

## **Lapel Board of Zoning Appeals Meeting**

**September 18, 2023**

In attendance: Cam Paddock, Ron Nunley, Herschel Hinkle, Tim Munro, Jeff Keith, Oksana Polhuy, and Jeff Graham, Town Attorney.

6pm meeting called to order.

Hinkle stated he had a document in front of him that stated there was no special use variance to consider. Hinkle asked Attorney Graham to explain the document.

Graham stated he had a read a letter filed by remonstrance led by counsel that the Board of Zoning Appeals does not have jurisdiction to hear a petition tonight based on the purported deficiency of the procedure of the Planning Commission and Town Council that issue will be litigated it is the position of the Town Attorney that is not the case and the Board of Zoning Appeals does have the authority to hear this petition tonight, and give a thumbs up or thumbs down or continue or whatever you would like to do tonight. But it is my position we are good to proceed tonight sir.

### **ELECTION OF OFFICERS**

Hinkle proceeded with the next order of business the election of officers. Hinkle opened the floor for the Chair of the Board of Zoning Appeals to be nominated.

Nunley made the motion that Munro be made the chair of the Board of Zoning Appeals for the remainder of 2023. Hinkle asked Munro if he would accept the nomination, Munro replied he would. Hinkle then called for a roll call vote, all were in favor.

Hinkle asked for a nomination for Vice Chair. Munro nominated Keith as Vice Chair for the remainder of the year. Hinkle asked Keith if he would accept the nomination, Keith replied he would. Hinkle called for a roll call vote, all were in favor.

Attorney Graham noted that the BZA also needed to nominate a secretary and the secretary need not be a member of the BZA. Munro called for nominations, Paddock nominated Paula Lee, Jeff Keith 2<sup>nd</sup> and all were in favor.

Hinkle turned the meeting over to Chair Munro.

### **NEW BUSINESS**

#### **Application BZA 2023-01**

**Requested Action:** UDO V 10.1.2 Special Use application to permit Salvage Yard use in the General Industrial zoning district.

**Address:** 6199 South State Road 13.

**Petitioners:** LKQ Midwest Inc. (Randy Smith) and FMC Advisors LLC (Chris Farrar).

**Property Owners:** Carolyn L Wilson & Wilson Land Trust c/o Dick Wilson.

Munro called on Polhuy to present the staff report.

Ms. Polhuy introduced herself and began her presentation of the staff report. In the Staff Report, she refers to the following Exhibits:

1. Location, zoning and land use map
2. Aerial map
3. Submittal
4. Site Plan & Building Elevations
5. Site & Neighborhood Pictures
6. Recommended land use (Comprehensive Plan)
7. Parks Plan Exhibit
8. Indiana Clean Yard Award Businesses

Ms. Polhuy states that the subject site is located on the west side of SR 13, about 975 feet south of the intersection of SR 38 and SR 13. The 102-acre subject site is comprised of three parcels, all in the same ownership, currently zoned General Industrial and used for farming (Exhibits 1 & 2). She states, the surrounding zoning districts and uses can be seen on the previous page and in Exhibit 1. Also, the aerial view in Exhibit 2 shows the surrounding area uses as of 2023.

Ms. Polhuy continues, the petitioners, LKQ Midwest Inc., requests permission to conduct a Salvage/Junk yard Special Use at the subject site. Specifically, LKQ would like to conduct vehicle recycling and most storage operations indoors and some storage outside (see Exhibit 3. Submittal). Exhibit 4 (the site plan and the building elevations) show the following planned improvements:

- a building with offices and indoor facilities for dismantling vehicles and storing vehicle parts and fluids ( $\approx$ 133,400 sf);
- a parking lot to serve the office with parking landscaping;
- a storage yard around the building and on the rest of the lot;
- an 8-ft-tall metal fence to screen the storage yard around the entire perimeter of the yard;
- a planned landscape buffer outside of the fence;
- a drainage detention pond;
- a preserved floodplain area around the Sand (or Mud) Creek that the construction won't encroach into (west side of the project site).

The preliminary exhibits of the building and some examples of it being constructed in Colorado, Arizona, and Utah are in Exhibit 3 in the "Presentation" section.

She states that per Lapel's UDO, a **Junk Yard** is defined as "*A place, usually outdoors, where waste or discarded property, other than organic matter, including but not limited to automobiles and farm implements and trucks, is accumulated and is or may be salvaged for reuse or resale; this shall not include any industrial scrap metal yard. The storage, dealing in or the permitting of the accumulation of significant quantities of combustible, organic or nonmetal scrap materials such as, but not limited to, wood, paper, rags, garbage, tires, bones and shattered glass on the premises of such an establishment will disqualify it from being classified as a scrap metal yard, and the same will be classified as a junk yard.*"

She states that per Lapel UDO Definitions, **Junk** is defined as, "*Scrap material, including but not limited to the following:*

- A. automotive or machinery equipment or parts, including used automotive tires;
- B. cloth and clothing;
- C. manufactured clay and porcelain products;
- D. manufactured plastic products;
- E. manufactured rubber products;
- F. paper and paper products;
- G. recyclable products of all kinds;
- H. scrap metal, including copper, brass, iron, steel, ferrous and nonferrous material;
- I. wood and wood products;
- J. wrecked and/or dismantled automotives;
- K. inoperable and exposed appliances;
- L. building debris;
- M. unused fill;
- N. old cable or cordage.

Given the types of activities proposed by the petitioner, she states that their use is classified as a “Junk Yard”. She states, Junk Yard use is a Special Use in the General Industrial zoning district, which means that the BZA has the authority to approve it as long as the proposed projects meets 4 criteria listed in Lapel’s UDO and analyzed below. Please note that while the granting variances is a matter committed to discretion of the BZA, granting a Special Use approval is mandatory once the applicant shows compliance with relevant statutory criteria.

