

October 7, 2010

The Ellettsville, Indiana Plan Commission met in regular session on Thursday, October 7, 2010 in the Fire Department Training and Conference Room located at 5080 West State Road 46. Dan Swafford called the meeting to order at 6:00 p.m. Phillip Smith led the Pledge of Allegiance.

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

Approval of the Minutes – September 2, 2010

Dan Swafford entertained a motion for approval of the September 2, 2010 minutes. Phillip Smith so moved. Phillip Rogers seconded. Motion carried.

Monthly Conflict of Interest Statement

Don Calvert asked if Chad Stephens being a former student of his is a conflict. Dan Swafford said he wasn't certain but didn't think so. Dan Swafford noted Don Calvert used to be his teacher also.

New Business

Asher Fleet Services C-3 Zoning Land Use Classification and Current Land Use. Connie Griffin, Planning Department, and Chad Stephens, Manager/Owner.

Connie Griffin, Planning Department. Asher Fleet Services is a C-3 zoning classification. The Planning Department has received several complaints and concerns about the current land use of two parcels located on West McNeely Street identified as Asher Fleet Services at 6679 West McNeely Street in Ellettsville. The Manager/Owner is Chad Stevens. The parcel numbers are listed at 009-0969000 and 009-0029001. The complaints and concerns were specifically citing the current land use and the current zoning classification. An inspection was conducted on September 13, 2010, with Dan Swafford and Ms. Griffin. Photographs of the inspection were taken and distributed. When Mr. Swafford and Ms. Griffin met with Asher Fleet Services, the current land uses were discussed as well as the new uses that were added. Mr. Stephens stated that the following new uses were added in April 2010: a salvage business, roll off dumpsters and Chad's Recycle, Inc. With the inspection of the new land uses, the property is now classified as a legally non-conforming use by Town Code. A definition of non-conforming use is *"A legally existing use of land or structures which does not conform with the permitted uses and provisions applicable to the zoning district in which the use is located on the date of adoption of this Chapter"* which was May 27, 2003. Asher is running a salvage yard by Ellettsville Municipal Code definition. Under the salvage definition there is *"Storage . . . processing, disassembly, reuse and/or resale of discarded matter . . ."* Mr. Stephens and Dan Farley stated the cars and vehicles are stored anywhere to 30, 90 or 120 days. Possession of two or more inoperable vehicles for more than 30 days is also a definition under Salvage Yard, *"Wrecking or dismantling of a vehicle for resale, selling of any major component parts of the vehicle, including the engine, transmission, body-chassis, dog house (front assembly), rear-end or frame, rebuilding wrecked or dismantled vehicles. Engaging in the business of*

storing, disposing, salvaging or recycling of vehicles . . .” Salvage yards by code require a special exception Industrial 2 zoning classification by Code 152.085. Code 152.085 is a special exception that goes before the Board of Zoning Appeals for salvage yard, junk yard or scrap metal processing facilities. Under the special exception, “*Solid Waste Sorting Facility, all permits required under state and federal law have been secured.*” At this point and time, the State license for salvaging has not been secured. According to the FEMA map, this business is located 100% within the floodplain. The proposed site should not be located outside of or not closer than 1,000 feet to the boundary of a residential or commercial zoning district. The property is approximately 440 feet from a residential district. A site permit was not issued with filling in the floodplain area where the dumpster roll offs are located and this is required pursuant to the Department of Natural Resources permit for construction in a floodplain by I.C. 1428-1. Also, for operating a salvage yard requires an Indiana state permit and the Town Code requires it as well. In summary, the land use is in conflict with our current code and there is not a State permit at this time.

Dan Swafford asked if the codes Ms. Griffin stated were state and local codes. Ms. Griffin responded they were state and local codes. Further, there is a special exception under the BZA which is the Town Code. A majority of the codes cited by Ms. Griffin were Town Codes but each of those codes refer back to the adoption of State codes. Ron Wyat asked if the property being in a floodplain makes it federal law. Ms. Griffin responded it did. Mr. Wyat further stated regardless of what the BZA says it just cannot be there. Ms. Griffin responded this was correct. Phillip Smith asked if the previous owner had a special exception or if he was grandfathered in. Ms. Griffin stated the previous owner would have been grandfathered in the 1980s. Sandra Hash clarified Phillips Smith’s question in that the previous owner had a truck business to start with which is allowed in that zone. Dan Swafford had a few questions for Rick Coppock. First, Mr. Swafford wanted to know the difference between a floodplain and flood zone. Mr. Coppock responded they’re the same term. Mr. Swafford asked if there was any way possible to remove the property from the floodplain. Mr. Coppock responded the property is close to the creek and there is not much area. Generally, if you’re going to do a project that involves a flood way then you’re going to fill in one area then you have to cut in another area. The finished floor of your building would have to be two feet above the floodplain elevation. The property is a pretty tight location for removing it from the floodplain. Dan Swafford asked if there were photographs where the elevation was higher which were provided by Ms. Griffin. Mr. Swafford asked if the property is considered in a floodplain because it’s near the creek even though the elevation is higher. Mr. Coppock stated that is what the elevation is at this date. The Department of Natural Resources would go back years prior before anyone used any fill. What happens when you use fill, you’re going to create problems for people further down and up stream of the property. Mr. Swafford asked if Mr. Coppock meant that fill was used and it wasn’t a natural process. Mr. Coppock responded some of it has been filled in. Further, Mr. Coppock advised if you wanted to do anything in that area then you would have to come up with a grading plan, contact the DNR and they would give you what the flow of the creek is and then you create a computer model with different plans for different grades to make certain the flow can pass through that area. This would show you what the elevation would be and what it would do to upstream and downstream. You can’t increase the flow to any other properties on the creek. Mr. Swafford asked what his thoughts on the reason for the retention pond. Ms. Griffin stated that would be

a question for Mr. Stephens. Sandra Hash asked if an excavation permit was issued for that area. Ms. Griffin responded an excavation permit had not been issued. According to I.C. 14-28-1, *“a permit from the Natural Resources Commission is required prior to the issuance of a local building permit for any excavation, deposit construction or construction activity located in the flood way. Land preparation activity such as fill and grading clearing, no action shall be taken by the director until a permit has been issued by the Natural Resources Commission granting approval for construction in the flood way.”*

