

## October 6, 2011

The Ellettsville, Indiana Plan Commission met in regular session on Thursday, October 6, 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. Ron Wayt led the Pledge of Allegiance.

**Roll Call:** Members present were: Phillip Smith, President; Terry Baker, Vice President; Don Calvert; Phillip Rogers, Dan Swafford, Ron Wayt and Sandra Hash, Secretary. Connie Griffin, Director of Planning, and Rick Coppock, Town Engineer, were also present.

### Approval of the Minutes – September 1, 2011

Phillip Smith entertained a motion for approval of the September 1, 2011 minutes. Dan Swafford so moved. Ron Wayt seconded. Motion carried.

### New Business

**Planned Unit Development Petition #9122012-2-Pip Jay Properties, LLC/Burch Enterprises, Inc., Chad Stephens and Roger New. Petitioner is requesting rezoning from C-3 to PUD.**

Company Name	Tax ID	Property	Acres
Burch Enterprises, Inc.	0090029001	53-04-10-200-163.000-013	3.09
Pip Jay Properties, LLC, Chad Stephens, Member	0090969000	53-04-10-200-031.000-013	2.42

**Connie Griffin, Director of Planning** – The PUD Application materials were turned in on September 12, 2011. Fees for the PUD and two public hearing notice signs of \$404, check number 27332, have been submitted. The public hearing notice was published in The Ellettsville Journal on September 21, 2011. In accordance with Town Code §152, PUDs are a four step process. They have had the pre-design conference, the outline plan has been submitted and they are ready to hear from the Petitioner.

**Mike Carmin, Attorney for Petitioner** – The Petitioner is Pip Jay Properties, LLC (“Pip Jay”) which owns one of the two parcels involved in the PUD. Pip Jay Properties would be the east third of the property. Burch Enterprises is owned by Roger and Patricia New. The owner of Pip Jay is buying the Burch Enterprises property on contract. Pip Jay is essentially undeveloped at this point. The Burch Enterprises property has two primary current uses: Chad’s Truck Services and Chad’s Recycling and Refuse. This is not a trash collection use. Chad’s Recycling and Refuse (“Chad’s”) buys salvageable and recyclable parts for the most part. A lot of this is the purchase of salvage vehicles. The fluids are drained, collected and recycled. Metal parts are recycled. This is a collection site for these items. They are taken and transferred off site. It is not a storage site for vehicles and not a salvage yard for long term storage.

The law allows for a Commitment of the Use and Development of Real Estate (“Commitment”) also referred to as a recordable commitment. It’s various commitments, promises, assurances of how the uses would be conducted and restrictions on those uses would get signed and recorded upon approval of the petition.

It puts it in the public record, and an encumbrance on the real estate, it runs with the chain of title, it's a public document and sets out the various commitments. The Commitment goes into some detail of the recycling refuse operation and the business practices, quality control and steps that will be taken to alleviate previous concerns. The use that is at issue with Chad's is a use that has been on the property for an extended period of time. There are things that are ongoing which are part of the Commitment and are in specific detail such as to how the collection systems operate. There is actually a triple safeguard in regard to the fluids. Chad has previously talked about the use of sealed containers. The Commitment goes into detail about the use of containers that are ultimately sealed. The containers are not sealed during the day but they are located five feet above the 100 year floodplain elevation. The collection will be moved inside on a concrete pad. If there is a spill, the concrete pad enhances the ability for prompt cleanup. The collection takes place inside of a concrete vault. It's a containment facility designed specifically for collection. The retention pond located on the property meets Indiana Department of Environmental Management's ("IDEM") current standards. The capacity of the pond can handle the 100 year flood event. Burch Enterprises will install an oil/well separator. The separator picks up surface water running across land before it gets to the retention pond to improve the quality of the water. The water in the retention pond will exceed the quality of water in Jack's Defeat Creek. Under IDEM rules there has to be continued periodic water quality testing and reporting.

