

**MATERIALS AND STATEMENT IN RESPONSE TO OCTOBER 9, 2023
HEARING AND STATEMENT**

On October 9, 2023, the Lapel Board of Zoning Appeals (“BZA”) held a public hearing where additional information, materials, and testimony were presented to the BZA by LKQ and members of the public, including remonstrators represented by counsel, and those who were not. The Town of Lapel did not post the materials provided by LKQ prior to the October 9, 2023 hearing and, thus, an opportunity to review and question members of LKQ regarding the materials submitted did not take place.

In response to the materials and testimony submitted by LKQ, remonstrators tender the following information to the BZA in consideration of the upcoming October 30, 2023, hearing. Remonstrators respectfully request the BZA carefully consider the legal requirements imposed upon the petitioner, LKQ, and whether they have met those obligations when making their decision.

1. The Apex Report is Inconclusive at Best

Following the October 9, 2023, BZA meeting, the Town of Lapel made available a report relied upon by LKQ which was submitted to the BZA. This report, performed by Apex Companies, LLC (“Apex Report”) was a summary of information relying upon other reports and information acquired by a subcontractor Alt & Witzig Consulting Services. Remonstrators point out that LKQ took no initiative to obtain this report until concerned citizens of Lapel raised questions regarding LKQ’s operation. Remonstrators also remind the BZA that LKQ did not even send its own representative to the initial BZA hearing on their own petition. It was only after LKQ realized the pushback from residents regarding legitimate concerns about LKQ’s operations and lack of environmental responsibility that LKQ took any action at all.

The Apex report seems to base its conclusions on six sources of data. (*See pg. 1; Apex Report*). Among the six sources of data, are the following:

- Self-supplied information from LKQ regarding its on-site operations;
- A Phase I Environmental Site Assessment (Phase I ESA) Report performed by a company subcontracted by Apex and which was not provided for review;
- Preliminary Subsurface Investigation and Geotechnical Evaluation Report which was not provided for independent review.

Of particular note is the Apex Report’s reference to LKQ’s “proposed operations” for dismantling and temporary on-site storage of automobiles. In other words, LKQ is asking Apex to take its word for how it intends to dismantle and store automobiles, much like LKQ

is asking the BZA to accept its word at face value. The Apex Report states LKQ will have “equipment and procedures in place to prevent spills from occurring and provide BMP’s for handling spills” but the Apex Report fails to perform any substantive analysis of what this equipment and procedures are, and how they will prevent spills from occurring. The Apex Report also omits the fact that there is no ongoing monitoring of LKQ’s operations. The BZA should also consider that the LKQ representatives from out of state providing the BZA information about this “proposed operation” will not be the individuals responsible for overseeing these operations in Indiana.

The Apex Report touts LKQ’s “warehouse sanitary pipes” which drain to a series of “three (3) 1,000-gallon sand/oil/water separators prior to entering the sewer outfall and discharging into the public sewer system.” The Apex Report claims this “closed loop” drain will help prevent potential contamination from occurring to the soil subgrade. The Remonstrators remind the BZA that this is what was likely told to the residents of Massachusetts before three (3) separate LKQ facilities were fined in 2021 for violations of the Federal Clean Water Act. See *Exhibit A – March 24, 2021 EPA Press Release, Massachusetts Auto Salvage Company Settles Alleged Clean Water Act Violations*. In its press release the EPA indicated that “all of the facilities had either **not identified or incorrectly identified stormwater conveyance paths** and/or discharge points” and “had conducted **inadequate corrective actions** to try and mitigate the monitored pollutants as required.” *Id.* This same company is asking the BZA to take its word that it will do what it says it is going to do.

After being fined nearly \$293,425.00 for violations at three of LKQ Northeast, Inc.’s facilities, the concern among residents in Massachusetts has still not been alleviated, this despite the local town of Webster Massachusetts imposing an Order of Conditions upon LKQ. A news article from a local paper dated February 10, 2023, contains claims made by Glen Krevosky of EBT Environmental Consultants, Inc. indicating that LKQ remains the “largest polluter of soot” going into Webster Lake and that the EPA and State of Massachusetts are aware of the problem, but LKQ continues to ignore its obligations. Mr. Krevosky claims the pollution is worse after large rain events that and the does not trust the EPA and LKQ officials seems to ignore the issue. See *Exhibit B – February 10, 2023 Article from Yankee Express, LKQ Called to Account for Soot Draining into Webster Lake*.

The BZA should also note the Apex Report does not speak in absolute terms. Instead, suggesting that what LKQ is proposing *should* work. For example, The Apex Report finds “the thickness of the stone layer and the geotextile underlay **should keep** rust chips, paint chips, or residual fluids contained within the stone base.” Discussion of “additional evaluated or potential contamination pathways” contains findings that are based upon presumptions. For example, the Apex Report two gas wells located near the LKQ site are potential pathways for contaminants. The Apex Report conclusively finds the gas wells are not a potential contaminant site because they are “presumed plugged” yet, no one bothered to confirm whether or not they were actually plugged.

The report is not absolute, instead, it qualifies its findings in terms of minimal risk and minimizing risk contingent upon certain factors, such as LKQ adhering to its own policies and those imposed by State and Federal authorities. The report does not eliminate risk. In

essence, the report finds that so long as LKQ claims to do what it says it is going to do with its operations, there is a minimal risk.

2. LKQ Is a Nuisance: The BZA Should Not Overlook The Noise, Dust, and Lack of Adherence to Local Ordinances

As the BZA may recall, at the September 18, 2023, BZA hearing, Chris Farrar speaking on behalf of the applicants claimed outdoor car crushing was to occur once or twice a quarter and was not a loud operation. In fact, Chris Farrar represented that “they have had sound studies done” and “it is no louder than an 18 wheeler driving down the road” or a “lawn mower.¹” Chris Farrar’s representation, which relies on purported sound studies, lies in stark contrast to Mr. Nelson’s description of the car crushing. At the October 9, 2023, meeting, Mr. Nelson represented to this board that the car crusher was the same decibel level as a conversation. He then went on to say “at some point you just have to take someone’s word for it.” What Mr. Nelson did not mention is whether the decibel level of the machine being the same level as a conversation pertained to the motor of the machine itself or the sound of cars being crushed. If it is the former, LKQ’s statements about the sound emitted are misleading. LKQ represented it used a car crusher manufactured by “Overbuilt”. Remonstrators tender a link to a YouTube video of an Overbuilt Crusher being used. ([See https://www.youtube.com/watch?v=rt_Wr3RSXLo](https://www.youtube.com/watch?v=rt_Wr3RSXLo)). The noise generated by this car crusher, the sound of metal, sound of back up alarms, sound of diesel engines and forklifts, far exceeds the picture painted by LKQ representatives of “conversational” decibel levels. Knowing this the BZA must ask itself if it is willing to take LKQ’s word about the contradictory information they have presented?