Chad Stephens, the building was built in 1972 for a roll off and trash business by John Quinn. Mr. Quinn filed for an SBA loan, went bankrupt and the loan was bought by Boon Webb. Then Mr. Stephens' stepfather, Roger New, and mother purchased the location in 1983. Upon doing so, the banker had to have a zoning clarification to file for a loan. The President of the council at that time was G.L. Chandler. Mr. Chandler and Mr. New classified the property as Commercial - 3. Mr. New had owned South Central Indiana Salvage in Bloomfield from 1978 to 1982. At that time, in 1984, salvage was to be part of the business. Mr. Stephens provided an aerial photograph from 1988 which shows trucks setting around, being dismantled, salvage being sold and parts being used. Mr. Stephens purchased the business in 2004 from his family. He continued the truck shop and cleaned up the property considerably. Mr. Stephens continued to do salvage, continued to clean up, continued to cut trucks up, continued to buy and currently he is working on moving his truck shop. The business got to the point, Mr. Stephens' legal counsel advised he needed to create a new business. He wanted to leave it where it was for business in Ellettsville, to pay taxes and to have jobs. Mr. Stephens believes there is a miscommunication because there is nothing new on the property and no new business, it is just a new name. He still conducts the same business as it has always been but it has just grown considerably. There are approximately 150 customers who visit them weekly. Mr. Stephens did not know he had to have a salvage permit because the business has always been salvage. Dan Swafford asked if the original owner had a salvage permit. Mr. Stephens replied no and that no one from the DNR, the State, county or city has ever told him he had to have a salvage permit. Mr. Swafford asked when he purchased the business if he just changed the name and didn't create a new business. Mr. Stephens stated no. Mr. Swafford asked when Mr. Stephens applied for the retail permit did everything remained the same. Mr. Stevens responded yes and clarified he purchased the property on October 1, 2004. Mr. Swafford asked Mr. Stephens if he changed his business name at that time. Mr. Stephens replied no, he changed it to Asher Fleet Services in 2006. Mr. Stephens changed it for emotional reasons and no one could spell Ellettsville. Further, Mr. Stephens stated it was his own idea to clean up the facility, make Ellettsville proud of it and everyone who lives around it has stopped in and told him how well it looks. Mr. Swafford asked when Ellettsville had the big flood, did his building flood. Mr. Stephens responded during the flood, a storm drain across from Matthews Street blew a bunch of water on to the field and it comes north through the lot and back to the creek. Essentially, the water got approximately 8" deep. The building actually sets on the lowest point in the whole field. The State raised the road and replaced an iron bridge with a concrete bridge. Mr. Swafford asked if the back half of the property floods. Mr. Stephens replied no and a lot of the back area has two sewer lines running through the property. Much of the dirt in the field was left over from the sewer lines being installed. Mr. Stephens stated he had no intentions of doing anything wrong when he

purchased the property and in needing a salvage permit. At that time, it was presented has a truck shop and a salvage operation and was zoned C-3 Commercial. In 2010, Mr. Stephens hired an eight year veteran of the salvage industry who was not aware a salvage permit was needed. Ms. Griffin noted J.B. Salvage does have a salvage permit which is up for renewal in 2011 and it is good for four years. Sandra Hash asked Mr. Stephens when his attorney told him he needed to move his business, was it before Ms. Griffin contacted him? Mr. Stephens responded no, not to move his business. He is doing so well in his truck business he cannot grow any in four bays. He has three mechanics and he can't put in any more tool boxes or trucks. Business is good. Mr. Stephens found a location in Bloomington and he is currently working with Smith Newbecker and there have already been two public meetings. He will be moving the truck shop, road service and part sales to Bloomington. Due to the fact the salvage was always there and a part of the business, he does not want to move it to Bloomington. Mr. Stephens wants to leave a business in Ellettsville that pays taxes, creates jobs, continues to evolve and look better then it ever has. His legal counsel said to create a new name for the salvage business and leave it in Ellettsville. The roll offs have been a part of the business since 1972. Mr. New didn't do roll offs but that is why the business was originally built. The roll offs go hand and hand with the salvage. Mr. Stephens provided a letter from Connie Griffin wherein she explains there were new land uses in 2010. The only thing brought into the business that was new would be the roll off mixers. The salvage business has always been there and was created in Chad's Recycle Refuge. There are no trucks for sale but he was trying to sell some old stuff purchased from Mr. New. Tires are cut and they are disposed off at Hoosier Disposal. Currently, Mr. Stephens keeps cars at least 30 days. When he said 90 to 120 days, he may end up having cars come in, set up for 120 days and it would be similar to Pick-a-Part. After 120 days, they would finish disassembling it and sell off all the pieces. Mr. Swafford asked if this would be a junk yard. Mr. Stephens responded he doesn't like junk yard because he always thinks of it as a nasty place. On-line at Pick-a-Part, everything is beautiful and the cars are all in line. The cars are brought in, dated and then goes on an Indiana web site where anyone can locate and find a part. Dan Swafford asked if Mr. Stephens had worked on any of the things cited by Ms. Griffin as being in violation. Mr. Stephens thought Ms. Griffin would help him work through some of the violations and she could document them along the way. Mr. Stephens objects to some of the violations and others he does not. Mr. Swafford commented it appears Mr. Stephens' biggest obstacle is obviously the salvage permit. Mr. Swafford asked Mr. Stephens to read the following: *"To be completed by local zoning board. I, the undersigned, verify compliance with local zoning ordinance or other local ordinances for conducting salvage operator business at the address cited above."* Ms. Griffin noted this is I.C. 9-22-4, All Permits Required under State Law Have Been Secured. Even the recycling and solid waste sorting require special exception through the Board of Zoning Appeals for an Industrial 2. When you use the Indiana permitting, this is what the zoning would be based upon. Dan Swafford asked if there was no way the Town could sign off. Ms. Griffin replied with it 100% in the floodplain, the Town cannot. This is from Town Code 152.296(J) passed in 2003. Mr. Stephens said this is his objection as it has always been a salvage business since 1984 and he believes it should be grandfathered. Ron Wayt asked if a permit would have been required. Ms. Griffin responded a salvage yard permit is required by State law for this operation to be conducted. A permit process has to go through the Secretary of State's office. When an application is received and the Town looks at its zoning codes the code issues are listed. Dan Swafford asked Ms.