As a PUD they have designated a portion on the Pip Jay property as open space to be used, if necessary, for any additional drainage facility. This also creates a buffer between what may, someday, be the walking trail between Jack's Defeat Creek and the abandoned railroad right-of-way. The northern part of the property is larger and could house the current C-3 use and is large enough to allow for building. It does have its limitations because it is in the floodplain. They've attempted to confirm noise issues. The Commitment addresses the hours of operation to cut down on noise. It's less than highway noise. There's significant support to allow for Chad's use. A signed petition with approximately 288 signatures as well as letters of support was distributed. Photographs of surrounding properties for the purpose of showing drainage issues were provided. The law discusses that rezoning should give due consideration to the comprehensive land use plan. One approach to a land use issue is "do no harm." The petition does no harm. The use has been in existence since 1983 without complaints. The issue is what harm does it do and why not? By year end it is projected Chad's will have put \$5,000,000 back into the economy which doesn't include wages paid to the employees. This is not a full rezoning to an industrial zone. The underlying zone is C-3. This is a PUD request that mixes C-3 uses with a couple of selected uses that appear in an industrial zone.

**Jennifer Harper** – Over the past several days, she has walked the streets of Kelli Heights, McNeely Street and Main Street by Kenny's Tavern. They stopped and asked people about noise and no one had a problem with it. There was one person who was concerned about a big boom but didn't have any idea where it came from. The person asked her if it came from Chad's and she told them she didn't think so. On September 28, 2011, they set by Kenny's Tavern at 802 Main Street from 3:05 p.m. to 3:54 p.m. and they had no complaints. The only thing they heard was Asher's phone ringing and the traffic. On September 29, 2011, they set by Cook on McNeely Street and on September 30<sup>th</sup> they set at Stoneview, Chandler, Cooper, Robin and Langley Streets in the Kelli Heights area and they didn't hear recycling noise but heard Asher's phone

ringing and street noise. She provided letters signed by Ellettsville residents saying they don't hear any noise from Chad's.

**Rick Southern** – Works for the State of Indiana. Doesn't have concerns as to the existing facility. He has concerns about a salvage yard being put into an area where it may contaminate the water table. Jack's Defeat Creek is listed as an impaired water body. They're going to be building against the floodway. They'll have to have DNR, state and federal permits. Concrete is good if you're talking about explosives and flammables. As Westinghouse found out, it's not worth anything if you're talking about chemicals. If they were talking about putting some kind of restrainer or container as used in landfills he would feel much better about it. Rule 6, notice of intent stormwater runoff, will have to be met. They will have to come up with a stormwater pollution prevention plan. These all have to be in place before the law would approve this. He has no problem with Chad doing his business and no problem with his notice. He doesn't want to sell out the next generation because the Town wasn't forward thinking enough to make sure it was done right. If they're willing to follow the rules and do everything right and meet all requirements then he doesn't have a problem with it. At this point and time, he thinks there are a lot of things that need to be looked at.

**Mae Cassady** – Is an adjoining property owner of Chad's. She doesn't have any problem with Chad doing his business. Her main concern is flooding. He is down stream from her and whatever he does will have a dire effect on her property. She is requesting assurance that she won't be flooded any worse then she has in the past. Sandra Hash asked how many times her storage facility has flooded. Ms. Cassady replied only a small flood one time since the highway was re-done, the new bridge put in and the creek got cleaned out. The creek does need cleaned again. Ms. Hash asked how many times before that her property had flooded. Ms. Cassady responded at least six times. It was a common occurrence until the road got built and the creek was cleaned out. She received a notice stating there would be materials placed in the floodway. Her concern is what will it do to back water up on to her property. Phillip Smith stated there isn't anything Chad will be placing in the floodway that will back up water. Sandra Hash commented anytime there is something put in the floodplain it displaces the water. If he's going to construct a storage facility and the elevation of the property is five feet below the 100 year floodplain, they can't guarantee that he isn't going to do anything that could create additional water to back up in the floodplain. Ms. Cassady stated if they're going to make sure there's mechanisms in place that won't increase the water level anymore than it is today.