Ms. Polhuy presents the following analysis for the criteria.

### **Criteria 1**

*The approval will not be injurious to the public health, safety, morals, and general welfare of the community.*

Junk Yard use has the potential to be injurious to the public health, but the way how the operations are conducted can minimize the risks. Based on Lapel UDO’s definition of a junk yard, it assumes that some of the junk yard activities like dismantling and storage of the junk automobiles may happen outdoors. However, the applicant is proposing to conduct all dismantling operations inside of the building. All car fluids and car parts, except for the vehicle carcasses, would be stored inside of the building before they are transported elsewhere. Only vehicle carcasses would be stored in the fenced-in yard with the stored carcasses not exceeding 4 feet in height. Conducting dismantling activities indoors may mean the following:

- The noises associated with this activity will be greatly reduced by the building’s walls and will be limited to the area of the building itself (the applicant states “no excess noise”);
- The air emissions from indoor activities will likely go through the building’s air condition system before being released outside (the applicant states “no smoke or smell”);
- Since all fluids and combustible vehicle parts are meant to be stored indoors, any potential fires would be contained indoors first. The fire department could get to the fire quickly because the building is going to be located right by the state road. The carcasses stored outdoors shouldn’t have any easily combustible parts, so the potential for fires starting within the storage yard is low. Should the fire happen outdoors, the pattern of storing the vehicles that LKQ demonstrates in other yards shows that a fire truck could generally access any row of vehicles?

This type of operation with most polluting activities happening indoors greatly reduces the risks to the public health and makes the operation a lot cleaner than some other uses typically allowed in the General Industrial zoning district.

There are many environmental regulations that the auto salvage yards have to abide by and these regulations are enforced by the Indiana Department of Environment Management (IDEM). Examples of areas that IDEM regulates are air, water, and soil pollution, storm water runoff, hazardous waste disposal, and so on. IDEM has a page devoted specifically to [Auto Salvage Yards](#). Staff has this information here to show that certain public health and environment regulations relevant to salvage yards are within the authority of the state agency and not the local land use policies. The applicant would be required to apply for certain state permits as part of the general construction permitting process in Lapel in the future.

The applicant is proposing to preserve the flood zone area on the west side of the property (Exhibit 4). This area is also marked to be included into a future park in Lapel (see Exhibit 7), so preserving it means that it could potentially become an addition to the general welfare of the community by being turned into a park. Also, this part of the site is the only one that abuts an existing residential use, so having a 300-400-ft-wide floodplain between the residential property and the storage yard creates a substantial buffer.

## **Criteria 2**

*The requirements and development standards for the requested special use as prescribed by this Ordinance will be met.*

Lapel UDO, V 10.2.14.N has regulations specific to the Junk Yard Special Use:

“Vehicles or trailers of any type without current license plates and registration or in an inoperable condition shall be prohibited other than in completely enclosed buildings or associated with permitted junk yards or auto-repair facilities. Such vehicles associated with permitted junk yards or auto-repair facilities must be stored consistent with the following requirements:

- i. All such vehicles, including antique vehicles, shall be stored within the rear or side yard. In no case shall such vehicles be stored in any right-of-way, front yard, or required setback area.
- ii. All storage areas for such vehicles shall be completely enclosed with a six (6) foot tall, 100% opaque wood, stone, or masonry fence. Gates allowing access to the storage areas are permitted. Gate shall be closed when not in use, and shall consist of six (6) foot tall, 100% opaque wooden doors.”

According to the currently proposed site plan and pictures of the intended 8-ft-metal fence, the applicant would meet the regulations stated above and their intent of visually screening the storage yard and locating the yard out of the front yard and setbacks areas. The staff also proposes to add two conditions to the approval of this variance that the applicant propose in their application: the 8-ft-tall fence and that the storage of items outside won't go beyond 4 feet.

**Criteria 3**

*Granting the special use will not subvert the general purposes served by this Ordinance and will not permanently injure other property or uses in the same district and vicinity.*

The general purpose of Lapel's UDO per V1.2.4 is to "secure adequate light, air, and convenience of access; and safety from fire, flood, and other dangers" and to "promote the public health, safety, comfort, convenience, morals, and general welfare." Analysis for criteria 1 addresses these general ordinance purposes.

The UDO describes General Industrial district in the following way:

*"The "Ig", General Industrial District is intended to provide locations for general industrial manufacturing, production, assembly, warehousing, research & development facilities, and similar land uses. This district is intended to accommodate a variety of industrial uses in locations and under conditions that minimize land use conflicts. This district should be used to support industrial retention and expansion in Lapel."*

Permitting this proposal would help accommodate an industrial business in Lapel that is operated at a high standard that protects the environment and the general welfare of the community.

Most uses around the subject site are either vacant, agricultural or industrial (Exhibit 1, 2, and 5). It is likely that the way that the applicant is proposing to conduct its operations will NOT be injurious to the surrounding properties.

**Criteria 4**

*The proposed use will be consistent with the character of the zoning district in which it is located and the Town of Lapel Comprehensive Plan.*

The junk yard use is consistent with other uses typically permitted in the General Industrial zoning district as a Special Use: boat/RV storage (indoor/outdoor), truck sales and service center, storage/sale of petroleum products, sand/gravel operations, and mineral extraction. Some of these Special Uses are bound to have more pollution than applicant's proposal, like dust from mineral extraction. Based on LKQ's proposed operations that include outdoor storage only of the vehicle carcasses, it is similar to an outdoor or indoor warehousing use that is permitted in the General Industrial district by right. So, the proposed use is consistent with the character of the zoning district that it is in.