Griffin to read these violations into the records. Ms. Griffin read the violations as follows: legally non-conforming use salvage yard, recycle center, roll off dumpsters, new businesses added to current locations. I.C.9-22-4, No valid Indiana salvage motor vehicle business license on file with the State of Indiana, *"Grading without a permit or site plan, detention pond, no site plan, zoning classification C-3, current use requires special exception I-2 zoning class 152.085. Code stipulations under 152.296 (I) (J)"* Mr. Stephens asked if his business falls under the salvage yard definition, possession of two or more inoperable for more than 30 days, how many salvage yard permits will people have to get for the Town of Ellettsville because he knows of a lot of places that have more than two cars setting around.

Ron Wayt asked if Mr. Stephens has to request a permit, what is the process? Ms. Griffin stated the Town would look at the zoning classifications. Phillip Smith stated the way he sees it, the biggest problem right now is being in the floodplain because anything that runs from the vehicles flows right into Jack's Defeat Creek. Phillip Rogers stated the business has been there for 24 years and he knew Roger New. Roger New ran a salvage yard and as far as he is concerned Mr. Stephens should be grandfathered in. Regardless, it would be between Mr. Stephens and the Department of Natural Resources if they want to pursue it. The main problem is it is in a floodplain but it has been there for 24 years with no objections. Mr. Wayt asked Ms. Griffin when the Town's stormwater inspection is. Ms. Griffin said the inspection has been changed to March 2011. Ms. Griffin further noted this cannot be approved at this time because of the State application. Mr. Wayt stated being that the business is in a floodplain, there isn't going to be a way around it. This will cause a problem with the stormwater inspection in March 2011. Ms. Griffin stated there is a lot of grading that has transpired in the area without permitting. There has never been any communication between the business and the Planning Department that she could locate. Further, there have been lots of changes in that location which can be seen with the Google images. The State permit is what you have to keep in mind and the Industrial 2 Special Exception being located 100% within the floodplain and within 1,000 feet of a residential area. Phillip Rogers stated when Mr. New built the business it was right next to a disposal plant that stunk so bad you didn't have to smell it you had to taste it. Nobody else wanted it to be there so no one complained about it. As far as Phillip Rogers is concerned the complaint should have been generated 24 years ago and not wait until the man has an established business, then come back on him and say look you can't be there anymore. Ms. Griffin stated the Planning Department is responsible for complaints and when they receive complaints they have to act on them or they would be held accountable. When you argue the Town has been negligent in enforcing, you are actually arguing a case called "Lechay". Ms. Griffin read the following statement from the Town's attorney, *"When a resident argues that the Town hasn't been enforcing its ordinances in the past so why should he be compelled to comply with the ordinances now. He is really arguing Lechay. The town has neglected to enforce the ordinance and it should have been diligent. As you can see from the case in hand the courts have determined that the public interest is generally served by barring the defenses of Lechay and equitable estoppel. So, in other words, one can't normally argue that he shouldn't have to obey the ordinances because the town is just now getting around to enforcing the ordinance."* So, the Town of Ellettsville has the right, according to the Town's