**Rick Coppock, Bynum Fanyo, Town Engineer** – They looked at the report Chad had done by EMS Consultants & Engineering about the flood study and anything he does by the creek is subject to DNR approval. The study doesn't show any raise in the elevation compared to what is there now. It analyzes what is there now is based on the fact that they have placed some fill in the floodway. Any future buildings or pads they wanted to build would be out of the ground from the floodway and in addition to what has been analyzed so far would actually have to go back to the DNR for approval. They are not proposing, with what was seen in the study, that they add additional fill to bring the site out of the floodplain. They're just analyzing what fill has been placed in there for approval after the fact. This is currently at the DNR for review because it is their jurisdiction. If there is a 100 year flood which is a 1% chance per year that you will have that rain, it would be 5.75 feet of water above the building and on the back of the pad 4.75 feet under the pad. In past floods the water has never been that high. He is

uncertain as to the exact elevation but it has gotten into the Utilities blue building. Based on the elevations he has looked at it's not that 5.75 feet elevation. When the sewer plant was constructed and they constructed the line to the sewage treatment plant they got permits for crossing the creek and one of the things they encountered was a big log jam north of the two sites that was removed during the construction process. This seemed to help the flow of water in Jack's Defeat Creek and the potential for flooding. Dan Swafford asked what else in his summary Mr. Coppock would like to speak about. Mr. Coppock reviewed the report but didn't run the analyses. There are some things they questioned but since they aren't reviewing it, it's probably things the DNR would question such as changes in the base model. You take the base model and then do a corrected model based on updates or if something is found in error which is what they did. They changed the base flood elevation from what the DNR model had shown. Then, you take the corrected model and add whatever you propose and compare the two and that is how you determine how the proposed project affects the floodplain. In the DNR regulations it cannot be increased by more than .14 feet rather than the Town code which you can't increase by more than .10 feet. In their petitioner's statement they propose to put all items up five or six feet which would be below the 100 year floodplain limit. Dan Swafford asked if the cross section of the center of the site where the recycling is going on will be 4.75 feet under water and what amount of rain is considered in a 100 year flood. Mr. Coppock replied the calculations are based off of a volume of water that is a set value by the DNR. Mr. Swafford asked what the set value is. Mr. Coppock responded it states in the report how much flow comes down the creek. It's approximately six inches an hour. Mr. Swafford asked how much rain it would have to take for Chad's to be under water. Mr. Coppock stated the process to calculate that is tedious because there is a lot of data to be inputted. When Martinsville flooded, they were saying it was a 1% chance per year that a Town would have that storm event. In 1993 or 1995, the Town got seven inches in five hours. Chad Stephens commented it usually takes four inches of rain an hour for it to even come over the banks. The building in question is a concrete pad which IDEM approves for a use with no liner. There will be a roof and if the Town wants him to put three sides on it, it will still stay six feet above flood level. For the 100 year flood event, it would still flood right through the building. All the fluids above the 100 year flood level is in the petition because they said they would do that. There will be an open container by the processing area for the day. At the end of the day it would have a cap put on it and it would be placed on a rack. The building won't restrict flow other than six 4 X 4 posts in the ground and it would still go through DNR approval. Dan Swafford asked Mr. Stephens how many times he has seen it flood on his property. Mr. Stephens replied he has seen it flood over a foot 12 times. The worst flood was three feet deep and he has never seen it stick around. It's flash flooding. That's one of the reasons he is moving his truck shop out of there within the next 1 to 1 ½ years. Ms. Hash asked whenever he moved the office back into the building did he put it on the main level where it use to be or somewhere else. Mr. Stephens replied he put it upstairs on the second floor.