The BZA should contrast the representation (and other representations made by LKQ) with the case of *Reed v. LKQ Corp.*, 436 F. Supp.3d 892 (N.D. Tex. 2020). In *Reed*, a federal district court ruled in favor of the Plaintiff Reed against LKQ Corp. and found that LKQ Corp. was a nuisance that interfered with the use and enjoyment of Reed’s property. A part of the federal court’s consideration was the noise emitted by the car crushing. The BZA must ask itself if this is, in fact, what Lapel wants to inherit.

Of particular concern in the *Reed* case are the following findings of the U.S. District Court:

- LKQ conducted its operations in violation of the Specific Use Permit.
- LKQ made no attempt to try to stop the dust [caused by construction] from coming up;
- LKQ’s own representative admitted the construction of the facility constituted a nuisance;
- LKQ operated a car crusher outdoors in its salvage yard in violation of the special use permit issued by the city.

¹ Despite representations that a sound study has been done, neither applicant has tendered a sound study for the BZA’s consideration to determine if what is being represented is accurate information.

- LKQ dragged metal and operated a car crusher for a period of years before the court case was brought;
- Back up alarms on commercial vehicles were nearly constant from “sunup to sundown”;
- Lights used at LKQ were so bright they lit up neighboring properties;
- Tons of litter, Styrofoam, dust and debris littered neighboring properties;
- The LKQ facility produced constant noise “everyday all day from the moment they open until the time they close.”:
 - The noise came from dragging metal across the ground;
 - Sound produced by the mobile car crusher; and
 - Back up beepers from commercial vehicles.
- The sound of crunching cars was loud, but so was the hum of the motor of the car crusher;
- The dust generated from the white caliche surface used in the junk yard coated nearby properties; and
- Plaintiff notified LKQ of the problems on numerous occasions but LKQ ignored his complaints and continued to operate its business

The federal district court also noted the Plaintiff showed up and voiced his concern to the local municipality at the zoning meetings, planning meetings, counsel meetings and at LKQ’s request for a Specific Use Permit. At these same meetings, representatives Tim Nelson, Ottis Lee and others from LKQ told the City Counsel and the Plaintiff the LKQ facility “was going to be a ‘nice facility, not a junkyard and not noisy and dirty.’” *Id.*

In coming to its determination, the federal district court in Texas found the Plaintiff to be credible with his testimony and the testimony of LKQ representatives was not credible. Ultimately, the Court ruled that LKQ’s operations constituted a nuisance and awarded the Plaintiff \$228,729.64 in damages for interfering with the use and enjoyment of his land.

Remonstrators cite the *Reed* case because LKQ has made many of the same reassurances to the BZA that the facility isn’t a “junk yard” and that it is a nice facility that is not noisy or dirty. The BZA has repeatedly been shown flashy photographs of a pristine facility owned and operated by LKQ. The *Reed* case provides the BZA a perfect example that the operations LKQ proposes do not comport with what they are telling the board.

Furthermore, and perhaps more importantly, the latest supplement to the staff report imposes certain conditions upon LKQ. In the *Reed* case, it is apparent LKQ conducted its operations however it saw fit notwithstanding any conditions imposed by the Specific Use Permit issued by the town. Any conditions imposed by the BZA are simply illusory to serve as justification for a vote in favor of this project. The Town of Lapel does not have the resources to monitor LKQ’s compliance with any conditions imposed by the BZA, thus, this special use becomes an all or nothing proposition, and any conditions imposed are meaningless.

Not mentioned by LKQ are the inhalation dangers posed by car crushers and the toxic dust they emit. Metallic air pollution is widely recognized by the EPA which often targets metal scrap yards to control such pollution. In OSHA's published guidance for the Identification and Control of Safety and Health Hazards in Metal Scrap Recycling, OSHA recognizes the danger the significant amounts of dust produced by car crushers can produce. "This dust, if not controlled," writes OSHA, can present both explosion and inhalation hazards." See *Exhibit C*. OSHA recommends proper supplemental ventilation to protect employees from exposure to hazardous dusts. Operating the car crusher indoors would require LKQ to invest in expensive ventilation and dust suppression equipment. Instead, LKQ has chosen to operate its car crusher outdoors where the toxic dust can disburse onto neighboring properties.

Another concern the BZA must consider is LKQ's position that it is not currently taking EV vehicles. A representative from LKQ told the BZA that any EV vehicle arriving at its facility would sit and wait there until it went to another facility, which is contradictory to its claim vehicles would not be stored on the yard at all. Additionally, LKQ claims it is not wanting to take on the risk of dismantling EV's at this time. This, however, seems to contradict LKQ's official stance provided to the New York Times in a December 21, 2022 article entitled *Electric Cars Are Taking Off, but When Will Battery Recycling Follow?* In the article LKQ plant manager, Nick Castillo, says that LKQ is getting ready to dismantle EV's because they know it is going to be the future so they are preparing to take apart more hybrid and electric vehicles. **Exhibit D**.

3. People don't want LKQ and It Is not Consistent With Lapel's Comprehensive Plan

Prior to approaching Lapel, LKQ attempted to get approval in Pendleton and Anderson, however, neither of those municipalities wanted LKQ and neither do the residents of Lapel. A review of the Town of Lapel's comprehensive plan acknowledges the need for diversification of land use south of SR38, however, public input was made clear that office space, distribution, and institutional were the types of commercial development that was preferred. When it came to light industrial, technology, manufacturing, and warehouse/logistics were preferred.

The comprehensive plan also contemplates improvements in transportation to allow for more connectivity to downtown for cyclists and pedestrians. A traffic impact study has not been requested by the BZA, nor supplied by LKQ, to determine whether an increase in traffic will impact this portion of Lapel's comprehensive plan.

Lapel's comprehensive plan recommends an economic development plan for land south of State Road 38. A copy of this economic development plan is not before this board, however, among the recommendations in the comprehensive plan are housing growth. A review of resident responses to survey's about Lapel indicate residents, more than anything, seek indoor entertainment, access to grocery stores and restaurants to avoid losing people to Noblesville. This BZA is contemplating offering prime real estate to be utilized by a junk yard, something the comprehensive plan does not contemplate. The comprehensive plan survey responses also indicate residents are very concerned about the current state of Lapel's water,

which does not contemplate any impact LKQ will have on the water sources for residents. Perhaps most telling is that residents strongly disagree with even light industrial along major thoroughfares such as SR32 and SR13, let alone general industrial, a sentiment the town council selectively ignored when it approved the rezone in the first place.

When asked about traffic and which intersections needed improvement, SR 13 was a common factor of discussion. There has not been a traffic impact study to see how this might impact Lapel's comprehensive plan for increased transportation for pedestrians.