attorney, to enforce this particular case. Sandra Hash noted all of the stormwater laws have come about in the last decade as well. Ron Wayt asked if Mr. Stephens files his application and the State says okay then would he have to go to the BZA. Ms. Griffin noted the BZA would hear a special exception but you have to remember that the BZA cannot grant this particular use with the stipulations that it states in our code. Mr. Stephens asked if the complaints are public information. Ms. Griffin responded they are not. Mr. Stephens further noted he knows all of his neighbors and nobody has complained. Dan Swafford asked what we do from here. Mr. Stephens cannot apply for a salvage permit because the Town cannot sign off on it. Ms. Griffin suggested Mr. Stephens go ahead and go through his application process and when it is returned to the Planning Department, the Town Attorney will review the information and that would assist the Town. When we discussed a property we are currently enforcing on State Road 46 on Temperance, the resident's home, the Town gave him a 60 day abatement. Dan Swafford clarified Ms. Griffin was saying for Mr. Stephens to go ahead with the permit and then before he can send it to the State it has to come to the Planning Department. Ms. Griffin said yes, it has to go through Planning and Zoning and code review. The Town Attorney will look at our code, review the information that has been recorded and then it will go to Town Council. Ms. Griffin suggested a motion be made to state that the application could be started and it would then come back through the appropriate protocol, through zoning, and then Darla Brown would have a review and then it would go to Town Council for review. _____ (547-side 1) ____ asked if Mr. Stephens could operate his business until then. Ms. Griffin responded that would be an attorney question. Currently, it is Ms. Griffin's understanding from her research that it would be a legally non-conforming use at this point and time. The Town would need to give Mr. Stephens an abatement date. Phillip Smith asked if Mr. Stephens should contact the DNR about the floodplain. Ms. Griffin stated yes, he can contact the DNR. Mr. Smith asked who Mr. Stephens should contact at the DNR. Ms. Griffin stated the DNR could provide him with the same type of map she purchased from the product catalog of FEMA and receive the future firms that have already been established and they get issued on December 17, 2010. The current map from FEMA which she showed to the Planning Commission shows Mr. Stephens located 100% within the floodplain. Phillip Smith asked if this was the map they just came out with and Ms. Griffin responded yes. Rick Coppock asked Mr. Stephens if the business was always called Ellettsville Truck and Tire when Mr. New had it or was it Ellettsville Salvage or anything like that. Mr. Stephens responded it was Ellettsville Truck and Equipment. Mr. Swafford stated he thinks Rick is trying to see if there is any documentation at all that said it was a salvage company back in that time. Mr. Stephens replied he spoke with Mr. New and he said he still has three permits he applied for in 1983, and he said salvage, trucks and all of that was part of the talk with G.L. Chandler. Sandra Hash asked Mr. Stephens if Mr. New was granted the permits he applied for. Mr. Stephens said yes. Mr. Swafford commented the permits would really help. Ms. Hash asked Mr. Stephens if the permits Mr. New applied for were with the State. Mr. Stephens said he did not know. Someone from the audience asked why did the State ask for the permits if they were not going to be ____ (577-2nd side) _____. Ms. Griffin commented salvage permits are issued for a four year periods. Ron Wayt asked if this was something that had to be continually updated. Ms. Griffin responded yes. Sandra Hash responded we're all wanting to be optimistic, she understands and agrees Mr. Stephens has done a wonderful job. She has lived at the same address since 1977, it's just down the road from Mr. Stephens and she had driven by it many times. Ms. Hash has seen it when the

water covered the whole area on both sides of the road and she knows Mr. New put a trailer in there and blocked it up pretty high for a long time as a temporary office because of his office flooding. Then when Mr. Stephens came in and remodeled, he removed the trailer. Ms. Hash asked Mr. Stephens if he elevated his office. Mr. Stephens responded no and Dan Swafford said his office is pretty high because it is upstairs. Ms. Hash said she thinks it is clearly marked on the map that the property is in the floodplain and she has evidenced it flood. She is uncertain when the road was built and the new concrete bridge built in relation to when the water was on both sides. Phillip Smith said he lived on McNeely from 1981 until five years ago and he can remember the road flooding but can't remember how many years ago it had been. Ms. Hash knows there was a bad flood in 1994 and another flood before then. If the State of Indiana is not going to allow a salvage yard that has the potential to leak hazardous material. Mr. Stephens has been extremely careful draining fluids. Even the pictures the Board has looked at are pretty neat for a salvage area. His gravel areas are clean and nice. Ms. Hash believes Mr. Stephens is trying really hard and you really can't see it from the road when you drive by. The only time Ms. Hash wondered about the property was when the cars were stacked higher than the building. She could see the cars were stacked and wondered what was going on. Ms. Hash stated the residents want to keep Mr. Stephens. They want him to be able to keep his business, but Ms. Hash thinks the whole salvage yard issue is out of the Planning Commission's hands. It is in the floodplain. Ms. Hash further commented she doesn't want to create false hope for Mr. Stephens by saying if you do this or do that it may work. She does not see how it's going to work no matter what opinions the Board has for the salvage part. The roll offs may be a different situation but Ms. Hash is uncertain because she doesn't know the difference. Phillip Smith suggested as a fellow citizen to check with the Department of Natural Resources to find out if they have any suggestions on what Mr. Stephens can do. It may be something as simple as bringing more dirt in. He wouldn't leave any stone unturned. Dan Swafford said this is why he was asking about the back half with Rick - if there's any way that the salvage can be put up there to get it out of the floodplain. He told Mr. Stephens it would up to him to check out all of the options and go from there.

Mr. Swafford asked if the Commissioners had any further questions. Phillip Rogers said his concerns are immediate. He doesn't want somebody from this community that graduated from this school, spends his money here, hires people and pays his taxes to walk out of here tonight effectively shut down now. The State is effecting us and we're trying to help him out. Mr. Rogers wants Mr. Stephens to understand this. Then, Mr. Stephens has to go through this long process, and while he's going through this long process, he is not generating an income at all, and we've got three or four people or more - eight people that are not making a living in this day and age. Mr. Rogers further stated this isn't right and the Plan Commission need to do something so they can at least operate in some shape or motion because the State's not going to come back and pay all of those people their salary if they decide he can stay there. Ms. Griffin stated she would ask this question of Darla Brown because she is not the one to answer that type of question. Sandra Hash stated whenever you fill in a floodplain that takes a permit too, because if you're in a floodplain and you raise your land up, as Mr. Coppock stated earlier, that creates problems upstream from you because that water has to go some where. So getting a permit to put fill in is not real feasible either. Along Vine Street is a floodplain and the church wanted to build there. The church built on pylons so they