**George Ridgeway, Chief Architect for Cook Group** – They are adjoining property owners to the north. They have no problem with Chad's operation. However, they have two concerns. One is water quality and the other is water quantity. According to the public notice from the DNR, it states *"this application is for the placement of fill material in the floodplain and floodway of Jack's Defeat for the purpose of elevating the site."* Earlier he heard that there is no fill being placed. Mr. Coppock commented it is because the fill is already there. This is notice after the fact. Mr. Ridgeway stated Cook plans to use water from the two lakes at the north plant. Cook is also filing an

application with the DNR to retrieve water from Jack's Defeat Creek and use it has in the cooling tower in an effort to be a green citizen of the community and use less potable water. Cook's concern is as long as this application complies with the DNR, IDEM and the Corps of Engineers they have no problem with the salvage yard.

**Dennis Fisher** – Wants to know what is being salvaged now and is a shredder or compactor going to be installed. A shredder makes a lot of noise. Mr. Stephens replied there will be no shredder. He's trying to work on a place to do off-site recycling on the cars. They will not have a crusher but will have a bailer. The bailer will be muffled and shouldn't be any louder than the two loaders he currently has. He agrees a shredder is loud. The bailer has a diesel engine. The pad is built so that all runoff flows to the center and from the north to the south. Currently, everything is going to the pond and nothing goes to the creek. The Commitment states there will be a water and oil separator. When the water comes to the center, all the car preparation would be done under roof. The oil and water separator will catch the runoff on the pad and will also have drainage from the pad under roof so if there is anything that washes down it will go the water oil separator. He has been told the oil and water separator works so well that he can go back to the DNR and ask to have a runoff pipe at the very top. This will never be a salvage operation as far as junk vehicles coming in. They bring the vehicles in and the State says they have to hold them for three days. Then they process and ship them.

**Mae Cassady** – Asked Mr. Stephens if he is not going to do anything in the future that will impede the flow of water anymore than what he has already done. Mr. Stephens responded that is correct.

**Chad Stephens** – There is already a stormwater permit on file and it's a done deal. He has a green light from IDEM and has his salvage license. The DNR after the fact permit is in the works. The diesel fuel tank is double walled and will be moved under the building. All oil will be contained above the flood level. The car processing will be done underneath the barn. The two things that hold the engines and transmissions are separated in tubs. The building he's referring to is a proposed building. Ms. Hash asked what the existing garage building will be used for when he moves his truck business. Mr. Stephens responded if the PUD doesn't get passed it will probably go back to looking like it did before. If the PUD moves forward, the existing building will be used for dumpster re-building and service equipment.

**Ron Wayt** – The salvage license that has been issued is a conditional license based upon what the Town decides. If the Town decides that this does not go through then the license is pulled.

**Rick Southern** – When Mr. Stephens takes this on he is taking on a life time commitment. RECRA is a nickname for cradle to grave. This means any damage that is done to the environment, by any business he owns, he is responsible for it until it is cleaned up no matter how expensive it is, how long it is and who has to do it. If this is not done properly and poses an ecological problem the government will come in, take it over, clean it up and he will get stuck with the bill. Mr. Stephens said when the DNR came down, they told him they were there for three things: Removing trees, damage to the environment and fill in the floodway. There has never been a fish kill or a water sample that said they've done anything wrong. For the future, this is why he has the pond. This is why the pad was built to flow in and down to the pond as well as the

proposal to put things under the roof. He doesn't want to do any testing in the creek because of the advice of counsel. The salvage license shows that it wants him there.

**Dan Swafford** – Asked Mr. Stephens if he's thought about testing the water ahead of his place and after the place. Mr. Southern said this will establish a baseline. Mr. Stephens said a baseline is already established in the pollution runoff. His counsel said not to test in the creek. The Town Council can get the permit to clean out the creek. He would be happy to donate any equipment he has to clean out the creek.