This lack of due diligence when considering whether LKQ has met the special use factors has been a target for litigation in other jurisdictions. Take for example, Fluvanna County, Virginia where residents sued the town's "Board of Supervisors" similar to a BZA or town counsel, over the town's lack of due diligence when voting to rezone land from agricultural to industrial. Ultimately, the lawsuit resulted in a settlement between the landowners and the Board of Supervisors where the County agreed to pay \$130,000.00 to the landowners. A summary of the lawsuit and litigation is available in the attached article *Exhibit E*. The resolve of residents to ensure the Town *is* performing its due diligence to truly ensure the decision is made is not only the *right* decision, but also is legally proper.

4. Conclusion

The bottom line is that what LKQ is "selling" sounds good on its face, new jobs, neat clean facility, environmentally friendly, interested in Lapel. The truth, however, is borne out in real life case examples that tell a different story. Stories of EPA violations across the country and at least one federal court making a determination that LKQ is a nuisance are indicative of what Lapel seeks to inherit by allowing the special use variance.

A close look and thorough review of Lapel's comprehensive plan does not support a company like LKQ despite the staff reports recommendation. Even if the BZA finds that it does, such a special use comes subject to conditions, conditions the Town of Lapel is not in a position to monitor or enforce. Violation of the conditions is all but a foregone conclusion when looking at LKQ's track record in *Reed* and as it pertains to Lake Webster in Massachusetts.

The unfortunate reality is that LKQ is looking at Lapel solely from a business perspective. LKQ is not interested in making investments into Lapel or its residents otherwise it would have provided the studies and information demanded by residents of Lapel *without* the residents having to ask for it. LKQ executives are here to try to sell this project to Lapel. They will not be responsible for day-to-day operations at this facility nor will they be responsible for fielding complaints or ensuring compliance with regulations. They are concerned about getting approval so their project can go forward.

LKQ is a nuisance whose presence in Lapel would not only be in contravention to Lapel's comprehensive plan, but are also injurious to the public health, safety, morals and general welfare of the community. According to the *Reed* case, at least one federal court has already determined LKQ to be a nuisance for some of the very reasons Remonstrator's argue the BZA must reject its application.

Finally, Remonstrators ask the BZA to reject LKQ's proposed findings of fact. On the one hand LKQ recognizes it is a junk yard (factor 2) yet, on the other, LKQ attempts to equate itself with a warehousing and manufacturing facility (factor 4) in order to justify its "consistent character with the zoning district and the Town of Lapel comprehensive plan". A junk yard and a warehouse are very different commercial operations and should not be equated with one another.

Respectfully submitted:

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Date: October 24, 2023

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Massachusetts Auto Salvage Company Settles Alleged Clean Water Act Violations

March 24, 2021

Contact InformationDavid Deegan (deegan.dave@epa.gov)

(617) 918-1017

BOSTON – The U.S. Environmental Protection Agency (EPA) recently reached an agreement with LKQ Northeast, Inc., a national owner and operator of auto salvage yards, to bring its three Massachusetts salvage yards into compliance with the Clean Water Act and pay penalties for alleged violations of the federal storm water requirements at the facilities.

Under the agreement, LKQ Northeast paid the following penalties for the alleged storm water noncompliance: \$129,425 for its Webster facility, \$83,000 for its Leominster facility, and \$81,000 for its Southwick facility. All of the facilities had either not identified or incorrectly identified stormwater conveyance paths and/or discharge points (outfalls). Additionally, the facilities had conducted inadequate corrective actions to try and mitigate the monitored pollutants as required.

“Developing and following Storm Water Pollution Prevention Plans helps companies ensure that they meet the limits and requirements for the discharge of pollutants from industrial activities allowed under their stormwater permits,” **said EPA New England Acting Regional Administrator Deborah Szaro.** “It’s important that companies comply with their permits so that surrounding neighbors and waterways are protected from harmful effects of exposure to pollution.”

Discharge of stormwater associated with industrial activities, including auto salvaging, is regulated under the Clean Water Act’s Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Discharges (MSGP) and state water protection laws. These require permits and actions to minimize discharges of pollutants from these activities to surface waters.

Since issuance of the EPA orders, the company has taken steps to prevent the discharge of pollutants from storm water runoff into Browns Brook (near the Webster facility), Fall and Wekepeke Brooks (near the Leominster facility), and Kellog Brook (near the Southwick facility). These steps include submission of updated storm water pollution prevention plans, implementation and compliance with best management practices to prevent discharges, and fulfillment of all maintenance, monitoring, sampling, inspections, training, and recordkeeping requirements.

EPA works to protect public health and the environment by limiting pollution in runoff from industrial activities. These pollutants may include total suspended solids, iron, aluminum, mercury, zinc, cadmium, chromium, copper, lead, nickel, chemical oxygen demand, and polychlorinated biphenyls (PCBs), fuel oil, hydraulic oil, brake fluids, lead acid, and lead oxides.

For more information on Clean Water Act enforcement:<https://www.epa.gov/enforcement/water-enforcement> <<https://epa.gov/enforcement/water-enforcement>>

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LKQ called to account for soot draining into Webster Lake



Damaging runoff like this from the LKQ Auto Parts lot above Webster Lake needs to be contained, Glenn Krevosky of EBT Environmental Consultants in North Oxford says.

By ROD LEE

The folks at LKQ Route 16 Auto Parts on Old Douglas Road in Webster are undoubtedly familiar with Glenn Krevosky and Mr. Krevosky's concerns about runoff from the company's property onto land owned by at least one client of his and into Webster Lake. Mr. Krevosky is the owner of EBT Environmental Consultants Inc., a North Oxford-based firm that has been in business since about 1986. He describes himself as a wetland scientist, a restoration professional and a cold water fishery expert. His forte is ecological science and regulatory policy.

By his own count, Mr. Krevosky is working on more than seventy projects at any given time, while trying to get LKQ to adhere to an Order of Conditions imposed on it by the town of Webster approximately two years ago.





An overhead view of Webster Lake with Lakeview Marine on Thompson Road in the foreground.

Recently, Mr. Krevosky reached out to The Yankee Xpress in an effort to call new attention to the situation.

“LKQ is the largest polluter of soot that goes into Webster Lake,” he contends. “They have been getting away” with it even though the Webster Conservation Commission, the Webster Lake Association, the EPA and the Commonwealth are aware of the problem. According to Mr. Krevosky, the Webster Lake Association, of which he is a member, has a “Stream Team” that monitors the condition of such waterways as Mine Brook, Sucker Brook and Brown’s Brook.

The issue involves fifteen acres of “exposed canton soil” from which contamination leaks, especially during periods of heavy rain. The LKQ property sits high above Webster Lake. As soon as water that is “crystal clear” up to that point hits the LKQ yard “you have chocolate coming out of that site,” Mr. Krevosky says.

