

1 FRANKLIN COUNTY PLANNING AND ZONING  
2 BOARD OF ZONING ADJUSTMENT  
3 FRANKLIN COUNTY GOVERNMENT CENTER  
4 SECOND FLOOR COMMISSION CHAMBERS  
5 400 EAST LOCUST STREET  
6 UNION, MISSOURI 63084

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8  
9  
10 TRANSCRIPT OF PROCEEDINGS  
11 PUBLIC MEETING  
12 APRIL 25, 2017  
13 [Commencing at 7:00 p.m.]

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Reported by:  
Patsy A. Hertweck, C. R.  
Midwest Litigation Services

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A P P E A R A N C E S

BOARD OF ADJUSTMENT MEMBERS:

Gordon Upchurch, Chairman

Carl Ridder, Member

Derek Schriewer, Member

Justin Head, Member

Steve Hoff, Member

PLANNING AND ZONING STAFF:

Ms. Scottie Eagan, Planning Director

Ms. Nichole Zielke, Administrative Assistant

MIDWEST LITIGATION SERVICES:

By: Patsy A. Hertweck, C. R.

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St. Louis, Missouri 63101

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1 P R O C E E D I N G S

2 [APRIL 25, 2017]

3 CHAIRMAN UPCHURCH: Good evening.  
4 I'm Gordon Upchurch, and I'm going to call this meeting to  
5 order.

6 If you all are done talking, we're going to  
7 start the meeting now.

8 I'm going to call this meeting to order of the  
9 Franklin County Board of Zoning Adjustment. I'm joined  
10 tonight by Derek Schriewer, Justin Head, Steve Hoff, and  
11 Carl Ridder. We welcome all of you.

12 We have two matters on the agenda this evening.  
13 Well, actually one matter with two different positions.  
14 Before we reach those matters, we have some minor procedural  
15 matters to attend to. And before we even get to those, I'll  
16 apologize for the fact that we all stood outside till  
17 7 o'clock, which escapes me, which was no one in the room's  
18 fault. But we'll leave that to another day. But in any  
19 event, sorry that we started late.

20 In addition to that, I, as a matter of  
21 courtesy, asked the parties from both sides this evening how  
22 long their presentation would take, and informally both  
23 sides told me around an hour, including the individuals to  
24 speak.

25 I'm going to sort of hold everybody to that so

1 we're going to get out of here before too late tonight.

2 I brought an egg timer if it reaches that  
3 point. You know, our budget is almost limitless.

4 On a serious note, I'm going to ask everybody  
5 to be courteous with regard to time, and I am going to,  
6 within reason, hold each side to that one hour for their  
7 presentation. As I indicated earlier, as we've done in  
8 every case, we'll permit rebuttal, a response to what the  
9 other side has thereafter offered.

10 Rebuttal isn't repeat. Rebuttal is a new  
11 response to something that came up that was somewhat  
12 unexpected.

13 So that is how we're going to handle these  
14 tonight.

15 In addition to that, all of you have one of  
16 these, probably so Big Brother knows where we are. As a  
17 matter of common courtesy, what we're going to do is we're  
18 going to pull them out of our pocket right now, and we're  
19 going to turn them on vibrate. And if they go off, I'm  
20 going to ask security, if they're around, to take the phone  
21 out of the room. If you think you need to take that call  
22 and answer the call, security will remove you and the phone  
23 as a matter of common courtesy.

24 So let's turn the phones off. Okay.

25 Ms. Eagan, would you call roll.

1 MS. EAGAN: Gordon Upchurch?  
2 CHAIRMAN UPCHURCH: I'm here.  
3 MS. EAGAN: Carl Ridder?  
4 MEMBER RIDDER: Here.  
5 MS. EAGAN: Justin Head?  
6 MEMBER HEAD: Here.  
7 MS. EAGAN: Derek Schriewer?  
8 MEMBER SCHRIEWER: Present.  
9 MS. EAGAN: And, Steve Hoff?  
10 MEMBER HOFF: Here.  
11 MS. EAGAN: Okay, we have a full  
12 Board.  
13 CHAIRMAN UPCHURCH: And next I  
14 believe we need to approve the last prior minutes, and I'm  
15 going to ask for a motion to do so.  
16 MEMBER SCHRIEWER: Motion to approve.  
17 CHAIRMAN UPCHURCH: Is there a  
18 second?  
19 MEMBER HEAD: I'll second it.  
20 CHAIRMAN UPCHURCH: There's been a  
21 motion and second to approve the prior minutes. Those in  
22 favor aye.  
23 MEMBER SHCRIEWER: Aye.  
24 MEMBER RIDDER: Aye.  
25 CHAIRMAN UPCHURCH: Aye.