**Dan Swafford** – Asked Connie Griffin, if the PUD was to be approved would she list the codes or ordinances it would be violating.

**Connie Griffin, Director of Planning** – It's the Plan Commissioner's responsibility as an advisory board to the Town Council to review the outlining plan, hear the petitioner's case, the Town's representing engineer and the Planning Department's findings of fact. After the Plan Commissioner's review they will send a recommendation to the Town Council as favorable, non-favorable or no recommendation. If the petitioner is granted the PUD by the Town Council the zoning map would be revised by ordinance. A few updates:

- The Town is participating in the National Flood Insurance Program ("NFIP"). She was asked by the Town Attorney to check with the DNR about the program and if the Town would be jeopardizing the program by going against the Town Code and what has already been established in the floodplain ordinances. Anita Nance, Certified Floodplain Manager with the DNR, said a community participating in the National Flood Insurance Program would be expected to follow and enforce their floodplain regulations. It appears the Town is doing what it is expected to do as a community that is a member of the NFIP. The more restrictive regulations would take precedent which is the Town Code.
- On May 23, 2011, Toby Adams, DNR Compliance Inspector, sent a letter to Mr. Stephens stating there is to be no further construction, excavation or filling within the floodplain without approval from the DNR.
- A cease and desist order was issued not only by the Town of Ellettsville on September 6, 2011, but also by the Secretary of State's Enforcement Attorney, Ashley Humphries. Ms. Humphries also validated that the salvage license issued at that time is conditional upon the Town's finding and ruling on the rezoning request. When the Town contacted Ms. Humphries, she was asked at what point does someone issue a salvage license that goes against its zoning ordinances without the Town's approval or sign-off. At that time, Ms. Humphries advised it was a conditional salvage license.

The following are the code violations should the PUD be granted:

- Prohibited land use in a C-3 zoning classification per Ellettsville code.
- Salvage yard business and recycling yard requires it to be in an Industrial 2 zone with BZA special exception approval by §152.085. In 2010 new businesses were added: salvage business and recycle yard. They filled in floodplain with no grading permit issued by the Town of Ellettsville or the DNR. No site improvement permit. §152.104(b)(1) or DNR permit construction in a floodway under I.C. 14-28-1. The Flood Control Act requires 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 DNR prior to initiating

the activity. The Flood Control Act under I.C. 14-28-1 regulates various development activities, obstructions, deposits and/or excavations within the floodway or any state water way by requiring DNR approval prior to the beginning of the project. The regulations fundamental premises are as follows:

1. Whether or not the project will adversely affect the efficiency of or unduly restrict the capacity of the floodway.
  2. Whether or not the project will constitute an unreasonable hazard to the safety of life and property.
  3. Whether or not the project will result in unreasonable detrimental effects upon fish, wildlife or botanical resources.
- Performance standards differ in the Act than the Town Code. The Town Code is more restrictive. Code 152.105(b) states *“the total cumulative effect of the proposed development when combined with all other existing anticipated development shall not increase the regulatory flood elevation more than 1/10<sup>th</sup> or 1.2 feet and shall not increase flood damages or potential flood damages.”* Performance standards in I.C. 14-28-1 is 1.8 feet.
  - The State of Indiana License Required for Operation of a Salvage Yard, I.C. 9-22-4 and §152.084, all permits required by law must be secured.
  - Ellettsville Town Code-Draining site plan: §152.145, Code stipulations under §152.296(i)(j).

Some additional information: The Town has been at this for some time. The Town granted the Petitioner 60 days for the burden of proof to establish that this was a business that had been there for awhile. It has been almost one year and still no burden of proof has been met. One gallon of oil spill can contaminate up to 1 million gallons of water.