“I just want them to comply with the Order of Conditions. You have to stabilize that yard, for heavy, silty, clay soils. This is clay and silt. Bigger basins are needed. I told them they had to crush-stone their yard. When it rains you can’t see a quarter inch into the yard.”

“Nine, ten years ago, I went there for water-quality testing. A basin was required and the EPA was involved. The basin only receives 1/6 of that drainage.”

There are those who say “it’s all been rectified. Look at it during a rain event and it’s not fixed,” Mr. Krevosky says.

Mr. Krevosky is a veteran of such battles.

In 1979, he said, “I took on the French River, to clean it up in my lifetime, and I’m in my 60s.”

Sadly, he adds, of damaging runoff from the LKQ property, “with rain it will show its ugly head again; and our rain events are now several times a year.”

He identifies LKQ as “a Fortune 500 company” whose principals may not be that alarmed about the matter.

As this is written, messages have gone out to LKQ, to Joseph Wigglesworth and Dawn Portman of the Webster Conservation Commission, and to the EPA, with no response to date.

On Thursday, February 2nd, Dave Deegan in the Office of Public Affairs with the EPA's New England Region, replying to a follow-up email, wrote "thanks for the reminder—I'll recheck for you."

"This is in EPA's hands right now," Mr. Krevosky says.

"I don't trust them."

In an email on behalf of the US EPA, Dave Deegan wrote "as you know, in 2012 EPA announced a settlement with LKQ Northeast Inc., for alleged violations of federal storm water requirements at several of their facilities, including in Webster. EPA's enforcement action against the company was for the discharge of pollutants (including sediment). Under the settlement the company is required to implement improvements to their site's best management practices in order to have pollutant concentrations come below their industrial sector's benchmark thresholds.

"In addition to taking specific actions to mitigate the excess pollution to the surrounding environment, the settlement requires the company to provide regular reports to EPA documenting the progress and compliance with terms of the settlement agreement."

Contact Rod Lee at rodlee.1963@gmail.com or 774-232-2999.

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Guidance for the Identification and Control of Safety and Health Hazards in Metal Scrap Recycling



OSHA 3348-05 2008

Exhibit C



the shears, or to have a hand trapped between pieces of scrap that were fed into the shears. (Nijkerk 2001)

Hydraulic shears can be stopped instantly to prevent damage to the machine or operator, whereas mechanical shears transmit force from a flywheel to the shears and cannot be stopped quickly in an emergency. Hydraulic shears are, therefore, safer for the operator. Both types of shears, however, are still used in a variety of operations.

Modern alligator shears are often operated by a foot pedal that stops the shear immediately if released (Nijkerk 2001). Employers can also use controls such as wrist straps (attached to cables) to keep employees' limbs a safe distance from moving parts. One way to distance shears from the operator is to attach the shears to a crane. In this setup, the operator sits inside the cab of the crane and demolishes objects or cuts pieces of scrap metal from a safe location. If the metal scrap is being cut from a building or other object high off the ground, remote operation also eliminates the safety hazards associated with working at heights.

Hydraulic guillotine shears work similarly to alligator shears and pose similar hazards: employees must remain at a safe distance from the point of operation so that no limbs or other body parts could contact the cutting mechanism. Employers must install shields around stationary cutting areas to protect employees from flying objects.

When a tough or complex piece of scrap damages a machine, that machine may be more likely to malfunction and to pose a hazard to the operator and to other nearby employees. As a result, machines should have periodic inspections and should be maintained in proper working order. For all types of shears, employees must follow the company's established procedures for de-energizing energy sources and for lockout/tagout when performing servicing or maintenance tasks (see the OSHA Lockout/Tagout standard at 29 CFR 1910.147).

Case History #6

A 52-year-old welder was crushed to death by a hydraulic door on a scrap metal shredder. The victim was attempting to remove a jammed piece of metal from the hydraulic door when the incident occurred. Prior to removing the jam the victim did not lockout or de-energize the system. When the piece of metal was cut away, the hydraulic door,

which was still under pressure, closed upward on the victim. (NIOSH FACE, 02CA004)

Preventive/corrective measures: Employees must follow lockout/tagout procedures to de-energize all equipment prior to cleaning or performing maintenance.

Applicable Standards

- 29 CFR 1910.147, *The control of hazardous energy (lockout/tagout)*
- 29 CFR 1910.212, *General requirements for all machines*
- 29 CFR 1910.218, *Forging*
- 29 CFR 1910.219, *Mechanical power-transmission apparatus*
- 29 CFR 1910.242, *Hand and portable powered tools and equipment (general)*
- 29 CFR 1910.243, *Guarding of portable powered tools*
- 29 CFR 1910.244, *Other portable tools and equipment*
- 29 CFR 1910.252, *General requirements (Welding, Cutting, and Brazing)*
- 29 CFR 1910.1000, *Air Contaminants*

Sources of Additional Information

- OSHA Safety and Health Topics: Welding, Cutting, and Brazing, <http://www.osha.gov/SLTC/weldingcuttingbrazing/index.html>
- OSHA Construction Safety and Health Outreach Program: Safety and Welding, <http://www.osha.gov/doc/outreachtraining/htmlfiles/welding.html>
- OSHA 3170, *Safeguarding Equipment and Protecting Employees from Amputations*

Baling, Compacting and Shredding

Scrap metal is often compacted using balers to promote efficient melting by allowing more metal into a furnace than would be possible for a random assortment of sheeting and other scrap objects. Balers use powerful hydraulic systems to compact scrap metal. Moving parts of balers must be shielded to prevent body parts from coming in contact with the machine. Car flatteners work on many of the same principles as balers and present similar hazards.

Balers are typically automated machines. This allows operators to stay a safe distance from the ma-



chinery, however, employees must still exercise caution when feeding raw material into a baler using a hopper or conveyor belt. Again, some sort of physical restraint such as railings may be appropriate to keep employees from falling onto these machines.

Some paper balers and shredders have sensors or heat detectors installed that react to human body heat and automatically stop all machine operations. For others, employees may wear magnetic or other devices on their belts that are linked to a safety interlock system (Nijkerk 2001). Systems such as these could be applied to some metal balers and shredders to provide additional protection to employees (both from metal and from contaminants in the scrap). Employees must be trained to understand the functioning and safety procedures of their equipment, and must follow procedures for adequate control of hazardous energy, particularly when performing maintenance procedures on equipment. (NIOSH FACE; 29 CFR 1910.147)

Case History #7

A 34-year-old laborer died after falling into an operating paper baler. The victim and a coworker were loading scrap paper into an automatically operated paper baler via a belt conveyor. The victim ascended to a platform located between the conveyor discharge and the feed chute of the paper baler to clear jammed material. Before ascending, the victim had asked the coworker to shut down the conveyor so that he could clear the jam. After shutting down the conveyor, the coworker turned away to get more paper. The victim fell into the baling chamber and the baler ram automatically activated. (NIOSH FACE, 9715)

Preventive/corrective measures: Employees must follow lockout/tagout procedures to de-energize all equipment prior to cleaning or performing maintenance. Employers must install guards on machinery to prevent any employees from contacting moving parts. Where access to process machinery is necessary, employers should consider installing standard railings using gates interlocked with the machine's control system. When the gates are opened, the machine will shut down.