1 MEMBER HEAD: Aye.

2 MEMBER RIDDER: Aye.

3 MEMBER HOFF: Aye.

4 CHAIRMAN UPCHURCH: Those opposed

5 same sign. [None]

6 Minutes are approved.

7 Ms. Eagan, would you read into the record the  
8 hearing procedures.

9 MS. EAGAN: Tonight's Board of Zoning  
10 Adjustment hearing is governed by the Franklin County  
11 Unified Land Use Regulations.

12 At this time, I would like to place into the  
13 record these Regulations as Exhibit A, the official Map as  
14 Exhibit B, the official Master Plan as Exhibit C, and the  
15 case file for each case Exhibit D for all the cases to be  
16 heard at this hearing.

17 [Thereupon, evidence was marked for  
18 identification and presented for the  
19 record as Exhibits A, B, C, and D.]

20 The Board of Zoning Adjustment will address  
21 each case as they are listed on the agenda. As each case is  
22 opened for hearing, a staff report will first be read to the  
23 Board, followed by any questions for the staff.

24 Then if anyone in the audience would like to  
25 speak or comment during this public hearing, they must first

1 print their name on the sign-in sheet provided, and then be  
2 sworn in by the Chairman. When it is your turn to speak,  
3 you will come to the front of the room to address the Board  
4 and only the Board, not anyone in the audience, with any  
5 questions or comments.

6 At the conclusion of all questions, comments,  
7 and discussion concerning each case, the public hearing for  
8 that case will conclude and the Board of Zoning Adjustment  
9 will proceed with a decision. Any decision by the Board may  
10 be appealed. If anyone desires to appeal a decision made by  
11 the Board of Zoning Adjustment, they need to submit it to  
12 Circuit Court.

13 And then just a quick special announcement.  
14 The way our security changed is our security automatically  
15 goes on at 8 o'clock. So around 8 o'clock, the deputy  
16 should come up and shut one of the doors. At that time, no  
17 one allowed to leave this room. Otherwise, when our  
18 security comes on, it will trigger the alarm.

19 Once he disables it, he'll come back up and  
20 open the door, and then you're free to go in and out of the  
21 room again.

22 CHAIRMAN UPCHURCH: Okay. With  
23 regard to the matter this evening, as I've indicated  
24 earlier, rather than hear those two matters separately  
25 involving the same evidence in the same Conditional Use

1 Permit, we're going to be hearing these facts and  
2 circumstances at one hearing but permitting all sides to be  
3 heard.

4 We actually have an application of Kim Lynch,  
5 and I've spoken to her. And she is here, and that is the  
6 Appeal 170048.

7 Scottie, you're supposed to be nodding at this  
8 point in time.

9 MS. EAGAN: You're right.

10 CHAIRMAN UPCHURCH: And an appeal by  
11 Meramec Aggregate, Inc., which is 170051, which is an appeal  
12 also of the same Conditional Use Permit and from the  
13 materials, if I understood it properly, the Conditional use  
14 Permit being appealed by both sides for different reasons,  
15 seeking different results, is Conditional Use Permit 160220.

16 MS. EAGAN: Correct.

17 CHAIRMAN UPCHURCH: Thank you.

18 And with regard to -- before we get to the  
19 staff report, I'm jumping around here, Scottie. I apologize  
20 for that.

21 MS. EAGAN: Uh-huh.

22 CHAIRMAN UPCHURCH: I believe our  
23 burden in this matter tonight is for us to offer substituted  
24 judgment on the Conditional Use Permit after hearing the  
25 evidence in which we can either affirm, deny or modify the

1 Conditional Use Permit.

2 MS. EAGAN: That's correct.

3 CHAIRMAN UPCHURCH: Okay. So it's  
4 going to be our intentions to take the facts that you all  
5 will offer this evening on both of the competing  
6 applications.

7 And then at the end of evidence from both sides  
8 and rebuttal from both sides, is for the Board, as we always  
9 do, to discuss issues amongst ourselves while we are here on  
10 the record, and as we normally do, we'll probably render a  
11 judgment this evening.

12 I believe we have a staff report?

13 MS. EAGAN: I have two. Would you  
14 like for me to read them back to back?

15 CHAIRMAN UPCHURCH: Yes.

16 MS. EAGAN: Okay. The first is File  
17 170048. The applicant is Kim Lynch and Citizens for the  
18 Preservation of the Meramec River.

19 The applicant is appealing the decision of the  
20 Planning and Zoning Commission to issue a Conditional Use  
21 Permit to Meramec Aggregates, Inc.

22 The property is located at 102/109 River Cabin  
23 Road, on the south side of the intersection of Mill Hill  
24 Road and Cove Creek Road, in Calvey Township.

25 The Facts: Meramec Aggregates received a

1 Conditional Use Permit approval on December 20, 2016 with  
2 nine conditions listed.

3 The total area of the property that received  
4 the CUP is 54 acres in size.

5 The zoning of this property is Non-Urban and  
6 Agricultural. In this district, the extraction, quarrying  
7 or mining of sand, gravel, topsoil or other material  
8 requires a Conditional Use Permit.