Lapel's Comprehensive Plan (CP) shows the area around the subject site with the recommendation for the light industrial use to the north, south, and east of the subject site, and an agricultural use to the west (Exhibit 6). The proposed character of operations conducted mostly indoors is consistent with the light industrial uses recommended by CP. In Lapel, auto repair facilities, which are close to indoor dismantling activities, are permitted in the Commercial 1 zoning district, which is consistent with the proposed Commercial use in CP to the south of the subject site.

Staff recommends approval of the Special Use based on the following findings:

- The approval will not be injurious to the public health, safety, morals, and general welfare of the community:

**Conducting most dismantling vehicle activities and storing most car parts and fluids indoors before they are transported elsewhere with the only item stored outside being the car carcass greatly reduces the environmental and health risks typically associated with the junk yard use. The applicant shows other site features like parking and buffer landscape areas, tall fencing, and preservation of the flood plain that add to the general welfare of the community by creating an aesthetically pleasing design.**

- The requirements and development standards for the requested special use as prescribed by this Ordinance will be met:

**The proposed 8-ft-tall opaque fence around the entire storage yard with the gate and the yard located in the side and rear yards meets the zoning ordinance standards specific to the requested Special Use.**

- Granting the special use will not subvert the general purposes served by this Ordinance and will not permanently injure other property or uses in the same district and vicinity:

**Permitting this proposal would help accommodate an industrial business in Lapel that is operated at a high standard that protects the environment and the general welfare of the community. It is likely that the way that the applicant is proposing to conduct its operations will NOT be injurious to the surrounding properties. Nearby property owners may remonstrate against this petition if they believe this request will have significant adverse effects on adjacent properties. Should nothing contrary be brought to light by adjacent owners at the public hearing, it is presumed that the approval of this Special Use request will not have a substantially adverse effect on the use of adjacent properties.**

- The proposed use will be consistent with the character of the zoning district in which it is located and the Town of Lapel Comprehensive Plan:

**The proposed junk yard operation is consistent with the character of other General Industrial uses and with some Light Industrial (indoor industrial uses) and commercial uses (car repair) recommended in the area around the subject site proposed in the Comprehensive Plan.**

With the following specific conditions:

1. The Applicant shall provide an 8-ft-tall opaque fence around the entire storage yard.
2. The only item type to be stored in the outside storage yard shall be vehicle carcasses.
3. The Applicant shall sign the Acknowledgement of Special Use document prepared by the Lapel Planning Staff within 60 days of this approval. Staff will then record this document against the property and a file stamped copy of such recorded document shall be available in the Lapel Town Hall.
4. This Special Use approval is given to the current applicant at this current location. Should there be a change in the tenant who operates the use, then a new Special Use application shall be submitted to the BZA.

### **LKQ PRESENTATION**

When Polhuy finished presentation of the staff report, Munro called upon LKQ to speak on the petition. Chris Farrar gave a power point presentation on LKQ. Farrar stated LKQ is building new facilities all across the US with the Indianapolis area being the next location. Farrar developer for LKQ explained they began 20 plus years ago acquiring mom & pop salvage yards and transforming them into the models seen today.

LKQ stands for Like Kind Quality, company was founded in 1998. The mission statement says LKQ strives to be the leading global value added sustainable distributor of vehicle parts and accessories by offering our customers the most comprehensive, available and cost effective selection of part solutions while building strong partnerships with our employees and the communities in which we operate.

There are multiple facets to the business such as parts distribution and recycling. LKQ dismantles over 800,000 vehicles per year. Vehicles are brought in and put up on lifts, parts are logged into hand held computer, tires are removed, fluids are drained, and motor and battery are removed. What's left is a frame, quarter panel or roof panel, and that carcass is stored in the yard.

Farrar spoke on a slide which indicated that 780,000 vehicles have been procured, 2.1 million tires, 3.9 million gallons of fuel, 343,000 gallons of antifreeze/wiper solution, 1.5 million catalytic converters, 740,000 batteries, 2.2 million gallons of waste oil, 13.8 million individual parts sold and 1.1 million autos taken to scrap.

EPA monitoring is governed by state, LKQ has a working relationship with IDEM. Annual training is done on sight, storm water is tested regularly, all water in the facility is tested.

LKQ also strives for corporate citizenship and to be good community stewards by working with local police and fire as well as community non for profits.

LKQ hopes to employ 40 to 50 jobs initially with up to 70 jobs once the project is completed this would include transplants from other facilities.

The question is often asked why do you need 103 acres for a 133,400 square foot facility. For LKQ's use it makes sense to have the storage yard, there will also be tractor trailers up to 5 a day with delivery box trucks that run the parts to local body shops and retailers.

On site operations- there will be no public access or walk up customers. Nothing stored above 4 feet outside the building, there will be an 8 foot solid panel fence around the entire property perimeter along with extensive landscape buffer and screening with no smell or excess noise.

Slides were presented showing new facilities in Denver, Salt Lake and Phoenix. As an overview, cars sit outside for 24 hours, go inside, dismantled and then sit for 4 to 5 hundred days and converted to scrap. Warehouse slides were shown depicting the shelving and parts operation. Slides were also presented showing the new facilities that have been built. Mr. Farrar completed his presentation.

Attorney Graham asked if anyone on the board had any questions regarding the presentation. A member of the audience spoke up and said, "I got something to say before you start the questions, you're talking about dumping them cars out for 24 hours they're gonna sit there and dump stuff out on the ground for 24 hours before you do anything about it? You just said it. Munro stated that we would come back to the gentleman's comments once the board had been given a chance to ask questions.

Munro called for questions from the board for Mr. Farrar, Attorney Graham stated that the presentation tonight had several different conditions and standard operations that LKQ is involved would the Board have any objection with this presentation being attached to a potential approval of the special use as an overall condition or commitment of LKQ? Mr. Farrar replied absolutely not what you see here is literally what we do in other markets and is exactly what Lapel will be. Conditional uses you want to see we're willing to adhere.