For all equipment where pieces of scrap metal are fed into a machine directly, or using a hopper, or even via conveyor belt, employees must be trained in the proper use of the equipment. In addition, ap-

propriate guards must be installed to prevent employees from coming into contact with hazardous moving parts of the machinery. This applies to the alligator and guillotine shears discussed above, and also to other similar machines such as rotary shears and rotary shredders. For such equipment, employees need to stay a safe distance away from working machinery and take adequate safety precautions to minimize risks. Employers must install shields to block stray pieces of metal scraps from flying out from these machines and employees must be trained to know what materials can or cannot be fed into the machine to prevent malfunctioning.

In addition to the physical hazards associated with baling, compacting and shredding, these processes also produce significant amounts of dusts. These dusts, if not controlled, can present both explosion hazards and inhalation hazards. Some ways to control these hazards include:

- Installing proper air cleaning systems on shredding machines.
- Installing explosion sensors where appropriate to inject water to suppress explosions.
- Operating machinery at lower speeds to reduce dust generation.
- Introducing an inert gas to rotary shears to reduce the risk of explosion. (Nijkerk 2001)
- Providing supplemental ventilation where needed and perhaps respiratory protection to protect employees from exposure to hazardous dusts.
- Using wet or semi-wet shredding processes.

Some scrap materials such as scrap vehicles or refrigerators may contain fuels or other materials that introduce additional hazards to the process. Operators must be sure to remove these materials before introducing the scrap to process machinery. For example, gasoline must be removed from the gas tank of scrap automobiles before compacting or shredding the automobile. In addition, chloroflourocarbons (CFCs) and ammonia must be removed from air conditioning systems to prevent employee exposure to these irritants and to prevent the release of these gases to the atmosphere. Removal of CFCs also applies to shredding of refrigerators.

Many of the processes above use large amounts of electricity to operate. Employees must be aware of the hazards of working in high-voltage environments and should take appropriate precautions. All equipment power systems must be covered with



non-conducting covers that require a tool to remove. High-voltage areas must be protected to prevent access to unauthorized individuals. Employers must create a lockout/tagout program and train employees on proper implementation of these procedures.

Applicable Standards

- 29 CFR 1910.147, The control of hazardous energy (lockout/tagout)
- 29 CFR 1910.212, General requirements for all machines
- 29 CFR 1910.219, Mechanical power-transmission apparatus
- 29 CFR 1910.1000, Air Contaminants

Melting and Baking in Furnaces and Ovens

Many scrap metal recycling operations heat scrap pieces to high temperatures to separate different metal components, increase the purity of scrap, bake out non-metal substances, burn off contaminants, remove insulation from wire, or otherwise process the metal scrap (EPA 2001). This may be done using furnaces or ovens that use fuel or electrical heating sources.

Employees near operational furnaces are exposed to hazards even if they do not work directly with the furnace. Heating scrap will generate metal fumes if the furnace temperature is above the melting point of any of the metals in the furnace. In addition, hot pieces of metal could jump from the furnace, creating fire or burn hazards to nearby locations or people.

Similar to many of the processes already discussed, electrical furnaces use large amounts of electricity at high voltages to melt the metal scrap. Employees near these furnaces could face an electrocution hazard if they come into contact with a furnace in an unsafe manner. Employers must ensure that furnace refractories are kept in good condition and that employees follow electrical safety guidelines. Employers should ensure that there is sufficient room for employees to work safely in the vicinity of energized furnaces. For example, an employer may establish a maximum scrap metal size and weight for each type (and size) of furnace that they operate. (NIOSH FACE)

Furnaces generate smoke, dust, and metal fumes, depending on temperature and content. Combustion by-products may include sulfur and nitrogen

oxides, and carbon monoxide and carbon dioxide. Organic compounds may be emitted as heating vaporizes oil and grease on scraps (EPA 2001). In addition, heating or burning of certain plastics (such as plastic-coated wiring) may release phosgene or other hazardous substances. Emissions from fluxing typically include chlorides and fluorides. The highest concentrations of 'fugitive' emissions (i.e., gases and vapors that escape from equipment) occur when the lids and doors of a furnace are opened during charging, alloying, and other operations (EPA 2001). Employers should ensure that workplaces are well-ventilated, consider the use of local exhaust ventilation during these operations, and that emissions from furnaces are filtered before the air is released outside the facility.

Afterburners can be used to control organic compounds, carbon monoxide, chlorides, fluorides, and hydrochloric acid; fabric filters can be used to control metal oxide dust, chlorides, fluorides, and hydrochloric acid; wet scrubbers can be used to control metal oxide dust, sulfur oxides and sulfuric acid mist; and electrostatic precipitators or fabric filters can be used to control particulate or other matter. These are used in different setups depending on the specific recycling industry. EPA (2001) discusses control methods for some recycling industries. For a full listing of hazardous air pollutants associated with some metal recycling processes, such as aluminum production, lead smelting, iron foundries and steel foundries, see EPA's Emission Inventory Improvement Program (EIIP), Vol. II, Table 9.2-1. (EPA 2001)

For information on ventilation, refer to the "Examples of Engineering and Work Practice Control Techniques to Reduce Emissions" section at page 29.

Case History #8

A 22-year-old male foundry laborer was electrocuted when a piece of scrap metal he was loading into a damaged electric induction furnace became energized. The refractory had developed an unusual degree of cracking, and molten metal seeped out of the refractory and solidified. This material was in contact with the frame, but not the coil. Two employees lowered the scrap into the furnace, which already contained molten steel. The victim was resting his thighs on the top edge of the frame. The furnace was jarred, and presumably more molten metal was released through the cracks, completing the circuit be-



RACE TO THE FUTURE

Electric Cars Are Taking Off, but When Will Battery Recycling Follow?

Many companies and investors are eager to recycle batteries, but it could take a decade or more before enough used lithium-ion batteries become available.



By Niraj Chokshi and Kellen Browning

Niraj Chokshi and Kellen Browning reported this story from Reno, Nev. Chokshi also traveled to Rochester, N.Y., and Browning to Adelanto, Calif.

Dec. 21, 2022

Benjamin Reynaga used power tools to hack his way into a beat-up hybrid Honda Fit at an auto dismantling plant at the edge of the Mojave Desert until he reached the most important part of the car: its lithium-ion battery.

The vehicle itself was set to be crushed, but the battery would be treated with care. It would be disassembled nearby and then sent to Nevada, where another company, Redwood Materials, would recover some of the valuable metals inside.