9 The operation would include mining, production  
10 and sales of sand and gravel.

11 The area surrounding the property is primarily  
12 low-density residential or undeveloped land.

13 This property has access to Mill Hill Road.  
14 Mill Hill Road is a publically-maintained road.

15 All but the northeast corner of the property is  
16 located within the floodplain.

17 A small portion of the property is located  
18 within the floodway; however, it appears from the site plan  
19 the operation is not located within the floodplain -- or  
20 floodway.

21 Staff Comments: The purpose of the Non-Urban  
22 and Agricultural zoning district is to allow agricultural,  
23 recreational, wildlife, forestry, open space, farming and  
24 related uses to mix with low-density residential  
25 development.

1                   The Board of Zoning Adjustment has the ability  
2   to reverse, affirm or modify the order, requirement,  
3   decision or determination appealed from. In order to  
4   reverse or modify, the Board must have a four-fifths vote.

5                   The next staff report is for File 170051.

6                   The applicant is Meramec Aggregates, Inc.

7                   The applicant is appealing the decision of the  
8   Planning and Zoning Commission pertaining to condition No. 9  
9   on the Conditional Use Permit approved under File 160220.

10                  The property is located at 102/109 River Cabin  
11   Road, on the south side of the intersection of Mill Hill  
12   Road and Cove Creek Road, in Calvey Township.

13                  The Facts: Meramec Aggregates received CUP  
14   approval on December 20, 2016 with nine conditions listed.

15                  Meramec Aggregates is appealing condition No. 9  
16   which states, "Only Havin/Meramec Aggregates owned or  
17   operated trucks shall be permitted to haul material from  
18   this location."

19                  The total area of the property that received  
20   the CUP is 54 acres in size.

21                  The zoning of this property is Non-Urban and  
22   Agricultural. In this district, the extraction, quarrying  
23   or mining of sand, gravel, topsoil or other material  
24   requires a Conditional Use Permit approval in this zoning  
25   district.

1                   The operation would include mining, production  
2                   and sales of sand and gravel.

3                   The area surrounding the property is primarily  
4                   low-density residential or undeveloped land.

5                   This property has access to Mill Hill Road.  
6                   Mill Hill Road is a publically-maintained road.

7                   All but the northeast corner of the property is  
8                   located within the floodplain.

9                   A small portion of the property is located  
10                  within the floodway; however, it appears from the site plan  
11                  the operation is not located in the floodway.

12                  Staff Comments: The purpose of the Non-Urban  
13                  and Agricultural zoning district is to allow agricultural,  
14                  recreational, wildlife, forestry, open space, farming and  
15                  related uses to mix with low-density residential  
16                  development.

17                  The Board of Zoning Adjustment has the ability  
18                  to reverse, affirm or modify the order, requirement,  
19                  decision or determination appealed from. In order to  
20                  reverse or modify, the Board must have a four-fifths vote.

21                  CHAIRMAN UPCHURCH: As I'd indicated  
22                  earlier, we are going to take these two competing matters up  
23                  together rather than hearing most of the same facts twice  
24                  tonight.

25                  In addition to that, again I've got a rough

1 count on witnesses, and from the representation of the  
2 parties, we're going to try to keep the original  
3 presentations from each side, including additional  
4 witnesses, to be about an hour.

5 In addition to that, for those of you who are  
6 here and are going -- do wish to testify in addition to the  
7 main presentation that each side is going to make, we have  
8 received a packet, a substantial packet, and I presume that  
9 the parties know of all the letters, exhibits and other  
10 documents that are in there, we formally at this time, if  
11 not by other operation of law, received those exhibits.

12 So those of you who are concerned or want to  
13 make sure that your letter or your comment or your exhibit  
14 that was in the packet has been received, we are formally  
15 receiving that. It's received at this point in time.

16 It would be unnecessary -- and that beep that  
17 you hear, again, our budget is unlimited, is the fact that  
18 the batteries are going out on one of these mics. So we  
19 will fumble around for a while with the mics to figure out  
20 which one is dying slowly.

21 But in any event -- as luck would have it,  
22 probably my mic. In any event, we've received those  
23 exhibits. We're perfectly willing to hear people refer  
24 those exhibits, but you -- you've already made that record.  
25 So you don't need to repeat or to offer those exhibits

1 again.

2 In addition to that, in light of the timing of  
3 the appeals, we will start with the -- the people  
4 representing the Kim Lynch application first, and again,  
5 we're targeting at about an hour to hear from them and their  
6 other witnesses.