Findings of Fact. In accordance with I.C. 36-7-4-603, in considering a proposal for rezoning, the plan commission must pay reasonable regard to the Comprehensive Plan as follows:

- Criteria 1: The Comprehensive Plan.
- Criteria 2: Current conditions and the character of the current structures and uses in each district.
- Criteria 3: The most desirable use for which the land in each district is adapted.
- Criteria 4: The conservation of property values throughout the jurisdiction.
- Criteria 5: Responsible development and growth.

1. The proposed rezoning (is)(is not) consistent with the land use policies contained in the Comprehensive because her findings are that it is not for the following reasons:

- Industrial areas are to be located west of Ellettsville for light industry. (Page 22-Industry)
- Town 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 is 700 to 1,000 feet. (Page 22 – Commercial)
  - Support the Heritage Trail using old rail beds as a linear pedestrian pathway. Salvage yards are 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) Different communities prohibit salvage yards in commercial areas. They all want them five acres in size and 1,000 feet from residential. In the City of Bloomington the proposed use must be consistent with growth plans and will not create a nuisance by reason of noise, smoke, odors or 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 the particular use of the chapter. South Bend also has a very similar town code and they also require five acres.
2. Conditions (have)(have not) changed in the area since the original zoning was established and she has found they have for the following reasons:
- Conditions have changed in the area because there are additional uses that have been added to the PUD application which has strayed away from the original intent of the code. More residential development has transpired on McNeely (Stoneview Condos-PUD R-3, as well as additional subdivision east of the site which is more residential land use).
3. On the area serviced with Town water is correct. There are roads and the infrastructure is in place.
4. The proposed rezoning (will)(will not) establish a desirable precedent in the area and she has found it will not for the following reasons:
- The Comprehensive Plan states light industry zoning should be developed west of Ellettsville (pages 22, 31 and 36). Heavy industry is only mentioned twice within the Comprehensive Plan and it focuses on being west of Town in an industrial established area. Zoning shall prohibit heavy industries that would likely create a known health or explosive hazard (page 31). Restricts areas within the 100 year floodplain hazard area to park land use (page 31). It will be mandatory to control pollution from entering streams by stopping unclean discharges of stormwater at or near their source (page 32). Soil erosion control measure should be carefully planned, implemented and monitored (page 32).
5. The proposed rezoning (is)(is not) compatible with surrounding land uses and she has found it is not for the following reasons:



- The Comprehensive Plan states Land Use Recommendations for Ellettsville – 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?
- 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?
- What needs to be done to upgrade the value of surrounding property?
- What kind of image does the visual scene portray? Does the built environment give a good first impression?

This particular land use of salvage yards and recycling centers are good businesses. They have to be located within the right area. This particular use is against the Town Code and it supercedes the DNR and State. The Town has higher requirements. This is a PUD which, in her opinion, is a land use variance disguised in a PUD. Her recommendation is and, in her professional opinion, it should receive an unfavorable recommendation to go to Town Council.

**Phillip Smith** – Agrees that the PUD application is not really a true application and is just a variance. What really concerns him is the flood insurance and the possibility of jeopardizing the Town's flood insurance. There are no grading permits and they are trying to get them. There was a lot of time, effort and money spent on the Town's Comprehensive Plan to just toss it aside. The Comprehensive Plan is the Town's bible and the same with the Town Code. In the last five years the Town Code has been changed but not to this magnitude. As a Plan Commission they will need to decide whether they want to go ahead and give a favorable, non-favorable or no recommendation to the Town Council.