The plant where Mr. Reynaga works, in Adelanto, Calif., is at the front lines of what auto industry experts, environmentalists and the Biden administration believe could be an important part of a global shift to electric vehicles: recycling and reusing metals like cobalt, lithium and nickel. If batteries past their prime supply the ingredients for new ones, electric cars, trucks and vans would become more affordable and environmentally sustainable.

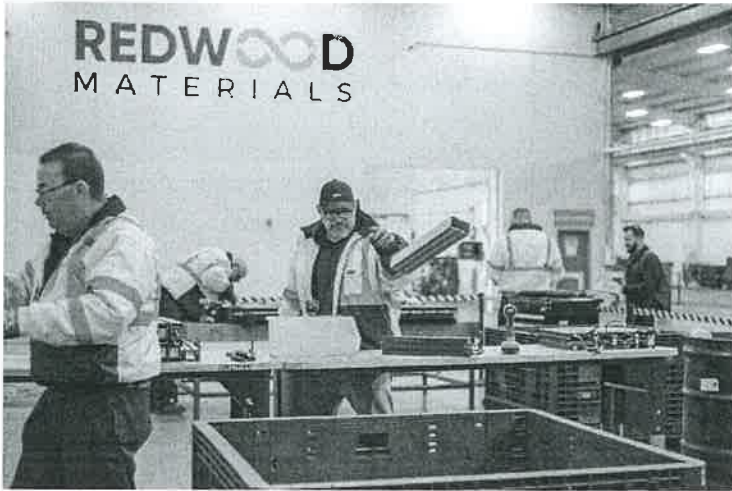




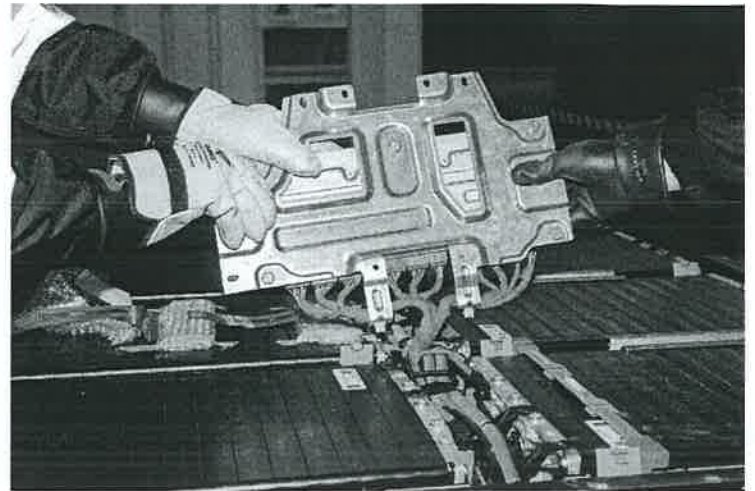
Cars and trucks, either at the end of their functional lives or damaged from accidents, sit at the LKQ plant before being recycled for parts. Gabriella Angotti-Jones for The New York Times

“We’re just getting ready,” said Nick Castillo, who manages the plant for LKQ Corporation. The facility mostly dismantles gasoline vehicles but is preparing to take apart more hybrid and electric vehicles. “We know it’s eventually going to take over — it’s going to be the future.”

Sales of electric cars and trucks are taking off, and the auto and battery industries are investing billions of dollars to upgrade and build factories. These cars could help address climate change, but batteries pose their own problems. Raw materials can be hard to mine, are often found in countries with poor human rights records and require processing that leaves behind noxious waste.



A Redwood Materials employee, John Caylor, dismantling discarded electric scooter batteries. Nina Riggio for The New York Times



Redwood Materials employees starting to dismantle a Ford electric car battery. Nina Riggio for The New York Times

Fortunately, those battery ingredients are also highly reusable. And now a race is on to collect and recycle used lithium-ion batteries. Venture capitalists, automakers and energy companies are pouring money into dozens of start-up recycling companies in North America and Europe.



Discarded batteries waiting to be sorted at Redwood Materials. Nina Riggio for The New York Times

“We’re weaning our entire society off of fossil and carbon-intensive fuels — we can’t underestimate the scale of that challenge,” said Gavin Harper, a research fellow at the University of Birmingham in England who studies battery recycling. “The demand is going to be so enormous.”

But for all the optimism, this new business faces a daunting challenge: Few batteries will be available to recycle for a decade or more. Tesla, which dominates the electric vehicle business, began selling cars in 2008 and until 2017 sold fewer than 100,000 cars a year. There are other sources to recycle today, including hybrids and consumer electronics, but the supply is limited and collection can be challenging.

That has left recycling companies in a difficult position. They need to invest in factories, machinery and workers or risk losing ground to competitors. But if they invest too quickly, they could run out of money before lots of aging batteries arrive at their loading docks.

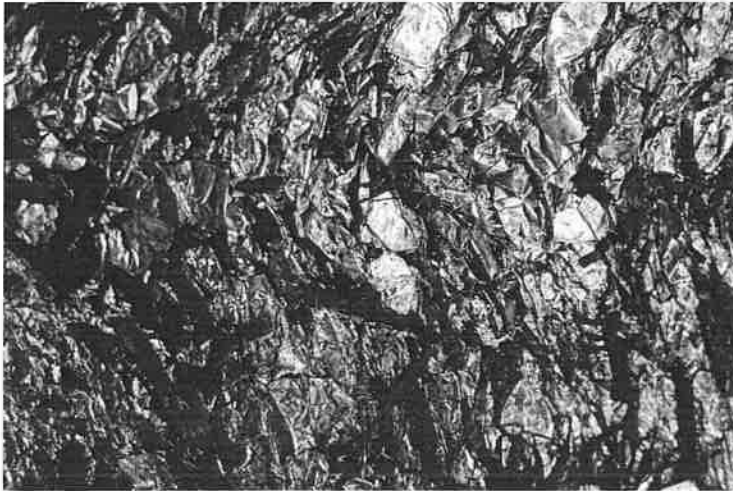
“You have people that are just burning through money, because you don’t have the feed stock to be able to make the material to sell,” said Eric Frederickson, the managing director of operations for Call2Recycle, a nonprofit program that helps recyclers find old batteries.

The companies also have to figure out how to find, collect and dismantle batteries. They have to work with many dismantlers, scrap yards and nonprofit groups. And because batteries are prone to fires and packaged and built differently from model to model, taking them apart can be complicated and dangerous.

Among companies recycling batteries, Redwood stands out. The company was founded by J.B. Straubel, a former top Tesla executive, and has raised more than \$1 billion from investors, it said. Redwood sees itself primarily as a producer of battery materials — made from recovered or mined metals — and has established recycling partnerships with Ford Motor, Toyota, Volkswagen and Volvo. Redwood also recycles scrap from a battery plant run by Panasonic and Tesla, near Reno, Nev.