Keith asked Farrar about EPA testing and independent audits. Farrar replied there is a large annual audit done by APEX companies they perform testing on storm water and pollution prevention plans all the way down to the tanks and compliance with the EPA. If there are items found that warrant additional audits they will comply with those. Also worth noting in this market there have been complaints to IDEM before, IDEM will investigate the complaint and provides resolution if needed. Keith asked about the million cars per year and assumed that was nationwide. Keith asked about the number of cars that would come to the Lapel facility. Farrar said locally he would have to get back to Keith with that number. Keith asked about the process of bringing in cars and wanted more detail. Farrar answered the cars would come in off trailers and be staged, within 24 hours the cars would be moved indoors. What happens within that 24 hours? Fluids will not be leaking, vehicles come from auctions in Farrar's experience fluids are not leaking out onto the ground. Car goes into facility is entered into hand held computer and is dismantled guys can get thru 4 to 5 cars a day. Sometimes there is no back log sometimes there may be 5 cars sitting.

Paddock asked how long do the cars sit before being crushed. Farrar sits 4 to 5 hundred days or a year and half max based on the commodity price for steel.

Hinkle asked how big the facility is and how many bays the facility is. This facility is about 9 to 12 bays. Hinkle asked how many are you anticipating on doing or receiving each day. Farrar said he would get the answer to that question. Some days they get none. He would get an average number. Hinkle asked is the area local that they collect cars from. Farrar assumed they would be from Indiana.

Nunley asked about the jobs that would come to Lapel seeing as how employees would transfer to the Lapel location from locations that were being shut down. How many jobs would be created for Lapel people. Farrar said he didn't know how many of the existing employees would come to Lapel. In the past they usually get higher paying jobs, sometimes 3 or 4 come but there will be 70 plus jobs after about a year and a half. Nunley asked how much money has LKQ spent since they've been in business for cleanup of spills. Farrar said he didn't know. A voice from the crowd stated 7 million. Farrar stated he didn't know how much they had spent on clean up but the newer facilities are being built state of the art to close down these older facilities with issues. For the last 4 complaints against the Avon facility the complaints have been unfounded by IDEM.

Paddock asked if the crushing happened outside and Farrar said yes it happens outside of the facility. Paddock asked if it was a Monday-Friday facility. Farrar said the goal for these cars is to get them in and out quickly. LKQ is going to make an effort to make thing moves quickly. Paddock asked if there were any other facilities that enforced more of a containment unit especially for the newer cars coming in. Farrar stated that when a car comes in they will be drained and spill kits are standing by in case of spillage.



Nunley asked about the noise level within the plant and the noise level when crushing the cars. Farrar stated they had sound studies done and there will be a large fence. Sound studies prove it's no louder than an 18 wheeler or a concrete truck driving down the road. Inside there are using impact wrenches and a fork lift that will drive around but that is contained within the warehouse.

Keith asked Mr. Graham about including this presentation in the special use as Lapel has been fooled before if this presentation is included and LKQ varies from the presentation. Graham stated that if the special use is granted without any conditions whatsoever at that point you are penned in by the 4 corners of the document. If they continue to conduct a salvage yard there is no enforcement capability from the town however once you put conditions on which that could be attached any substantial variance would allow the Lapel Planning or Council now 5 years from now or 20 years from now to be able to go out there with an enforcement and say you're violating the zoning ordinance because we made this special use contingent upon you doing all that. The document would be recorded along with the property to inform future Lapel planners about what can and cannot be done.

Farrar offered up that IDEM has an existing salvage workbook that LKQ adheres to and if you wanted to add that as a supplement or an additional condition we have no problem with that.

Munro asked Farrar about the storage height of the carcass how do you maintain the under 4 foot high level. Farrar answered they won't be on tires, it will just be the rims, cars are not double stacked. On average everything is 4 feet.

Munro asked Oksana in the fact sheet she stated there was only one residence bordering the property and looking at the plot map even though it's across the street from state road 13 there is one property. Polhuy then reviewed the map from the staff report. The map shows the uses according to property cards. Munro pointed out the residence, Polhuy stated she was going on the records of the property cards. The property cards stated the residence as vacant land. Munro then pointed out another residence and Polhuy stated she can only go by what is reported on the property cards. Polhuy added a few remonstrance letters had already been reported and she put them together in Exhibit A and each board member was given a copy of it today. Because the remonstrance letters talk about environmental issues Polhuy did a quick search of IDEM violations just LKQ records were from 1995 to September 14 and the search returned no results. She did not find any violations within Indiana even though information given provided violations from other states. This will be Exhibit B.

Munro asked if there were any other questions from the board. Graham asked if there were no other questions to open the public hearing and let people state if they are for or against the project, the board can ask questions of the public and then at the end the petitioner should be invited to address the concerns that are brought up in that public hearing.

### **PUBLIC HEARING**

7:10pm Munro opened the Public Hearing for BZA 2023-01 Special Use application to permit salvage/junk yard use in the General Industrial Zoning District. Munro asked for questions from the public beginning with those who filled out cards to speak. First speaker being Jeff Purdue, 4956 W 400 S Pendleton, Indiana.