**Dan Swafford** – Asked Rick Coppock, in his professional opinion, if there is anything that can be done to bring it in compliance with any of the Town Codes. Mr. Coppock stated the easy answer is yes there is probably something that could be done to bring it into compliance. Sandra Hash asked if there was anyway to remove it from the floodplain. Mr. Coppock stated fill would have to be added and adjustments to the existing contours to bring it up out of the floodplain. Ms. Hash asked if by doing that would it create what Mae Cassidy discussed. Mr. Coppock replied if that is to be done there still has to be DNR approval. DNR approval would be contingent on them not increasing the floodplain or floodwater elevation. Mr. Swafford stated two months ago someone spoke that it would only make  $\frac{3}{4}$  of an inch difference in the flood area. Mr. Coppock advised it was in the proposal last time. The report shows a .04 increase and what is there now is a .04 increase in the flood elevation. Mr. Swafford stated it really goes down to where it's four to five feet under water in that area and he doesn't understand what that means. Mr. Coppock explained what the analysis shows is that the fill they've added there now is not increasing the base flood elevation by more than .14 feet. Mr. Swafford asked if this was the entire creek area. Mr. Coppock replied it's over the entire floodplain from McNeely Street back off of their property. It cannot be increased by that amount off of their property. What they have filled in so far is not going to have to be removed because it does not increase the base flood elevation by .14 feet. Ms. Hash asked if DNR has approved the report and agree with the findings. Mr.

Coppock responded they have not received anything back from the DNR and it takes quite a bit of time for them to do their analysis and notifications. Mr. Swafford asked what additional information the report would generate. Mr. Coppock replied the report would state if they agreed with the analysis that had been submitted to them, and it would say there would be no additional excavation required at that site based on that analysis. In other words, they don't have to take out the fill that is already there. They would approve the fill that's in place. Mr. Swafford asked if the Plan Commission makes a decision on something like that right now and the report comes later that states they have to take out the fill then what would that do. Mr. Coppock responded the Plan Commission is looking at a zoning issue. This is a PUD and they're looking at an outline plan approval. The next step would be an approval of their design for the site. This is the zoning portion of the PUD. Mr. Wayt asked if Chad's use is in the floodplain. Mr. Coppock replied this is correct.

**Sandra Hash** – Asked Connie Griffin if she knew anything about the DNR review. Ms. Griffin stated yesterday her source with the DNR said the application is incomplete. Mr. Swafford asked what that meant. Ms. Griffin responded it means the DNR will be in contact with Chad's to submit additional information. Mr. Swafford asked if the DNR isn't going to go any further until they get the additional information. Ms. Griffin replied the DNR isn't ready to make a comment because they're going to ask for more information. Bernie Guerrettaz asked who is the DNR source. Ms. Griffin answered it is Toby Adams, the inspector at the DNR.

**Bernie Guerrettaz, Surveyor and Design Engineer with Bledsoe and Guerrettaz** – They have been working with Chad's on the outline plan and submittal. Mr. Stephens contracted with Shane Arden, a floodplain engineer, stormwater hydrologist and a professional engineer to perform the flood study. After Mr. Stephens realized there was a violation with placing the fill in the floodway without the permit, he contracted with Mr. Arden to do a study for an after the fact permit. Mr. Arden's study found that fill in the floodplain elevated the 1% frequency flood elevation by .04 and .14 feet is the DNR standard. The DNR application being incomplete is part of the process. It just means they have questions.

**Sandra Hash** – She read the list of names and understands they are seeking support. There are a lot of names listed who are not taxpayers or residents of the Town of Ellettsville and who are not affected by Chad's.

**Phillip Smith** – Asked Darla Brown, Town Attorney, how they proceed with the process. Ms. Brown advised they need to make a motion with a favorable or unfavorable recommendation to Town Council.

Phillip Smith entertained a motion to adopt the staff's findings, deny the petition and send the petition to the Town Council with an unfavorable recommendation. Terry Baker made a motion to adopt the staff's findings, deny the petition and send the petition to the Town Council with an unfavorable recommendation. Ron Wayt seconded. Roll Call Vote: Phillip Smith – yes; Terry Baker – yes; Don Calvert – yes; Phillip Rogers – no; Dan Swafford – yes; Ron Wayt - yes and Sandra Hash - yes. Motion carried 6-1.

**Phillip Smith** – The unfavorable recommendation will be forwarded to Town Council. Connie Griffin stated the next Town Council meeting is October 10, 2011 and it is on the agenda.