On a flat, dusty tract of land near that plant, Redwood is building out a 175-acre campus. There, the company recovers metal from old batteries and produces materials for new ones. Redwood announced last week that it would spend at least \$3.5 billion on another campus in South Carolina, in a region of the country that is fast becoming a hub for battery and electric vehicle production.

Batteries have an anode and a cathode, which contains most of a battery's valuable metal. When a battery is used, lithium ions move from the anode to the cathode. The flow is reversed while charging.



Cathode material compressed into a large block is stored on pallets at Li-Cycle in Rochester, N.Y. Libby March for The New York Times



Anode material that is also compressed into large blocks at Li-Cycle. Libby March for The New York Times

Most anodes and cathodes come from China, but Redwood hopes to change that. At the Nevada facility, the company is making thin anode foil using recycled copper. Redwood also plans to make cathode materials there using recycled cobalt and a mix of recycled and mined lithium and nickel. Panasonic recently said it planned to use Redwood's products in its batteries at two U.S. factories.

Redwood regularly receives used batteries and scrap from suppliers like LKQ and partners like Panasonic. Some of that material is first heated at low temperatures in a proprietary process. All batteries go through chemical baths and other processes to isolate and extract specific metals.

Redwood buys virgin metal because there aren't enough old batteries and scrap. But mining and transporting can be carbon-intensive and subject to supply chain problems, so the company's executives said they were eager to use more recovered metals.

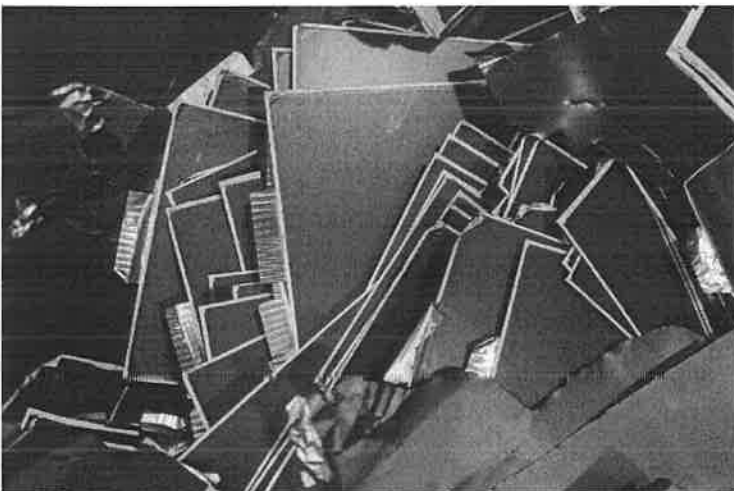
"We want to take in as much recycled content as we can because it's an available feedstock that's local," said Kevin Kassekert, Redwood's chief operating officer. "But we will have to augment that."



Storage at Li-Cycle's plant in Rochester. The company is focused on recycling. Libby March for The New York Times

Other businesses are focused solely on recycling. Li-Cycle, a Canadian company founded in 2016 by two former engineering consultants — Ajay Kochhar and Tim Johnston — is building several plants.

At collection centers in Alabama, Arizona, New York and Ontario, the company breaks down batteries and manufacturing scrap. In its plant in Rochester, N.Y., a conveyor belt ferries materials up one story before dropping them into a vat where they are shredded while submerged in a proprietary chemical solution to prevent fires.



Discarded cell batteries await processing at Li-Cycle. Libby March for The New York Times



A conveyor belt carries batteries to be recycled into reusable material at Li-Cycle. Libby March for The New York Times

The resulting pieces are separated, and Li-Cycle then harvests a granular substance, known as black mass, which is processed into its component metals elsewhere. But Li-Cycle plans a total capital investment of about \$485 million to build a facility, also in Rochester, to turn the substance into battery-grade lithium, cobalt and nickel.

Li-Cycle, which became a publicly traded company in 2021, said it had more than 100 battery suppliers, including a partnership with Ultium Cells, a joint venture between General Motors and the South Korean battery company LG Energy Solution. Li-Cycle also has strategic partnerships with the mining giant Glencore and Koch Industries, the privately held conglomerate with extensive fossil fuel operations. Together, those two businesses have invested \$300 million in Li-Cycle.

“We were fortunate that we took the path that we did, when we did,” Mr. Kochhar said. “This is an industry that does require, just like battery making, a good amount of capital.”

Battery recycling is still relatively new in North America, but more mature companies abroad could provide a hint of what’s to come. In China, for example, there are many recyclers but a shortage of material.

“They have too much capacity and too few batteries to recycle,” said Hans Eric Melin, who founded Circular Energy Storage, a consulting firm that specializes in the market for old lithium-ion batteries. “I think that’s exactly the situation that we will face in both Europe and North America.”

It could take many years for recycling to become a thriving industry in the United States. Relatively few electric vehicles are on the road, and most are new. Smartphones, laptops and other electronics also contain lithium-ion batteries, but they are difficult to collect and there are not enough to meet the growing needs of the auto industry.

But lawmakers and environmental groups want recycling to take off quickly to cut carbon emissions, protect the nation from an overreliance on foreign producers and promote the safe disposal of batteries.

The Inflation Reduction Act signed by President Biden over the summer, for example, requires a growing share of a battery’s valuable minerals to be sourced domestically or from a trade ally before vehicles qualify for tax credits. And the European Union appears close to requiring a minimum amount of recycled content in all electric vehicle batteries.

For now, recyclers are focused on collecting factory-floor scrap.

Massive battery plants are being spun up around the world, including many in the United States. Those factories could provide the recyclers with a great deal of defective or excess battery material, particularly in their early years.

“There are always inevitable losses along the process of creating a cell for a lithium ion battery,” said Sarah Colbourn, a research analyst at Benchmark Mineral Intelligence. “Because of that, there’s really an opportunity to recycle that waste.”

Such scrap will account for about 78 percent of recyclable materials globally in 2025 and remain the main source for recyclers until the mid-2030s, when used batteries take over, according to a recent report by Ms. Colbourn.

But recycling those dead batteries won’t be easy. Collecting scrap is relatively simple. Similar materials from factories are processed in batches. Used batteries come in different shapes and sizes.

Standardized designs and construction methods could help, but most auto and battery companies have shown little interest in that. Instead, they are working on different approaches as they compete to make cars that can travel farther on a charge.

In March, as Redwood prepared to move into the larger campus near Reno, workers at a smaller plant in nearby Carson City were busy processing used consumer electronics. Some sorted through large bins of batteries from power tools, laptops and other devices, while others oversaw conveyor belts dumping batteries into rotating bins to be heated and broken down.



Heath Millim, a Redwood employee, shovels discarded batteries while two other employees sort the battery types in Redwood's plant in Carson City, Nev.
Nina Riggio for The New York Times

“There’s an opportunity for us to revolutionize how material is recovered and sent back into the supply chain on the E.V. side,” Mr. Kassekert, the Redwood executive, said. “A metal atom can be recycled an infinite amount of times — it’s just a matter of how do you get it efficiently.”