Purdue stated that he owns the property right to the north side of the proposed location and have for 30 years. He said he took issue with the lady calling it vacant land, he makes his living off that vacant land and a lot of people make a living off that vacant land. I never thought I would own property across from a junk yard. It really sticks in my craw thinking my property value is going to be extremely negative. I have lived in this area all my life, my wife and I both have. We see growth coming we see Pendleton handling growth a certain way I would love to see Lapel handle growth in a certain way, this is not it. One of the first things I want to point out is when Bill Hobbs went out there and put the wells in he formed a well head protection committee, I was on that committee, I know that aquifer goes right under this property. There is a test well practically on this property. The farm that I have that butts up to it I have had to drain that farm with a lot of field tile because of active springs from the aquifer on my property. If you went out there right now no matter how dry it is in my tile there is running water which is collecting from that aquifer. The idea that you guys are even considering putting this type of business with the potential hazards that are available here on top of a water supply is really uncontainable to me. You screw that water supply up and you've screwed it up forever. So that is one of the main things I cannot seem to get my head around is the location. The other thing is its sitting right on state road 13 in between the interstate and town. It is one of the first things people see as they come down towards town I would almost guarantee board rooms across the country have this location pegged as future Meijer's, future Walmart's, future this future that if the town needs money that bad we should be thinking long term because this stuff is coming but it's not going to come with a junkyard there. It's going to be a negative. So my main thing is you can't put a whole lot of lipstick on this pig it's still a pig so think of it that way. To me it's a super negative and I wouldn't have any part of it. Thank you.

Munro then called Dave Smethers 9148 W State Road 38 Lapel. Smethers provided the board with a packet of information. Mr. Smethers said he is 1000 feet north of where this property is a little farther away from Shelby which was put in. Every morning at 6:30am to god knows when I hear them banging on those tumblers in the concrete trucks. At 10:30 at night on a Sunday the high intensity lights point right at my windows, and I'm not the only one that has to deal with this. And the bad thing is the Planning Commission for the Town of Lapel has no authority over them, that's poor planning. And I don't want to see this end up in the same way and the only other thing I'm going to say about this cause I've got someone I'd rather do some talking for those who are opposed to this I passed out a short resume of my qualifications I've been in the physical damage business all my life and what I want to tell you for 6 months when I was with American Family as a physical damage adjustor I was assigned to manage our total loss center at IIA/IAFP that's where they buy their cars. And we rented offices and garage space the reason for this is when the insurance company deemed the cars a total loss it was picked up and moved to whatever shop it was in sometimes those cars sat out there for 2 weeks before we had them pulled in for our inspections and every day at the end of our shift they brought them in and set them down with a pay loader or picked them up at the end of the day we went thru bags and bags of floor dry so if they sit out there 24 hours and he's never seen a drop of fluids it happens. Salvage yards we've seen depictions of this which is one extreme to some of the stuff we've seen on line this is not what this is about it's about water. But I can guarantee you one thing even though junk yard salvage yard recyclable yards are all the same thing one thing has to change they all use gas, antifreeze, coolant, transmission fluid and when they get crashed it comes out and that's my concern. I got a lot of selfish reasons but it's the water. If it's a minor chance that would happen why would we take it? I don't get it. So that's all I'm going to speak about and hopefully we get to our representative before long.

Munro called Russell Cate attorney for remonstrance representing 4 individuals. Cate began by passing out information to the board complete with color photographs that he hoped would help the board in making their decision. Cates introduced himself as an attorney representing a group of remonstrators that information has been set forth in a letter that's attached to the materials I've provided to you. Try to keep my comments short I know we're short on time but there's some very important things I need this board to consider on behalf of the remonstrators who are speaking out against this project. Before I get into the substance of the presentation I do need to address a couple of preliminary matters and before I raise these preliminary matters I need to make sure everyone is clear about a couple of things. Number one these statements are not meant to offend, embarrass, harass or call into question anybody's integrity but on today's date I sent a letter to both Ms. Polhuy and Mr. McMullen who represents the BZA and I raised the conflict of interest provision under Indiana Code 36-7-4-909 and respectfully must ask Mr. Paddock to recuse himself from the vote. I understand you may disagree with me but pursuant to Indiana Code 36-7-4-909 which says at a BZA meeting if biased prejudiced or somebody is unable to be impartial they must be disqualified from hearing and discussion or if they have a direct or indirect financial interest in the outcome of the hearing or decision. The contents of the letter address that Dan Paddock obviously is Cam and Landon Paddocks father, Dan Paddock sits on the Planning Commission who's responsible for tendering certification of what they consider to be official action. I think Mr. Graham raised earlier that there is litigation that was filed to directly address this issue. Just recently a declaratory judgment was filed on behalf of the remonstrators, but what is important here is Landon Paddock is employed by ARCO Design Build, this is in the materials submitted to the board. ARCO Design Build has done work for LKQ in Arkansas prior to working for ARCO Landon worked for IMI which owns Indy Paving which is where Mr. Paddock here that sits on the board is employed. It's expected that both ARCO and E & B are going to tender bids to work on this project thus it is the remonstrators position that not only Cam Paddock has a direct or indirect financial interest, somebody has to supply the gravel for 103 acres. But that he can't be unbiased or impartial for those reasons we would request Mr. Paddock recuse himself, I'll let Mr. Graham address that at the conclusion of my comments.

Secondarily, I've also raised the issue but I do need to preserve it here that the board does not have authority to hear the special use variance because the actions of the Planning Commission and the Town Council render the ordinance-rezoning from agricultural to general industrial as void ab initio again there is a lawsuit that was filed asking a court to make a determination and if that's correct this board has no authority to be moving on that.

Another important point the board must concern itself with, the Town of Lapel has an ordinance structure and the ordinance structure sets forth what an application must contain. There was no mention in the staff report of the deficiency of the application. Number one an application must contain a deed to the property involved. The public records submitted on the Town of Lapel website did not include a deed for the property involved only a title search for two of the parcels. There must also be a letter from the Madison County Board of Health indicating that the special use will make acceptable use of an existing or proposed septic system or a letter from the public sewer provider stating that the proposed special use shall be served by the facility. That is the responsibility of the petitioner who filed this application and that is not here. Therefore, the board should not vote on this application because

the petitioner did not comply with Ordinance 1.8.4 under special use process of the Town of Lapel's ordinances.