didn't affect the flow of water and she doubts if Mr. Stephens will want to elevate his property above the floodplain. Ms. Hash reiterated she doesn't want to build false hope. Mr. Smith stated that's why he told him to contact the DNR. Phillip Rogers stated he is like Ms. Hash and doesn't want to tell Mr. Stephens there is no hope in the world for it but thinks he needs to investigate all of his options. This is why he was asking Rick what it would take or redo the back half. Mr. Rogers does not want to run a business out of Ellettsville – there is no way. Mr. Stephens employs people, pays his taxes here and we want to keep him here. Mr. Rogers further commented everyone on this Board agrees they want to do what they can for Mr. Stephens but thinks the ball is in his court. The Board can submit it to the Council if it is necessary and the attorney can look at it also. Mr. Rogers doesn't think he would just leave it at that and thinks Mr. Stephens needs to keep investigating as well. Phillip Smith asked Mr. Stephens if he has a loan against that business. Mr. Stephens responded it is on contract. Mr. Stephens stated Mr. Griffin had a picture of the retaining pond in the back. When he put the gravel down in the back, it sloped away from the creek to the center and then slopes in the front from the north to the south so it drains in that retention pond. Anything that would happen to be on the ground as far as run off, which anyone is welcome to come look, would find there isn't anything on the ground. His kids have to live here, hopefully their kids would, hopefully, live here and that's the difference between what it use to look like and what it looks like now. So, any run off that's happening is going to the retention pond. Mr. Coppock can come down and he's more than welcome to come down and look at it and give him any insight. As far as Mr. Stephens being close to a residence, he believes he read somewhere fencing was an issue and that it needed to be blocked. Ms. Griffin stated it is in code that it does require fencing or some source of vegetative buffer. Mr. Stephens stated so the fencing is not an issue in that it is planned but right now it's hid behind the trees. Mr. New has already expressed, and they've already made an agreement, for Mr. Stephens to buy the rest of that land so it is looking to be a ten acre operation. If Mr. Stephens can't get it zoned correctly he is not going to buy the rest of the land. They're talking about a pretty good sizable operation.

Mr. Swafford asked for public comment.

Jeana Kapczynski agrees the property looks a lot better. She has lived here since 1978 and knows Mr. Stephens has done a really nice job cleaning it up. It looks nice. Ms. Kapczynski asked if the elephant in the room is the federal government. She doesn't understand the process. If he fills out the application to the State for the permit and the Town says it is okay is that going to trigger the feds to look at the floodplain? Ms. Griffin responded technically right now she can't approve it because of the Town Code. Ms. Kapczynski asked if the State is then going to say Mr. Stephens has to have an okay for the floodplain too. Does Mr. Stephens have to have it signed off of the floodplain and all of that? Ms. Griffin replied he will have to have it signed off through her department and that would be the beginning process. She has been in discussion with Don Cloud, compliance officer for this particular division of dealership, so she has been unable to get a couple of her questions answered as of today. Right now, Ms. Griffin believes this should be tabled and then let the legal counsel review the information she has prepared and then Mr. Stephens can start his application process. Ms. Griffin cannot say what's going to happen and isn't going to guess. Sandra Hash commented the floodplain maps have all been redone since 2008, after the flood. They have had public meetings and it's been published and they have been accepted. The Town, itself,

got letters and there was a period of time to dispute those floodplains. No one from the Town Council or Planning Commission, that she is aware of, tried to argue with the floodplains. Now, those have all been reviewed and reset and Ms. Hash believes the decision is beyond the local level. Mr. Stephens asked if the public got letters. Ms. Hash responded it was in the newspaper. Any legal notice is in the newspaper. It takes due diligence to keep up on everything when you're a property owner.

Don Mullendore stated they have all been there whipping a dead horse for the last 20 minutes. This man knows he has the floodplain problem and knows he needs permits from the State. The heck with the State. Right now it is up to the Commission to not cut Mr. Stephens out of his money and the taxes that go to this Town. He is saying why doesn't the Town give him 60 days to get his act together. Table it for 60 days and in that time the Town can do what they need to and Mr. Stephens can get his act together to get his permits in. Ms. Hash stated the Town hasn't issued a cease and desist or anything like that. Mr. Stephens has not been asked to stop operations in any way. Mr. Mullendore stated this is what the Commission is trying to talk about. This gentleman says it's not fair for Mr. Stephens to go out of here with not being able to _____ (705)_____ and that's true. The way the economy is right now you should be able to work with people instead of against them to try to get them to go. If you give him 60 days to get it done and you don't get it done, that's his problem. Then the Commission has done what they're supposed to do.