7 And who would like to speak first with that  
8 position? Kim, will you start?

9 MS. LYNCH: [Inaudible response.]

10 CHAIRMAN UPCHURCH: Okay. I'll need  
11 you to step up to the podium and sign in. Hopefully there's  
12 a sign-in sheet there. That's how we normally do it. Okay.

13 MS. LYNCH: And if you'll allow it,  
14 Nick is going to set up the presentation.

15 CHAIRMAN UPCHURCH: And while you all  
16 are finishing getting set up and as long as we have record  
17 going, I was handed this evening a letter from a limited  
18 liability company, Summer, Compton, Wells, which refers to  
19 Meramec Aggregates. I have glanced at it inasmuch as it  
20 apparently was filed sometime today. Apparently filed, at a  
21 glance, not by a party but of course I guess I'll hear more  
22 about it this evening, suggesting something about the  
23 Disabled Veterans Memorial and something about a conflict.

24 Candidly, I'll just for the record state I'm  
25 unfamiliar with the issues that are referenced there. I

1 would ask if any of the Board feels that they have a  
2 conflict will let us know now. Inasmuch as we try to have a  
3 complete Board for everyone, if no one does feel they have a  
4 conflict with regard to Disabled Veterans Memorial or candid  
5 with the issues contained in the packet, it would be my  
6 intention, and I think I probably speak for the Board, to  
7 say our intention that we received very untimely this  
8 letter. And don't know how to deal with it other than the  
9 fact that we've seen it. Don't know much about the facts  
10 contained in it.

11 It seems to seek to have the Board recuse  
12 itself. Inasmuch as a recusal would have to indicate some  
13 kind of conflict or knowledge, I'm blissfully unaware of  
14 what the issue is here, and as a result, as for me, I think  
15 I speak for the Board, I'm prepared to move forward and, for  
16 whatever it's worth, we will, I guess, include that letter  
17 with the packet too, for whatever that may be.

18 With that, Ms. Lynch, are you ready to start?

19 MS. KIM LYNCH: Yes.

20 CHAIRMAN UPCHURCH: Okay. I'll need  
21 for you to state your name for the record, and then we'll  
22 have you sworn.

23 MS. LYNCH: Kim Lynch.

24 [Thereupon, the witness was sworn.

25 Thereupon, evidence was marked for

1 identification and submitted into the  
2 record as Lynch Exhibit Nos. 1 through  
3 7.]

4 Thank you, gentlemen. Thank you for hearing us  
5 this evening.

6 So I think I want to start here with  
7 information you already have, but I did put a page as  
8 Attachment 1 in your packet to remind you of the Franklin  
9 County Planning and Zoning Commission by-laws, your rules of  
10 procedure.

11 So all meetings for the Planning and Zoning  
12 Commission shall be conducted in accordance with Roberts'  
13 Rules of Order, unless otherwise noted herein.

14 The Planning and Zoning public meeting on 12/20  
15 did not follow Roberts Rules of Order.

16 A second vote on the motion for the Meramec  
17 Aggregates was taken. So what we had on that night was a  
18 5/5 vote that when you're seeking approval is a denial. So  
19 that is a denial.

20 At that point, one of two things can happen.  
21 You can go with the denial of that Conditional Use Permit,  
22 or someone from the prevailing side, which is the side that  
23 won, would have to bring up a motion to reconsider.

24 At that point, a motion to reconsider or a  
25 motion to revote has to be voted on, and it has to pass by a

1 majority in order for you to revote on that issue.

2 That's not what happened. What happened was is  
3 the 5/5 vote was announced. Then there was debate, and once  
4 when you bring up an order to reconsider, even if it does  
5 pass and you're going to take another vote, you can't debate  
6 it. So there was a long debate, and then Todd Boland  
7 brought up, hey, let's -- let's have another vote on this.  
8 And then it passed with a 6/4 vote.

9 Unfortunately, the second vote is invalid.  
10 It's actually illegal according to Roberts Rules of Order.  
11 You say that that's what you follow, and if you say that you  
12 follow that, you must follow that. Actually I think by  
13 Missouri statute.

14 So where we stand right now is that we have a  
15 5/5 vote in denial of the Conditional Use Permit. That is  
16 the only legal vote we have at this point. So we will go on  
17 with this knowing those things.

18 And here again, here is the Roberts Rule of  
19 Order. We have a 5/5 vote -- 5/5 tie vote, which is a no  
20 vote, and here is the packet with Roberts Rule of Order.  
21 You also have that in your packet. Those to be considered  
22 was 2, and then you have 3 which is -- tells you about the  
23 votes and how Roberts Rule of Order looks at those votes.

24 So the basic principle of decision in a  
25 deliberative assembly that's become after choice and body, a

1 proposition must be adopted by a majority vote. That is,  
2 direct approval implying assumption of responsibility for  
3 the act must be registered by more than half of the members  
4 present and voting. So that did not happen at the last  
5 meeting.

