. Anything down in there would not be sustainable to flooding, like a tub of short steel down in the north part may move down in there. A tub of old sheet may move down in there. So, he doesn't ever foresee it overgrowing that unless something major would happen and he doesn't see any of his competitors's going out of business any time soon. He wants this here and he's going to fight for this to be here. He does have other things happening for more growth but this will stay here if it's approved and they get it going. It'll stay here and basically be a feeder yard to another yard. That's why he withdrew from expanding down closer to Temperance. That's why he withdrew going closer to Mr. Crider's concern of going closer to Matthews because he believes just staying in that area where the building and the current center is now, the main recycle part of it, and he can do everything he wants to do right there. Those tubs that they see on the other side that Mr. Wayt was talking about, he'll have the room over there. Does it solve a concern of rain water, no it doesn't, but it'll keep it out of that east parcel which is also what Joey was talking about having those over there. He definitely doesn't want his kids over there – he has a couple of girls and a boy himself – he doesn't want them over there playing in them and he definitely doesn't want them in something like Mr. Wayt seen if there's some residual in there. So, he doesn't want that. So, those containers will go over there. So, that piece of property is open for development and that is a whole other meeting, if and when, they're working for a grading permit for over there also with the DNR and with the Town. He has an idea over there and to spell that idea out, he originally wanted to work with the Town in building a parking lot over there for the Rails to Trails but that's yet to be seen. If that don't happen it could become a place to maybe put in just a small commercial building for a plumber or electrician to rent that don't need a whole lot of highway frontage but that's all down the road. Mr. Wayt asked if it was correct that the expansion he was talking about was across the creek. Mr. Stephens replied yes sir, it is. Referring to a photograph, he pointed to the area. Mr. Wayt stated if he isn't going to expand out towards Matthew's Drive why include Roger and Patricia's property in the PUD. Mr. Stephens responded he said earlier that when this first was talked about with MS Consultants, they were hurrying and trying to do everything they could to get in front of the Town. But, they had to work with the surveyors and the process. He drew the line and said to Mr. Carmin and the surveyors, they could possibly use the field for an overflow and that's his ignorance of not knowing hydraulics. He was simply thinking, where Mr. Baugh was standing in that one picture, he was thinking they could pipe underneath that field over to a basically just a holding pond and it would offset that water for the field that he spread out in the back. Well, that's not hydraulics. Hydraulics is all about flow and he was just trying to offset the water. So, when he drew that line in there, it was purely for a retainment pond if they needed to put one in. Shawn Harden said for one that wouldn't work and two, he wouldn't need it because he is well within the DNR spec. He and Mr. Carmin was actually saying it's quite possible they could withdraw that out of the PUD if it was an option. It's pretty clear on the east side of that blue line which is Jacks Defeat to that red line farthest to the east (referring to a photograph). He doesn't want to expand any kind of recycling into that area. He doesn't have enough room with his truck shop there and that's why some of the tubs are over there. He doesn't want his tubs over there either but he just don't have the room. He would rather they set out making money. So they'll all be pulled over here. He has no interest in the south part there that encompasses Roger and Patricia's property and then the field. He knows he can stay within that middle section that has the repair and recycling behind it. He guesses he'll end with saying they know he'll do whatever – he'll fight for this and they can clearly see he has been. They know it's something he wants and he doesn't want to hurt anything. He doesn't want to hurt the

environment. Mr. Carmin said that in the PUD, he knows if it requires tubs that hold engines and transmissions to be sealed so be it. The Town has a code enforcer now. He met him down there the other day. He told him he can come on his property any time he wants. He'll give him a key to the gate. He wants to work with the Town. Clearly, it's young but he wants to see Ellettsville grow and he wants to work with the Town on the trail. He wants to do everything he can to stay there, not hurt the environment and help Ellettsville. He grew up here. He wants to do whatever he can to help Ellettsville grow. Now granted that's 800 feet that Connie wrote in there but if they want a 15 feet tall fence, he'll put a 15 feet tall fence up. If they want flowers on the fence, he'll put flowers on the fence. It's whatever the Town wants. He's willing to work with the Town.