Robert Lowers stated he is a resident of Ellettsville. Mr. Lowers asked if the recycling center falls under the same categories as salvage and in the same floodplain just right down the street. Dan Swafford asked if he meant the collection center for solid waste. Mr. Lowers responded yes. Rick Coppock commented the collection center is an I-2. Dan Swafford asked Mr. Coppock if the collection center was zoned correctly. Mr. Coppock commented yes. The history of the collection center is the Town built what is the utilities building now which use to be the street department building. The Solid Waste Transfer Station came in and wanted to fill in the floodplain and build their building. So when they applied to the DNR, the DNR said the Town had violated the floodplain when it built the blue building. So, the Town had to go in and do a plan to equal out the amount of fill and cut. Then, back in the early 1990's, the Town, with the help of the Solid Waste District, had a big bulldozer grade a bunch of the lower area off to equal out what they filled in with the utilities building and the transfer site. Dan

Swafford asked if the current salvage collection site is not in the floodplain. Mr. Coppock responded no because it's built up through there. Sandra Hash stated if Mr. Stephens purchased the additional land there is the possibility he could move the dirt around to make a higher area and replace it with a lower area. Ron Wayt stated the property is still not zoned properly. Ms. Griffin stated it requires DNR permitting. Rick Coppock stated it is too far off the map. Mr. Coppock further stated there are enough questions on what the original business was back in the 1970's and he is uncertain when it was annexed into the Town. These are other issues the Commission is going to have to take a look at to find out what the original uses and permits were. Mr. Coppock said Mr. Stephens could get statements from Mr. New and Mr. Chandler. Phillip Smith asked if the property was annexed at the same time as the whole stretch of McNeely on the south side. Mr. Coppock stated it may have been done when they did the treatment plant, he didn't know. Sandra Hash stated the parcel may have been

annexed in the 1970's, perhaps 1973. Ms. Hash was reviewing some zoning this past year and remembers the garage area being discussed. Mr. Coppock said the zoning at that time would also need to be determined. Ms. Hash responded she could research the minutes to find out if there was any discussion of the zoning or annexation.

Russ Ryles stated 1994 was the last big rain event where we had 6" of rain try to take Ellettsville off the map in one afternoon. Mr. Ryles asked Mr. Stephens what fill dirt has he added on his property adjacent to the creek since 1994. Mr. Stephens responded he hasn't added dirt, just gravel. Then Mr. Ryles asked what fill gravel had been added. Mr. Stephens stated in the back lot he has added 6" on the edge to taper to the center. Mr. Ryles asked on the east side of Jack's Defeat Creek, if there is a small lot parallel to the place where Mr. Stephens has some of his roll off stored. Mr. Stephens stated yes, he purchased it off of Kent Robinson. Mr. Ryles asked Mr. Stephens if he had done anything to change the level of that ground. Mr. Stephens said he dosed out some old piles left over from Kent's dad and when Tractor Supply was being built they brought dirt to that property. In the very back of the property where they dumped concrete out of cement trucks for years, it has a substantial pile. Without getting a machine to breakup the concrete, Mr. Stephens was rolling and flattening it out. There was quite a bit of the concrete that rolled down into the creek and Mr. Stephens cleaned it up. Mr. Ryles stated right now the bridge is a bottle neck and if there is another 6" rain, the bridge is going to be a choke point for water coming, trying to get out of Ellettsville. Any additional elevation raised on other sides of the creek causes other places the water can't go. This will further back flood water at critical times into the center of old Ellettsville. Mr. Stephens said he won't argue that the bridge is a choke point. Mr. Ryles stated he believed he could have built a better bridge and he's not an engineer. Mr. Stephens said if anyone wants to look at it, they can go to the south side and see how wide the creek is. Then walk to the north side and look how little the creek is. The State needs to come and clean it up. Mr. Ryles stated his concern is not so much what is being discussed at this meeting but the broader picture of water flow and getting water out of Ellettsville. Mr. Stephens stated when they raised the road they damned the water right on to his place.

Connie Griffin stated she had some photographs to show the starting of the complaints. Mr. Stephens stated, he's not doubting Rick, but he grew up on the property every day, and he never saw a bulldozer across the street rolling any ground to the top. Mr. Stephens saw it when it was getting built and he didn't ever see it get bulldozed up and moved to the top. Mr. Stephens stated he would need to see proof of this. He grew up there and every day and after school he rode his bike. Dan Swafford asked Ms. Griffin what the photographs were. Ms. Griffin stated one photograph is of the first day she received the first complaints in October. There was quite a bit of land disturbing activity going on to the right which was to the east of Asher Fleet Services. At that time, there was dirt being dumped into the area fill which has raised the area. Ms. Griffin told the gentlemen to stop what he was doing and she was advised at that time to make them stop. There were no permits for the grading of that area. Mr. Stephens stated the area is the black top area leading into the property and not out on the road. Ms. Griffin stated there have been trees removed and the stumps are not to be removed

because it makes the soil insecure. There has been grading conducted in this area without permit for quite awhile.

Before the vote was taken, Dan Swafford asked for last comments. Phillip Rogers said he appreciated Mr. Stephens' demeanor and approach. Mr. Rogers and Mr. Swafford thanked Mr. Stephens. Phillip Smith asked Mr. Stephens if he was raised in Ellettsville. Mr. Stephens responded yes. Dan Swafford asked if Don Cowden was his teacher. Mr. Stephens said yes. Then Russ Ryles said conflict of interest. Sandra Hash thanked Mr. Stephens for all he has done because it looks so much better.

Dan Swafford entertained a motion to table this issue for 60 days. Phillip Smith made a motion to table this issue for 60 days. Phillip Rogers seconded. Roll Call vote: Dan Swafford – yes; Ron Wayt – yes; Don Calvert - yes; Phillip Rogers – yes; Phillip Smith - yes; Sandra Hash – yes. Motion carried 6-0.

Richland Bean Blossom Community School Corporation Jr. High School Development – Bledsoe Riggert Guerrettaz. Connie Griffin, Daniel Butler and Bedsoe Riggert Guerrettazz.