After years of losing ground to China, U.S. and European executives and lawmakers are optimistic that battery recycling can quickly help establish a domestic battery industry. But they may be in for a rude awakening, said Mr. Melin, the consultant.

Electric vehicle batteries can last 15 to 20 years. Even then, many batteries will find second lives — to store wind and solar energy for use when it’s not windy or sunny, for example — before they are recycled.

“There won’t be a lot of material to recycle for a long time,” Mr. Melin said. “And that is obviously a positive thing because the main reason is that the batteries are in the cars.”

A correction was made on Dec. 21, 2022: An earlier version of this article cited an outdated cost estimate for a factory being built by Li-Cycle in Rochester, N.Y., to turn recycled materials into battery-grade lithium, cobalt and nickel. The company says it expects the total capital investment to be about \$485 million, not \$175 million.

When we learn of a mistake, we acknowledge it with a correction. If you spot an error, please let us know at nynews@nytimes.com. [Learn more](#)

Niraj Chokshi covers the business of transportation, with a focus on autonomous vehicles, airlines and logistics. More about Niraj Chokshi

10/24/23, 8:56 AM

Electric Cars Are Taking Off, but When Will Battery Recycling Follow? - The New York Times

Kellen Browning is a technology reporter in San Francisco, where he covers the gig economy, the video game industry and general tech news. More about Kellen Browning

A version of this article appears in print on , Section B, Page 1 of the New York edition with the headline: Electric Cars Are Taking Off. Will Battery Recycling Follow?

Fluvanna

REVIEW

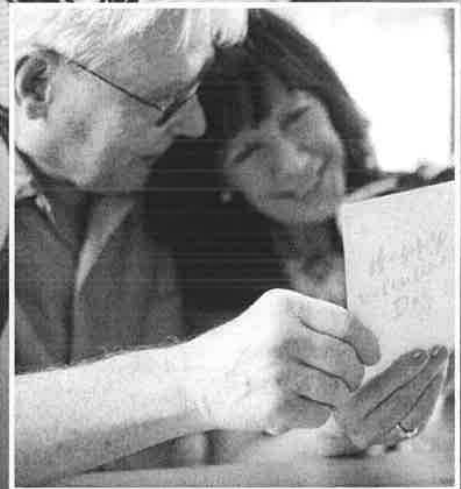
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Supervisors settle lawsuit for \$130,000

BY CHRISTINA DIMEO
EDITOR

The Fluvanna County Board of Supervisors has agreed to pay \$130,000 to settle a lawsuit against them.

Katie and Walker Ward filed suit Jan. 19, 2018, over the board's December 2017 decision to rezone a 90-acre parcel of land off Route 250 in Troy from agricultural to industrial. LKQ Corporation, a Fortune 500 company, intends to build an auto reclamation facility on the land.

The Wards, who own 70 acres adjacent to the LKQ site, passionately opposed the rezoning, saying the auto reclamation facility would severely impact the peace and rural atmosphere of the land.

Supervisors and the Wards signed a Feb. 4 settlement agreement in which the board agreed to pay the Wards \$130,000. The board approved the agreement following a closed session meeting Feb. 6.

Supervisors also agreed to provide for clean-up of the stream that runs between the LKQ parcel and the Wards' land. The stream will be tested quarterly by the Department of Environmental Quality. The board pledged to request that the unoccupied house on the LKQ parcel be examined to determine both its possible historical significance and whether it houses any historically significant artifacts.

The settlement is an agreement between supervisors and the Walkers on mutually acceptable terms for resolving the dispute. It is not an admission of liability or other improper or unlawful conduct.

Both supervisors and the Wards have requested that the court permanently dismiss the case.

Lawsuit details

The Wards' lawsuit claimed that proposed LKQ facility would "lower their property value through increased traffic, noise, dust, offensive smells, environmental harms through leakage of toxic fluids into the creek that adjoins [their] property, and the replacement of serene natural views with industrial buildings and junked cars."

They also alleged that supervisors issued inadequate notice of the proposal to rezone and failed to submit the rezoning proposal to the Virginia Department of Transportation (VDOT). They claimed the rezoning failed to serve a genuine public purpose.

Supervisors filed a demurrer stating

that they complied with the law when issuing notice of the rezoning and that they did, in fact, inform VDOT about the proposal.

While not all Fluvanna residents agreed with the board's rezoning decision, and opposition to the proposed LKQ facility clearly existed, supervisors claimed their decision was nevertheless reasonable.

The demurrer quoted the Virginia Supreme Court's rubric to evaluate reasonableness of a county's zoning action: "Legislative action is reasonable if the matter in issue is fairly debatable. An issue may be said to be fairly debatable when, measured by both quantitative and qualitative tests, the evidence offered in support of the opposing views would lead objective and reasonable persons to reach different conclusions."

Reactions

The two primary lawyers involved in the lawsuit had differing opinions on the outcome.

"The settlement of the Ward case vindicates the board's decision to rezone the property and clears the way for an important step toward economic development," said County Attorney Fred Payne, who represents the Board of Supervisors.

"In general, cases challenging zoning decisions are almost impossible to win," said John Simpson, the Wards' attorney. "That Fluvanna County paid my clients \$130,000 to dismiss their case is no insignificant matter."

Katie Ward reflected on why she and her husband decided to settle. "We are just regular people," she said. "Perhaps if we had unlimited resources, we may have taken a different path. But the emotional and financial strain of this lawsuit was taking its toll on us, and I know going to trial, regardless of the outcome, would have left us hurting even more. We had to make the best decision for our family. The settlement will cover our legal fees, provide some compensation for adverse impact on our property from the junkyard, and allow us to move on with our lives."

"I think the one good thing to come out of all of this is that we shed light on how important it is for our elected officials to do their due diligence," Ward continued. "Especially after this case, I hope our representatives will actually listen to

us, and be more transparent, purposeful, and thorough when such decisions have to be made in the future. We proved to the county that Fluvanna residents aren't sitting idly by while impactful decisions are being made."

"In the pursuit of economic development, it has been my experience that it is natural to encounter opposition," said Supervisor Tony O'Brien. "Looking back at the heated debate that was held when Tenaska applied for two plants, and all the fear and concern, I believe that it is fair to say the county would have benefited from both plants. I think the same is true for LKQ. It is a Fortune 500 company that will bring needed jobs to the area, reinforces the county's investment in infrastructure at Zion Crossroads, and highlights the strength of the area. I expect that, just like Tenaska, LKQ will prove to be a great corporate citizen."

"The settlement and the board's commitment to targeted economic develop-

ment are key toward the continued competitiveness of our county and our ability to provide quality core services while diversifying the tax base," he said.



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