6 CHAIRMAN UPCHURCH: And I don't mean  
7 to interrupt you, but just so we're clear and frankly for  
8 the flowing of this --

9 MS. LYNCH: Sure.

10 CHAIRMAN UPCHURCH: -- this Board has  
11 always handled our matters -- and I realize that's not what  
12 you're talking about yet -- informally, and we've never  
13 adopted Roberts Rules of Order in part for these reasons.  
14 We try to keep these as -- as informal as humanly possible  
15 respecting your position.

16 MS. LYNCH: Right. Thank you.

17 So we, you know, missed a few laws, big deal.  
18 Actually it is a big deal.

19 There's a case, Eldorado Amusement Company  
20 versus the City of San Antonio. So as I go through these  
21 points, anyplace where you see City of San Antonio, in your  
22 mind, put in Franklin County, and anyplace you see Rezoning  
23 Ordinance, put in Conditional Use Permit.

24 So these are the conclusions of law by Judge  
25 Gabriel. By the way, Eldorado Amusement Company won this

1 case.

2 So for -- with pursuant to Order of -- Roberts  
3 Rules of Order governs the procedure for conducting meetings  
4 of the San Antonio City Council, or Franklin County Planning  
5 and Zoning.

6 The City of San Antonio failed to follow  
7 Roberts Rules of Order in considering the rezoning  
8 ordinance, or in this case the conditional use permit.

9 The second vote which approved the change in  
10 zoning, or conditional use permit, was improper. So the  
11 vote -- we've already went through that -- was improper.

12 So Section 9, Section 36 of Roberts Rule of  
13 Order governs the reconsideration of an issue which has  
14 already been voted.

15 So here's how the judge puts it:

16 "Reconsideration requires a motion made by individuals voted  
17 with the prevailing side."

18 That's the winning side.

19 "Find the action on a motion to reconsider  
20 requires its own vote prior to the revote of the item being  
21 reconsidered."

22 So that's how the judge tabled it.

23 And then finally, the City Council's failure to  
24 follow the established procedure means that the ordinance is  
25 invalid or illegal.

1                   So where does that leave us? We have to go  
2 back to Franklin County's Unified Land Regulations, Section  
3 98, Reconsideration of Actions. I've also put that in your  
4 attachment so you don't have to look for it.

5                   Whenever the Planning and Zoning Commission  
6 denies or revokes a conditional use permit application, such  
7 action shall not be reconsidered by the Board at a later  
8 time unless the applicant clearly demonstrates that  
9 circumstances affecting the property that is the subject of  
10 application have substantially changed. Which I don't see  
11 that happening in this case.

12                   Or -- it's hard to read there, sorry. New  
13 information is available that could not, with reasonable  
14 diligence, have been presented at a previous hearing.

15                   We've been dealing with these mining things for  
16 a little over a year now between the Bruns and the Jeffery.  
17 I think Meramec Aggregates has had plenty of time to shore  
18 up their case and do the studies that we've been asking,  
19 traffic safety study, environmental impact study. They've  
20 had time to do their due diligence. They chose not to.

21                   So we are here at this crossroads. So I'm  
22 going to proceed on with the presentation knowing that the  
23 Conditional Use Permit 5/5 vote is the only legal vote that  
24 we have, which is a denial. And the rest of the  
25 presentation will be why it was denied and why it ought to

1 have been denied.

2                   So we'll start with human and animal health.  
3 In June 2012, International Agency for Research on Cancer  
4 classified diesel exhaust, including diesel particulate  
5 matter, as a known human carcinogen. OSHA includes truck  
6 drivers on their list of occupation with potential exposure  
7 to diesel exhaust and diesel particulate matter.

8                   The International Hazard Data Sheets on  
9 occupations lists acute poisoning by exhaust gases and  
10 exposure to prolonged engine noise of high amplitude which  
11 is greater than 80 decibels as physical hazards associated  
12 with the occupation of, and they define it as driving a  
13 truck with the capacity of more than three tons to transport  
14 materials to and from a specified destination.

15                   So when you expose the members of this  
16 community to 224 dump truck passes a day approximately 15  
17 feet from the edge of their property lines, you in essence  
18 expose us to the same unhealthy levels of diesel exhaust and  
19 diesel particulate matter that the dump truck drivers are  
20 exposed to.

21                   The difference is that the dump truck drivers  
22 chose this profession, and then they accept the inherent  
23 risks to their health. The residents of this community are  
24 having their health compromised without recourse. This is a  
25 true hardship on the residents of this rural community.

1                   So what is Meramec Aggregates doing to mitigate  
2 this or to help protect the residents? How old is their  
3 fleet? Talking to other dump truck drivers around, they say  
4 Meramec Aggregates runs some of the oldest trucks around.