If the board decides it is intent on proceeding with this hearing I want to reiterate a couple of things. Number one there's four criteria you should be listening for, each of you on the board there's four criteria. Ms. Polhuy went over those criteria but I'm going to go over them again just briefly.

The improvement will not be injurious to the public health, safety, morals, and general welfare of the community. Requirements for the development standards in the special use will not be met. Special use will not subvert the general purposes served by this ordinance and proposed use will be character of the zoning district of which is located in the Town of Lapel's comprehensive plan. Those are the four things that you have to consider if you are going to decide whether or not to grant this special use.

Let's talk about each of them in turn. Number one, the approval will not be injurious to the public health, safety, morals or general welfare of the community. Couple of things I want to point out ladies and gentlemen and no disrespect to Mr. Farrar, I understand he's doing his job but let's be clear he's not here on behalf of LKQ, there's not a representative here tonight from LKQ. There's a lot of questions that did not get answered. How many jobs are coming? The number of days these cars are going to sit outside? The number of bays that are inside to service these cars that are coming on a day to day basis. Those are the things that I heard. The response to that, that I heard, was I can get those answers. Today is the day for those answers.

There has to be evidence for this board to consider before it can render its ruling. That evidence is not before the board. There's also reference to the fact that there were studies available on the traffic studies that could be provided why weren't they submitted with the application. Why aren't they here today for the boards consideration. This is a billion dollar company let's be very clear about that. This is a billion dollar company most of the presentation provided by Mr. Farrar today on behalf of whom I'm guessing is the developer not LKQ. This is a billion dollar company where's the money that was spent for a local environmental study? Impact study? There's a lot of talk about a national study, there's a lot of talk about corporate responsibility at a national level and everything that's done to get harmful things out of the environment but what about local studies for the residents of Lapel to say this is what's going to happen and this is what's not going to happen? What about an economic impact study something that actually says in real comprehensive terms the real tangible assets this company would bring? Because all we saw was a slide show, there's nothing to back it up. And if this board votes on that you're just going to be taking LKQ's word spoken thru its developer. That's not doing a service to the people of Lapel.

I must be critical of the staff report to some extent. The number one thing is that this approval of the special use will not be injurious to the public health, safety, morals and general welfare of the community I heard during the staff presentation that there would be mitigation folks, mitigation is not elimination. Mitigation is not elimination there is an acknowledgement that this is going to bring pollutants to Lapel but there is no answers as to how those pollutants are going to be mitigated specifically, the only thing I saw in the staff report was that all this would take place inside and that it would be mitigated thru the air conditioning system. Well an air conditioning system is not an air

filtration system designed specifically for automotive break down. I'll point to the board to my materials that were included herein that talk specifically about IDEM's recognition of auto salvage yard contaminants of concern. Just to name a few lead, cadmium, ethanol, asbestos, mercury, PCB's these are all provided as Exhibit E direct from IDEM specific to auto salvage yards.

Munro advised Mr. Cate was at 8 minutes and knew he had a lot to present. Mr. Graham asked that Cate be given time as he represents 4 different remonstrators. Cate thanked Graham and said he would try to be brief.

Cate pointed the board to the materials provided and encouraged them to read it. He spoke on the constant talk on the workbook IDEM provides. The workbook that is being referenced is in direct relation to the staff reports notation that there is an Indiana Clean Yard Program for auto salvage yards, that's true. But it's a self-certification, the company certifies that they did it, IDEM sends a representative out to walk it for a day, a day that they schedule, and they get the blessing of IDEM. That's what happens. The program materials are contained herein in the remonstrator's exhibits. I think a gentleman had spoken earlier he had talked about the cost of clean-up I believe one of the board members I'm sorry I don't remember who it was that raised the question. The cost of clean-up, the cost of clean-up is very different from a fine. And I think one of the attendees here was referencing a fine that had been imposed. Yes a quick Google search can actually tell you how much the EPA has fined this company LKQ. It's not a random website I looked it up myself. I went directly to the EPA's website and I included orders from the EPA itself with these materials. One of those orders fined Keystone Automotive Operations which is owned by LKQ two and a half million dollars for environmental violations, intentional environmental violations. Another one in Pennsylvania, again this is the EPA, fined them \$100,000.00 for discharging into the water source. California another, an air violation. These are just a few, all of them are contained here final order from the United States Environmental Protection Agency an actual copy of the order from the EPA, it's not just a Google search this is a government document provided by the federal government.

Also contained in the materials is reference to a letter dated July 31, 2018 from IDEM this is reference to JB Salvage Yard Incorporated down in Bloomington. Some of you may have heard of this. Where there is actually a known contamination as a result of a salvage yard operating. IDEM tested the soil and it was testing about the EPA benchmark for PCB's, aluminum, copper, iron, lead, oil and grease. There's also studies that are included with these materials that talk about the fact that even the carcasses that are being stored they still have dirt, dust, grime and with rain water its being stored for 500 days all of that leads to potential contamination of soil. We've heard a little bit about how shallow the wells are I believe Mr. Purdue spoke about it, that's a real concern of the residents here. I've also attached the map of the aquifer system, I'd encourage the board members to look at that map, its accessible online thru the Indiana DNR and it talks about these specific aquifers and their propensity to soak in things because of the soil that lies above it they are more susceptible to that.

So I've tendered findings and facts, oh I should also mention this is important, this clean auto program there's a financial incentive for companies to comply with that. So if an auto salvage yard is turning in mercury switches the state of Indiana actually pays them for that.