Connie Griffin, Planning Department, stated she and Rick Coppock have reviewed the project. The project has minimum land disturbance so a Rural 5 permit will not be required. This project is not considered new construction but a redo of the pavement of the tennis court to convert it to a parking area with 91 parking spaces. Landscaping will be added that consists of ground cover, spreading juniper and grasses, other trees will be added around the side and a rain garden is located off to the side of the project area with grasses and plantings. She did look at the site today and the progress is very good. Phases 1 and 2 are moving right along and this project only exemplifies excellence in work.

Daniel Butler of Bledsoe Riggert Guerrettazz. Dan Swafford asked him why the tennis courts were being torn out. Mr. Butler responded the tennis courts are not in use any more. The pavement has significant cracks and cannot be repaired with an overlay. The school also requires extra parking. Sandra Hash commented the school built new tennis courts behind the new elementary school. Daniel Butler explained the school has only one area which is ADA accessible by a ramp. Now, every entrance to the building will have ADA accessibility. The dimensions of the new parking area are 120 feet, which is the same as the new tennis courts, and is approximately 260 feet. There will also be a remodel of the interior of the Junior High School. This will include new ceilings which includes a new fire protection system throughout the whole building. The project will be bid in December and will start in the spring. This will not result in any new classrooms in the Junior High. However, a project in the senior high will add five to six classrooms.

Dan Swafford entertained a motion. Phillip Smith made a motion to approve the RBBCSC Junior High School Development. Don Calvert seconded. Roll Call vote: Dan Swafford – yes; Ron Wayt – yes; Don Calvert - yes; Phillip Rogers – yes; Phillip Smith - yes; Sandra Hash – yes. Motion carried 6-0.

Animal Ordinance

Connie Griffin called animal control to schedule a meeting. She thinks it would be advisable to meet with them to find out what they are willing to enforce based upon the contract before the Code is revised. Sandra Hash commented her daughter had been bitten by a dog in 1994. At that time, she approached the Town Council to make some animal control laws. Monroe County called her and said if you want to make your own laws, then build your own shelter and have your own officer.

FEMA Code Adoption

Connie Griffin – this is a mandatory code. The public hearing notices have been published in the Journal for the Plan Commission and Town Council. This is a procedural code update to the floodplain ordinance. A letter was mailed to the Town Council on June 17, 2010. The subject of the letter was the final flood elevation determination and map revisions which will be effective in December 2010. Ellettsville must adopt these code changes has required under Section 1361 of the National Flood Insurance Act of 1968 to show evidence of adoption of floodplain management regulations that meet the standards of paragraph 60.3(D) of the National Flood Insurance Program regulations of 44 CFR 59, etc. In order for the Town to meet the particular time frame the Commission is to approve this code update and then will go to the Town Council for the first reading to be conducted and concluded by November 8, 2010. The second reading is on November 22, 2010 and this will be under the December 17, 2010 code change requirement. Darla Brown currently has the ordinance for review and changes. The Town has received a second letter from FEMA and based upon the hearing notices and the information they commended Ellettsville for making the necessary efforts to implement the floodplain management measures for the Town. FEMA also appreciates the Town's cooperation to ensure that our community's floodplain management measures are approved by the FEMA regional office by the effective date of December 17, 2010.

Dan Swafford entertained a motion. Phillip Smith made a motion to adopt the FEMA code as stated by Connie Griffin. Ron Wayt seconded. Roll Call vote: Dan Swafford – yes; Ron Wayt – yes; Don Calvert - yes; Phillip Rogers – yes; Phillip Smith - yes; Sandra Hash – yes. Motion carried 6-0.

Signage Issues, Potential Code Changes for November 2010 Plan Commission Meeting

Connie Griffin is having difficulty with some of the sign code. This is an introduction and will be discussed more in depth at the next meeting. The Town is having trouble with off premise advertising so a statement needs to be added to the definition that off premise signage is not allowed. It was concluded with the code change that the Town was not going to allow off premise advertising. Banners need to be restricted from being placed on wood stands such as the Halloween Shop. The Town has agreed banners should be displayed between two poles or pillars and this needs to be enforce and/or clarified. The six square of real estate signage needs to be enforced. The sandwich boards to be placed in areas as not to obstruct pedestrian traffic is an issue and there have been a couple of complaints. Yard sales signs displayed on utility poles or Town owned property will be taken down and a \$25 fine assessed. There are issues with lots of organizational activity signs. There is possibly a revision that needs to be

done on the size of temporary inflatable signs and banners in general. These are some of the code changes which will be discussed next month.

Plat Review Code Change November 2010 Plan Commission Meeting

Connie Griffin, Planning Director. To put the final plat review back to Plan Commission is a minor change to the code. The code would then read *“The Plan Commission shall have the authority to grant secondary approval as long as the proposed plat submitted for secondary approval is substantially in compliance with the preliminary plat approved by the Plan Commission.”* Right now, the code states that *“the planning and zoning administrator under the authority given by the Plan Commission has the authority to grant secondary approval as long as the proposed plat submitted for secondary approval is substantially in compliance with the preliminary plat approved by the Plan Commission.”* This will not be voted on at this meeting because a public hearing notice will be posted stating there will be code changes.