5                   So are they using engine exhaust filters? Are  
6 they using diesel loss catalyysts? Are they using  
7 bio-diesel? Probably not. Using newer, cleaner burning  
8 engines? And then the picture on the right -- it's a little  
9 hard to see. I apologize for that -- shows some broken mud  
10 flaps, some ripped tarp coverings. And so right there we  
11 know the little things aren't being done. So I'm worried  
12 that the big things aren't being done either, such as  
13 regular maintenance, helping these trucks run cleaner.

14                   Lead mines. They're inactive, but not  
15 forgotten. So lead mining as we all know there's a million  
16 abandoned lead mines down there, and we all know that in  
17 that day and time the mining was extremely inefficient. So  
18 this area that Meramec Aggregates wants to mine is within  
19 yards of the old lead mines.

20                   So aggregate contained with lead that we use to  
21 make concrete could give us air lead contamination in any  
22 project it's used in, our schools, our churches, our  
23 playgrounds. We need to look at that and make sure we're  
24 not out poisoning each other.

25                   So I'm sure we're all tired of hearing about

1 the gray bats, but they're still there. And thank God they  
2 are. So we know that Shelley Colaskie [ph.] from Missouri  
3 Department of Conservation set up a bat survey in July and  
4 she found endangered gray bats.

5 The U. S. Fish and Wildlife Service has now  
6 conceded that, yes, there are endangered gray bats there.  
7 They are there.

8 So our problem with this is that vibrations  
9 from the dredging operation and from the trucks would be the  
10 greatest danger to the bats. Lead doesn't occur naturally.  
11 It has to be smelted. So what you have to do is find  
12 galena, and galena is laid down along fault lines, and there  
13 are three fault lines that mine the bats currently inhabit.

14 So we all know that fault lines -- what they  
15 are, and that they are not stable. So when the bats are in  
16 the cave during the day with their young, and they only have  
17 one young a year. So if they lose that young, you've lost  
18 the next generation. If we have enough vibration that  
19 causes that mine to collapse, we're going to lose the entire  
20 population.

21 Also if we make enough noise and vibration that  
22 it disturbs their sleep during the day, that will also cause  
23 attrition of that colony because they won't get the sleep  
24 that they need to, to live and survive.

25 So now we need to go back to Franklin County

1 land use goals and objectives from the Master Plan. So these  
2 are things written by Franklin County.

3 It says that you encourage orderly  
4 higher-density development with defined quarters and near  
5 public infrastructure, and that you encourage intensity  
6 development in areas with infrastructure and that have  
7 factors that make development challenging.

8 So here we are in a wonderful rural setting,  
9 and you're going to affect the surrounding residences for 20  
10 to 30 years or more and increase traffic exponentially on  
11 rural roads that just weren't engineered to take this type  
12 of abuse. There is no existing infrastructure to support  
13 this kind of activity.

14 Okay. So this is a picture, and I'm sorry  
15 again that these are hard to see. There's a little red  
16 circle on Mill Hill kind of by my property, between my  
17 property and Paul Prince's property, and then you can see  
18 where the mine is.

19 This is a bus and a dump truck passing each  
20 other, or actually they're standing still, but this is what  
21 it would look like if they were passing each other. If you  
22 notice, the bus is hugging the white line as close as it can  
23 without technically being off road. Now, the dump truck is  
24 doing the same.

25 We had to put the stop sign -- stop flap out

1 because it's just for safety reasons, but we realized that  
2 in a normal situation, those flaps wouldn't be out and that  
3 truck shouldn't be passing that bus if it's letting children  
4 on and off.

5 Our concern is little arms out little windows.  
6 If you measure from that stop sign to that truck -- measure  
7 from that stop sign to the truck, it's four and a half  
8 inches.

9 So you're driving to work, you spill your  
10 coffee. You look down. It takes a second. You're driving,  
11 your kids are arguing in the back seat. You look up in the  
12 rearview mirror. It takes a second. You deviate from your  
13 lane four and a half inches. You are either off road or  
14 you're face to face with the dump truck.

15 So in 2015, according to the Insurance  
16 Institute for highway safety, 97 percent of vehicle  
17 occupants killed in two-vehicle crashes involving a  
18 passenger vehicle and a large truck were occupants of the  
19 passenger vehicle. So we have all these trucks on the road,  
20 and if there's an accident between a truck and a passenger  
21 vehicle, the people that are going to be killed potentially,  
22 or harmed to the worst, are going to be the residents of the  
23 community.

24 So here again, according the Franklin County  
25 Master Plan Goal No. 2 under Housing and Neighborhood Goals

1 and Objectives, it states that Franklin County strives to  
2 addressed problems that reduced quality of life for county  
3 residents, and the plan further states that you strive to  
4 address neighborhood safety and public safety concerns.

5 If that is so, why have you not required a  
6 traffic study be done for a project of this size and scope  
7 when you know the potential to kill is there? I think  
8 killing one -- one child on a school bus doesn't make  
9 grabbing aggregate a good idea.