**Centennial Park Subdivision – Petitioner is requesting a time extension of the preliminary plat approval for a 78 lot subdivision, 31.39 acre tract of land, until June 30, 2014. Owner: The Development Group**

**Rick Coppock, Bynum and Fanyo, Town Engineer** – The developer of the project is requesting an extension. The developer has requested an extension on a year by year basis. It always runs out in March when it's not very good weather for construction. With a future extension date of June 30, 2014, if he had to preserve his approval for the preliminary plat approval, he could build roads and keep his permit approved. The developer has requested an extension date of June 30, 2014, so he's not under any time or weather constraint if he should actually have to build it to keep it approved. By "keep it approved", he means if he actually starts the project then it continues with its approval because it is built in phases. They have put in some sewer that ran across the parcel to the north and that is stubbed out onto the property. It's really about the only construction activity that's been done. Based on the current housing market they really haven't proceeded with building anything because nothing is selling. The developer is hopeful by 2014 that the market will turn back around they will be able to start building homes. This is the same developer that built Union Valley Farms.

**Phillip Smith** – Asked if the developer normally gets a year extension. Mr. Coppock replied they have always requested one year at a time. Mr. Smith commented this is basically a two and a half year extension. Don Calvert asked what the procedure called for. Connie replied the can request an extension. Dan Swafford asked if there is any bond money. Mr. Coppock stated there wouldn't be any bond money until he actually plats and subdivides any property. The bond money assures that the public improvements will be constructed such as sidewalks, streets, trees, water and sewer, etc. Sandra Hash said she will testify to the fact he has been a good developer. When he was finishing Union Valley Farms he deposited \$30,000 with the Town to hold rather than having a bond. Don Calvert asked Rick if it was difficult to ask for this each year. Rick replied no. The developer was concerned if the extension was not approved in January then he would have to build a home in February or March to maintain the preliminary plat approval. Don feels we should have a set time for everybody. Phillip said that could require code changes. Don doesn't have a problem with giving a extension he just wants to be consistent with the time extended to avoid confusion in the future making it hard to keep a record of. It doesn't seem that difficult to ask for an extension annually. Connie agreed it needs to be established in code so it would be fair and consistent with all developments. Rick stated the code currently states the initial approval is good for 18 months and the extensions are for one year. Connie looked it up in the Town Code and Phillip Smith read *153.022 Effective term of primary approval. (A) Primary approval shall be effective for a maximum period of 18 months, except that, upon application by the petitioner, the Plan Commission may grant an additional 12-month extension. (B) Once extensions have been exhausted the process must start over.* Sandra stated it doesn't say how many extensions we can allow. Phillip replied no, but it does say an additional 12 month extension. Then the process must start over. This is not the first extension so Dan ask Darla to review the information and give her interpretation. Darla said it seems to imply you may grant an additional 12 month extension so that implies it is one 12 month extension. Phillip Smith said in part B its says extensions which would be plural. Darla responded that may be combining the 18 month and the 12 month together. Then the process must start over. Phillip Smith advised Rick according to Town Code the process would need to be started over. Don Calvert commented this is a living code and thereby amendable.

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When you look at the situation everybody is in right now he would like to suggest that we take a look at that. He can see other people having that problem. Connie has seen a slow down in several town developments. Phillip asked when the last extension ended. Rick said March of 2012. Rick then asked if the installation of sewer line meant he had started working on the project. This would need more research.

Dan Swafford made a motion the issue be tabled until it can be researched and discussed at the next meeting. Ron Wayt seconded. Motion carried.

### **Adjournment**

Sandra Hash made a motion to adjourn. Terry Baker seconded. Phillip Smith adjourned the meeting at 8:00 p.m.

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Phillip Smith, President

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Clayton Sullivan, Vice President

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Sandra Hash, Secretary

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Don Calvert

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Phillip Rogers

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Dan Swafford

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Ron Wayt