Couple other concerns that I've heard from other remonstrators this is 177,000 square foot warehouse, we all heard what happened in Richmond, Indiana in April where a warehouse burned for four solid days. 2,000 residents had to be evacuated. There was a salvage yard, again these materials are contained herein, there was a salvage yard in Clarksville, Indiana where that caught fire, the fire department couldn't put it out. Why? Because there were no fire hydrants nearby. I think we're going to find the same thing with this particular location here. There's not a ladder truck in Lapel that can service this facility. An inner local agreement is still going to take a substantial amount of time from either Fishers or Hamilton County or Noblesville or Anderson to send units over. For 177,000 square foot warehouse that is going to have chemicals stored inside of it.

As to requirement number two, "requirements and development standards for the requested special use as prescribed by this Ordinance will be met" the evidence that I've heard and I think it's acknowledged in the staff report is that the, that the fence that's going to be built all around this junk yard is going to be a metal fence. Lapel UDO doesn't allow metal fences for junk yards. 10-22.14.n requires junk yards to be surrounded by six foot tall 100% opaque wood stone or masonry fence.

Granting a special use will subvert, this is element number 3, general purpose served by the Ordinance and will permanently injure property or uses in the district or vicinity. A company of this size if they are truly identifying this as a prime spot for their operation why hasn't an environmental study not been done and provided to the residents? This community has great concerns about that. That's one of their biggest concerns and it should be the boards concern as well.

Affidavits have been tendered from realtors indicating home sales will decline around this area. Property values will decrease if the special use is granted and a junk yard is constructed. Does the Town of Lapel want to be synonymous in the headlines for the junk yard city for people coming up I-69 into the beautiful downtown off 13? The remonstrators believe that granting this special use is short sided. The presentation and the slide show by the developer, not LKQ shows a beautiful building, it's very clean. But I just bought a new car, and I took my kids to soccer practice, it's filthy inside. What's the point? Same thing is going to happen here.

What happens when LKQ sells this entity to another corporation based in China? Who is going to be responsible when they shut this down for the cost of remediation? Noblesville has experience with a super fund site in the Firestone facility. There's GM plants in Anderson. Noblesville has still not recovered from the shutdown of the Firestone site which was declared a super fund site by the EPA 15 years later. This is a permanent injury to the greater Lapel property. This proposed use is just not consistent with the zoning district in which it is located within the Town of Lapel's comprehensive plan. Respectfully I disagree with the staff assessment on this that where we're taking the general industrial and fitting it in just because our comprehensive plan doesn't address it. Maybe the comprehensive plan should address it before we decide to start placing things within the middle of a light industrial on a major corridor into the city.

So in summary, asking this board on behalf of remonstrators that I represent to deny this petition for a couple of reasons. Either number one because the board agrees and finds that it doesn't have authority I suspect the board won't do that and I understand why, there are legal reasons why. Number two deny

the application because it doesn't comply with the Town of Lapel's own Ordinance. And number three, specifically which the applicant whose burden it is to provide all this proof and this evidence has failed to meet the four criteria necessary to permit special use. If you find that they have not submitted sufficient evidence on any of those four items you must reject the application.

Chair Munro thanked Mr. Cate and called the next speaker Tom Prather, 9461 W State Road 38, Lapel to the microphone.

Mr. Prather stated that blue water is a real problem in this country and that blue water is the clean water, the percentage of clean water that comes off the surface of drainage. And this is not helping the problem. I wasn't aware of this pond on the west side of the property. But that's just creating a whole new problem. I've run this creek since I was six years old, I know that ground. 25 to 30 acres of it floods because of drainage. Well that pond is going to cut off 3 field tiles that run into that ditch. I don't know whether they know or not, probably never checked it but that's no place for a pond. Because once they get the water in it's gonna back up them drains on everybody's property south. All the corners of Madison County stand in water because of the drainage system. And that's just creating another problem. That's all I got to say.

Chair Munro thanked Mr. Prather and called Ken DeLaBastide, 1301 N Erie Street, Lapel to the microphone.

Mr. DeLaBastide stated his question was for Jeff Graham. So the board could put a condition of a performance bond on this company could they not?

Mr. Graham replied, sure any reasonable condition. This board has a statutory authority to do so.

Mr. DeLaBastide asked if they wanted to put a performance bond based on future damage to the aquifer they could do that?

Mr. Graham replied, yes anything that would be considered reasonable this board can add as a condition.

Chair Munro thanked Mr. DeLaBastide and called Kristi Worthman, 1405 N Vine Street, Lapel to the microphone.

Mrs. Worthman stated she had couple of quick questions, the first one being about storing scrap metal. Curious as to how these carcasses that are going to sit for four to five hundred days in a yard are not scrap metal and that they're intended for modification anyway.

The second question that I had was would the board consider requiring an independent tester that would be contracted by the board but paid for by LKQ to do secondary environmental storm water testing, ground water testing?

And the third question would be what do we do when LKQ decides that this site is a site they no longer want to operate? What happens if they go out of business or in 20 years the EPA restrictions are such that the plant is no longer viable and they shut it down? What do we do with it then?

Chair Munro thanked Mrs. Worthman.

Mr. Keith asked Ms. Polhuy how is the storage of car carcasses not considered scrap metal.

Ms. Polhuy read the junk yard definition and definition of the “junk” that is defined as scrap material including but not limited to the following, automotive or machinery equipment or parts including used automotive tires and the list goes on and it says wrecked and/or dismantled auto motives. So you can see these two items listed to be junk then junk yard means that it assumes that automotive or machinery equipment for parts as well as wrecked or dismantled auto motives would be able to be stored on site. I have a few but there might also be separate definition on what a scrap metal yard is in the Lapel UDO I will have to double check that as well.

Chair Munro thanked Ms. Polhuy and asked for an answer to Mrs. Worthman’s second question regarding testing with clarification from Mrs. Worthman regarding a third party environmentalist be selected to do testing on behalf of the town with LKQ paying the bill for it.