10 So the roads are already dangerous all by  
11 themselves. Mill Hill accidents, if you look through "The  
12 Missourian", in 2010 a teenager killed by hitting a tree,  
13 2013 a man had to be airlifted to the hospital, 2015 man  
14 died, 2015 another man died, and they are hitting stationary  
15 objects. So this not a moving dump truck. They're hitting  
16 trees and -- and getting killed.

17 Highway TT. This was the scene in 2015. We  
18 had a rollover. We just had another rollover in March of  
19 this year. So these are single-vehicle accidents, as you  
20 can see on a bright, beautiful, sunny day. Not at night.  
21 No, ice. No rain. No snow.

22 So according to the Missouri State Highway  
23 Patrol, 133 accidents occurred on TT between 1/1/06 and  
24 4/21/2017. Sixty-eight people were injured. Of accidents  
25 of injury, 27 were single-vehicle crashes, 32 were in clear

1 and dry conditions, 13 involved a curve in the road, but 29  
2 occurred just on the straightaway, and 6 of the accidents  
3 were rollovers.

4 So here we have people that live here that  
5 can't navigate the road as well, and now we want to do  
6 retail sales out of this gravel mine with people who don't  
7 know the roads? So these numbers are going to soar because,  
8 you know, the people who know the roads can't even navigate  
9 them properly.

10 And so not only do we have problems with the  
11 safety, we have problems with the roads themselves. This is  
12 an e-mail from Judy Wagner who represents MoDOT to Franklin  
13 County, and as of today, she still had not received a reply  
14 from Franklin County. So on behalf of MoDOT, I would like  
15 to request Franklin County to require the developer to add  
16 two-foot shoulders to Route TT.

17 As you know, we do not have the funds at this  
18 time to add shoulders or resurface Route TT, but with added  
19 trucks, this treatment will definitely be needed. Problem  
20 there.

21 So MoDOT in the meantime did a road study. On  
22 3/30/17, they finished it and the purpose of this study was  
23 to determine the condition, depth of the asphalt pavement on  
24 TT from commercial to Mill Hill. They took nine core  
25 samples at random locations, and this report is also in your

1 packet. And the drilling detained quarrying the asphalt to  
2 the underlying rock aggregate.

3           Their findings: They found stripping, which is  
4 the breaking of the adhesive bond between aggregate surface  
5 and the asphalt cement. They found raveling, the  
6 progressive disintegration of an asphalt layer from the  
7 surface downward. They found rutting. We all know what  
8 rutting is because we drive TT every day. And they found  
9 block cracking, which is a series of large, typically one  
10 foot or more rectangular cracks that are caused -- on the  
11 asphalt caused due to temperature cycles, so that the heat  
12 of the summer and the cool of the winter.

13           These are the core samples that they took, 1  
14 through 9, from left to right. The one in the middle,  
15 number 5, is actually the best one, and that was taken right  
16 by my house. So I can go five feet on my road by my house  
17 and be fine, but if go any further than that, we have a real  
18 problem with how the road is disintegrating. And that's  
19 without 255 dump trucks a day, or 244 or whatever you want  
20 to say.

21           So their conclusions are block cracking is  
22 present along the entire route. Intermittent segments of  
23 the highway are experiencing parallel and longitudinal  
24 cracking, mainly along the center line construction joint.  
25 Across the entire route, the upper lip is the only thing

1 holding Route TT together. So -- and they also said that  
2 they do not have the funding to increase the engineering of  
3 this road to enable it to support the proposed truck  
4 traffic.

5 So we're going to have lots of problems with  
6 the roads.

7 This is a sampling of damage on Brush Creek.  
8 River Bend. I'm sorry, River Bend. So this is what's  
9 happened to the road after only six months of dump truck  
10 traffic, and you know that it's there because you guys had  
11 to go fix it. And so I'd like to know how much this cost  
12 the taxpayers, how much we'll have to pay every six months  
13 as these dump trucks repeatedly rip up our roads, and make  
14 them impassable.

15 And then, of course, we have the problems with  
16 the holes, and then we have the problems with, you know,  
17 you've got to fix them. So then we're going to have traffic  
18 tie-ups because you're fixing the roads.

19 So here again, straight from the Franklin  
20 County Master Plan. Residents of Franklin County are highly  
21 dependent on roads for transportation within the county.  
22 2010 American Community Survey: 98.9 percent of households  
23 have at least one car; 82.8 percent of residents drove alone  
24 to work. We don't carpool a lot. 12.4 percent carpool, and  
25 just 1.4 percent walked. This is fairly typical for a rural

1 area, and indicates the importance of a well-planned and  
2 maintained road network.