Sandra Hash went on the site inspection yesterday and she even asked about the huge amount of lime in the area. It was so dusty. All of the leaves around the area were totally covered with the lime dust. There were considerable amounts of oil spots. She could smell the oil in the air when they walked through the area. She too lives fairly close, not as close as 1,000 feet, but she lives at top of the hill by the water tower and she has been there for 33 years. She hears the noise from her house. When she's inside and the windows are closed she doesn't hear it. But when she goes out on her back deck she can definitely hear the thumping and the pounding. Because she's lived there so long and the business has been on McNeely for a considerable amount of years she knows there have definitely been floods, two major floods, since she's lived there. It has been awhile but a flood's a flood, she has witnessed it. She appreciates what engineers say with their hydraulic studies but when they put several feet of fill on both sides, not just one side where the business is located, but the other side. She drives that way home every night and she has seen the tire tracks go in and the land just kept going up, up, up. There's a lot of fill dirt on that side, along the long thin strip on the east side of the creek. When they were there yesterday, there were dumpsters stored on both sides of the creek. The one that had the gunk in the bottom was also on the east side of the creek. Not only did he have the oil spills or fluids – it's on both sides. She, personally, has witnessed water. She went to school with Chad's mom, she's known Chad since he was a little boy and yes it looks a lot better but she's seen water come up so much they had to move the office out of the building. They put a pac van in and elevated it at least three to four feet to keep their office from getting soaked with water. People this is an issue. It's not going to go away. What he's done is add fill to both sides so his property may not get the water so much any more but that water is going to go some where. It's going to back up more downstream which is Vine Street, Town Hall and Main Street. It's been all the way over to Sale Street in front of Town Hall, it came into Town Hall since she's worked there. The whole issue is, it's not how wonderful the site looks, it's not how good a person Chad is and it's not that he employees 13 people and it's good for our economy. He's in Zone A. That is the highest zone for flooding. He is in the middle of our Town. He's 1,500 feet from Town Hall. There is a lot of countryside still in the outlying areas, perhaps not Monroe County but in another county. If he's going to be a feeder to another salvage yard he's going to have then it's a good business and he needs to find a suitable place that doesn't have a creek that run's right through it. He needs to relocate and, unfortunately, for us there will be some economic impact from that loss. The environmental impact outweighs the economic impact. That is her perspective from living up the hill for so long and hearing it and seeing it.

Dan Swafford – His recommendation would have been to table this because of the hydraulic report and for the license being presented to the Plan Commission at the last moment. But, there is a motion on the floor and it has already been seconded. He would like to amend the motion to state that the Plan Commission did not receive the hydraulic report and the license until the start of the meeting before it goes to the Council so they know that they didn't have all the information. Darla Brown stated she thinks that's something they can just discuss with Town Council. She's not certain it's appropriate to amend a motion with that kind of language. It's extraneous to the motion. Mr. Swafford asked if the motion can be tabled or do they need to vote on the first motion. Ms. Brown replied there is a motion and second on the table right now. Mr. Swafford stated so they have to vote on it. Mr. Wayt stated the information that has now come in would be used by the Town Council. Dan Swafford and Phillip Smith are on Town Council and they will know that information wasn't submitted. The Council can

say they're going to look it over at the next meeting and it could be tabled then. Mr. Wayt asked Darla Brown if that's correct. Mr. Swafford stated what he's saying is he's wearing two hats as far as the Planning Commissioner. This hydraulic report is very pertinent to his decision. So, if he's got to make his decision it will be based without the hydraulic report and license. He just wanted to make that point.

Dana Kerr – For the PUD, it doesn't appear to him that the report or the fact they were able to go through the licensing would make no real difference on whether or not this is a compatible use for the property. Just because they got a license and filled out a form and sent in their \$7.50, to him isn't pertinent to whether or not this is an acceptable use for this close to downtown. Whether the hydrological report is going to say whether that material can stay or go, however, that too doesn't affect whether it is a compatible use of the property in general. Mr. Swafford said he guessed he's right. It would be more than environmental on that but to him that's still part of the whole process. He thinks its pieces of the process. This is what happens when there are too many attorneys in a room. He was kidding – this was a joke.

Sandra Hash – Thinks this has all been very good information. She appreciates the testimony from both sides.

Phillip Smith – They have a motion and a second. He asked if the Plan Commission has any more comments. Phillip Rogers said they should try to get this done before the next Town Council meeting or they'll be waiting on the Plan Commission. Mr. Smith asked if the next Town Council meeting is Monday, August 8, 2011. Ms. Hash replied yes, but it won't be on Monday's agenda because it already went out. Mr. Swafford confirmed it will be on the agenda three weeks from now. Mr. Smith reiterated they have a motion on the floor to send to the Town Council a non-favorable recommendation and a second. Mr. Smith requested Ms. Hash take the roll call vote.

Phillip Smith entertained a motion either favorable, not favorable or no recommendation. Ron Wayt made a motion that they send this to the Town Council as unfavorable. Sandra Hash seconded. Roll Call Vote: Phillip Smith – yes; Don Calvert – yes; Phillip Rogers – no; Dan Swafford – yes; Ron Wayt – yes; and Sandra Hash - yes. Motion carried 5-1.

Adjournment

Dan Swafford made a motion to adjourn. Don Calvert seconded. Phillip Smith adjourned the meeting at 9:06 p.m.

Phillip Smith, President

Clayton Sullivan, Vice President

Sandra Hash, Secretary

Don Calvert

Phillip Rogers

Dan Swafford

Ron Wayt