Mr. Graham stated that question goes back to Mr. DeLaBastide’s question as well. The Board of Zoning Appeals if they would approve the project could put any condition that is considered to be reasonable. That’s a fun word that lawyers use to try to argue with each other. Anything that is related to the project itself and the special use that has a reason based in rationality which I would think that one would. The board can attach that as a condition they don’t have to but they can.

Ms. Polhuy commented there are things IDEM can do versus what conditions we can add on. It is my understanding that IDEM inspects these facilities at times at will. And that sometimes they schedule an inspection. Someone might suspect there is a spill and report it to IDEM. They will go out to inspect it. The kind of testing that is proposed would be above what IDEM does, so if you would like to add that condition that would be in addition to because I don’t want to step on anyone’s feet. I also want to make sure we understand what IDEM can do versus what we request.

Chair Munro thanked Ms. Polhuy and posed the third question what happens when LKQ discontinues business and we’re faced with clean up.

Mr. Graham stated the BZA could require a decommissioning bond. Those are fairly common animals when it comes to an industrial project. I know in the northern part of the county that was a major issue of contention on the solar farm up there. While the Town can certainly find that now you’re in violation, unless there is money to clean up the problem for whatever reason years from now any industrial prospect is gone how are you going to pay for the effect. It would be nice to have a bond.

Chair Munro announced that was the completion of those who had signed up to speak at the public hearing. Being new to the position Chair Munro turned to Mr. Graham for how to proceed.

Mr. Graham said they had some options at this point they could vote on the matter, and vote to make certain findings and facts. But first off let me back up just a little bit, not everyone is lucky to be in a lot of BZA hearings like this. Both the petitioner and the public are entitled to a decision of the board within a reasonable period of time. What is a reasonable period of time? 2 years would not be reasonable, but you don’t have to do it in one meeting either.



Regardless of whether you approve or deny, you must make findings of fact in all four of these slots. They don't all have to necessarily agree, just as an example, you could ultimately deny this special use if you could find the petitioner hits three of the slots or two of the slots or one of the slots.

But regardless, if you approve or deny you must state findings on all four. You are entitled to add conditions to the findings of fact based on the approval if you deny you don't have to put conditions, you've denied it. But what you can do is you can continue this hearing to a date certain you could go to your next month's meeting or a date before that in which you put everyone that is here on notice of when that would be so you don't have to send out the cards and notice again and invite everybody to come back.

I mentioned the solar farm and the northern part of the county, that one took almost a year to get thru now that was a bigger property area affected more people directly than this project. But you can continue that until your next meeting. There were a few excellent questions from the board and the folks here today that we didn't know. So that will give an opportunity to address those questions and give a little back and forth. We can't take this thing out months and months and months but can we get those questions answered at the next meeting? Yes.

Chair Munro asked if we were to decide to continue this we do not have to address all four items tonight or do we still need to address those tonight?

Mr. Graham stated that if you continue the hearing by my recommendation you don't address any of them. A Board of Zoning Appeals is a quasi-judicial docket. You don't get to put on robes and you're not held to the same standards as a judge is but you're supposed to be impartial so a continuance is we're going to continue the trial. We're going to hit pause and come back and we're going to hear more evidence or put more conditions or ask more questions of the petitioner. You've gotten hundreds of pages of documents today. You should read it, you should review it.

Chair Munro said with that is there a motion to go thru the four different items on the finding of fact worksheet or would be prefer to have a continuance or are there any questions or comments from the board. A voice from the crowd shouted "point of order".

Chair Munro stated he was speaking to the BZA members.

The voice from the crowd said, "I'd just as soon get this thing voted and get it over with its water it's what we need it's pure right now."

Chair Munro stated he understood where everyone is coming from here, Mr. Graham has said we were given two big handouts tonight of information and as far as voting on that it's up to the Zoning Board as to whether we vote on it this evening or not or we continue. So I would ask the Zoning Board members for a motion to either continue or to approve or disapprove. I think if we have a motion to approve we need to go thru the four items on the finding of fact sheet.

Mr. Farrar asked if he would have an opportunity to answer all the questions that were provided by the public. Chair Munro said we could do that and Mr. Farrar responded with not tonight.

Mr. Graham stated the petitioner regards what we do, that doesn't have to be tonight if the board continues.

Member Hinkle spoke and said I think the material we have been given to oversee and read, I think we ought to have a continuance of this meeting of the BZA until our next meeting rather than voting for approval or dismissal. So I recommend that we continue this until our next meeting.

Mr. Graham stated which is on October 16.

Member Nunley seconded that.

Chair Munro stated that Member Hinkle made a motion that we continue this hearing until the next BZA meeting which is scheduled for October 16. I thought I had that in my calendar and I don't think that was the date that I had. I have two weeks I'm going to be out of town and have a conflict.

So a continuation of this meeting, this hearing to the next regular scheduled BZA meeting which is October 16, I have a second from Ron Nunley. Paula, roll call.

Member Keith stated that is fall break for Lapel High School so he would recommend another week.

Chair Munro stated based on it being fall break and several people with kids in our school we could move it a week later to the 23<sup>rd</sup> but I will be out of town on business so we can either go earlier to the 9<sup>th</sup> which is Columbus Day which is a government holiday if no one else has an issue.

Chair Munro asked Hinkle to amend his motion to October 9<sup>th</sup>, same time 6 o'clock here at the Station if it's available. Hinkle agreed. Chair Munro asked for roll call.

Voting yes: Cam Paddock, Ron Nunley, Herschel Hinkle, and Tim Munro.

Voting no: Jeff Keith

Chair Munro stated four to continue one not to continue we will hold a meeting on the 9<sup>th</sup>.

Chair Munro asked for a motion to adjourn.

Member Keith made a motion to adjourn, Member Paddock 2<sup>nd</sup> the motion and all members were in favor.

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Tim Munro, Chairman BZA

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Paula Lee, Secretary