Planning Department Updates by Connie Griffin

Enforcement Violations

Don Mullindore: Dan Swafford said Don Mullindore asked him before he left the meeting, due to medical reasons, to request a 30 day extension. Connie Griffin stated this is a code violation of 152.257. A notice of violation was served on October 7, 2010. Mr. Mullindore could not request an administrative appeal before the Plan Commission because he has not filled out an application. According to Code 152.257, which this particular Code in general regulations F, Legally Non-conforming Signs, has not changed except in couple of areas which are mute because with the code changes it states *“The sign shall not be relocated to another place without going through the appropriate application process.”* The history of Mullindore Guns and Knives is as follows: the former director, Frank Nierzwicki, attempted to collect the sign permit fee from Mr. Mullindore in 2008 when his business was located at 200 E. Association Eagles Landing. At that time, Mr. Mullindore would not pay the sign permit fee. Don Lewis, former Trustee, came into pay the sign permit fee to resolve the code violation since Mr. Mullindore worked for him on occasion. A sign permit was issued on March 25, 2008, for \$0. Permit Number – no permit was issued. It was traditional in the 2008 sign permit process that Mr. Nierzwicki would issue the permit number based on the receipt number. No permit number was issued and a receipt was not attached to the document. All three of the original permitting application copies are intact. Mr. Mullindore does not have a sign permit. Pursuant to the current Code, Mr. Mullindore would fall under legally non-conforming signs. Ms. Griffin reviewed Mr. Mullindore’s comments in recent emails. In an email to the President of the Town Council stating that Ms. Griffin is involved in an act of extortion. The act or an instance of extorting an illegal use of one’s official position or powers to obtain property funds or patronage, an excessive or absorbable charge or something extorted. Mr. Mullindore calls Ms. Griffin incompetent by not knowing his business address because his letter was sent to 307 W. Temperance instead of 307 E. Temperance and because his business was referred to Mullindore Guns. Further, Mr. Mullindore states Ms. Griffin has committed an illegal act by taping a letter, which is serving a notice of violation, and bypassing the postal system. Ms. Griffin called the Ellettsville Postal Clerk and asked if it was illegal to place a returned letter in a new envelope and tape it to the door of the person that should

have received the letter. The clerk advised this is not an illegal act. This is also covered in Code Ordinance 10-07, Code 152.267, Sign Enforcement Procedures and Fines, *"The Ellettsville Planning Department shall issue a written order, letter or posted notice of violation to abate, remove or repair the issue in violation."* Mr. Mullindore ended his email with a statement that he will be contacting the Indiana Attorney's office concerning Ms. Griffin's enforcement actions. The new code states administrative appeal. Mr. Mullindore states that due her incompetence by not supplying the information needed for him to correctly argue his side which is constitutional right. A copy of the new code was hand delivered to him on September 2, 2010, as well as the administrative appeal form. Ms. Griffin had a past history with Mr. Mullindore and knew he would want an administrative appeal. Based on the email, a new letter was written today and was served directly to Mr. Mullindore at his place of business, Mullindore Guns and Knives. The letter was addressed to 307 E. Temperance. The letter states no permit has been issued. No application is on file and the code violation of 152.257(F), General Regulations, is being enforced. The next Plan Commission date of November 4, 2010, is listed and if Mr. Mullindore, in fact, wants an administrative appeal he can submitted a completed application on or before October 20, 2010. This is required pursuant to the administrative appeal form of ten days notice. If a sign installed without a permit an abatement date is set for seven days after the notice of violation has been served. Therefore, the abatement date is set for noon on October 15, 2010. The fine amount is a Class D ordinance violation and according to Code 1099, this is a \$100 a day fine not to exceed \$500. The fine amount will begin on October 15, 2010, if the sign has not been removed from the Village Inn pole sign. A permit costs \$50. Ms. Griffin advised Tom Orman wanted her to state that if Mr. Mullindore refuses to pay his sign permit that he will pay it out of his own personal pocket which is the same as the former trustee was willing to pay. If Mr. Mullindore has a sign application on file and the permit issued, then is sign would be legally conforming. Ms. Griffin has asked Mr. Mullindore to provide a copy of his sign permit if he has one and he has advised he does not need a permit. Phillip Smith commented if all the other business have to pay the permit fee then Mr. Mullindore should have to pay his fee. Sandra Hash stated Mr. Mullindore has been given ample information and ample time as well as the appeal form. He came to the meeting without submitting the proper forms. Ms. Griffin reiterated he was served with the violation this date and she is enforcing the violation.

Privilege of the Floor – non-Agenda Items

Russ Ryles had never heard of a secondary approval with regard to removing secondary approval from the Director of Planning to the Plan Commission. He is also concerned that substantially is a nebulous term. Mr. Ryles believes the terms preliminary and final are the terminology that should be used.

Robert Lowers has lived at 1119 Main Street since 2002. He is requesting to be placed on an agenda for the purpose of requesting a couple of ordinances. One ordinance would be to look at back yard habitat and the other would be an ordinance on the complaint system for the Town. In 2004, he began a natural habitat for wildlife. He has met with the Planning Director regarding guidelines. A habitat is defined as something that provides food, water, a place to sleep and protection from harm's way. Mr. Lowers enjoys watching wildlife in his back yard. Mr. Lowers is requesting guidelines for back yard habitats. Dan Swafford asked what type of complaints have been received. Mr.

Lowers has not personally received any but the Planning Department has received complaints. Mr. Lowers has a federal license to have a back yard habitat. Ms. Griffin believes the back yard habitat will fall under the new landscape ordinance. The consistent complaint is tall grass and weeds. Ms. Griffin is to schedule an appointment with Mr. Lowers to compile the information for the Plan Commission packet.

Adjournment

Dan Swafford entertained a motion to adjourn. Phillip Rogers made the motion to adjourn. Phillip Smith seconded. Dan Swafford adjourned the meeting at 8:12 p.m. The next meeting will be November 4, 2010 at 6:00 p.m.

Dan Swafford, President

Ron Wayt, Vice President

Sandra Hash, Secretary

Don Calvert

Phillip Smith

Phillip Rogers

Clayton Sullivan