3 And we're not going to have a well-maintained  
4 road network if this mining goes through.

5 So now we have health issues, we have safety  
6 issues, we have road issues that could potentially increase  
7 our taxes, and we're going to have property value problems.  
8 As your property value decreases, the profits for Meramec  
9 Aggregate soar.

10 So Diane Hite is an agricultural economics and  
11 rural sociology professor at Auburn University. She's done  
12 a study on any type of mining and property values of the  
13 homes and places close to the mine. So if we take a  
14 property worth \$250,000 and it is a third of a mile from the  
15 mine, it's going to decrease by \$62,000. If you're half a  
16 mile away, it's going to be \$50,000. If you're a mile away,  
17 it's 37,000. Two miles, 25,000. And keep in mind that  
18 these studies show that these losses are permanent. You  
19 don't get this money back.

20 But Diane Hite's not the only person that did  
21 this type of study, and it's not the only person who came up  
22 with the exact same findings. The W. E. Upjohn Institute  
23 findings actually showed on this graph a little large  
24 property value loss. And they stated that even if  
25 homeowners do not move as a result of the gravel mine, they

1 will lose homeowner equity as the potential sale price of  
2 their house is less.

3 So just ask the Ottolinos if the proposed mine  
4 was a hardship to them, 2288 Mill Hill. They sold for 30  
5 percent their market value. They had to because they needed  
6 to sell, but they sold 30 percent below because the new  
7 buyers found out about the mine. And so it really took away  
8 their ability to dicker and bargain.

9 So now we go back to Franklin County land use  
10 goals and objectives for the Master Plan. So these again  
11 are Franklin County's words.

12 "Encourage commercial and industrial  
13 development to be attractive, site appropriate, and  
14 compatible with surrounding uses."

15 Right now the surrounding uses around the mine  
16 are beautiful outdoor weddings, quiet pastures for  
17 convalescing horses, and very quiet peaceful homesteads,  
18 which that's the Princes' house, and it's not going to be as  
19 quiet and peaceful as you see it now because the proposed  
20 road for the mine comes out right across the street from  
21 their house.

22 So we're talking about attractive. This is a  
23 picture of the field as it stands now before it's  
24 desecrated. Would you rather look at this or this? This is  
25 Havin's landscaping. Boarded up. It's got dump trucks

1 everywhere. It looks like an industrial site, and it's  
2 right in town. It's not pretty. But yet, if you got to  
3 Kirkwood and you look at Kirkwood Supply, and their building  
4 there in Kirkwood, it's really actually kind of pleasant for  
5 what it is. So Franklin County and the City of St. Clair,  
6 they have the ability to make them make this look less of an  
7 eyesore, but they don't enforce that yet in your plan.

8                   So Franklin County land use goals and  
9 objectives again from the Master Plan: "Ensure new  
10 developments, minimize conflicts with existing residential  
11 or agricultural uses."

12                   And Franklin County tried to do that. The  
13 Review Committee invited Ms. Havin over, and said hey, we've  
14 got a problem with the community. We want to try to give  
15 them, you know, some reassurances that, you know, you're not  
16 going to just come in here and roll over them.

17                   And she came up with things that she thought  
18 that they could live with. So Chairman Evans' comment at  
19 the 12/20 meeting was, and this was in response to retail  
20 sales out of there, them not doing retail sales and keeping  
21 up Highway TT. He said Ms. Havin offered that because our  
22 concern with the safety issue with the drivers that weren't  
23 familiar with the area, and also wanting to keep off TT  
24 because it was more populated. Ms. Havin offered that in  
25 the Review Committee.

1 Ms. Eagan also said it was stated at Review  
2 Committee that once it freezes, the plant shuts down. It  
3 does not reopen. That was stated. And that also again was  
4 stated by Ms. Havin.

5 So my question is: Was -- in that Review  
6 Committee meeting, was Ms. Havin intentionally misleading  
7 the Review Committee about what her company needed or could  
8 do to help the community, or does she really not know what  
9 her company needs to have a black bottom line? I don't like  
10 either of those thoughts.

11 So this is where we're left tonight. This CUP  
12 was legally denied by Franklin County Planning and Zoning.  
13 It's denied. Five/five vote, tie vote, means denial.  
14 Everything that happened after that was improper and  
15 illegal.

16 So the actions of Meramec Aggregates will  
17 desecrate the natural resources of the county, endanger the  
18 health, safety, convenience, prosperity and the quality of  
19 life for county taxpayers causing a hardship on all the  
20 taxpayers for all those reasons.

21 The actions of Meramec Aggregates will cause  
22 serious injury to neighboring property uses and values, and  
23 they will also maximize conflict with the existing  
24 residences.

25 That's all I have tonight. Thank you for your

1 time.

2 CHAIRMAN UPCHURCH: Kim.

3 MS. LYNCH: Yes, sir.

4 CHAIRMAN UPCHURCH: Wait just a  
5 minute. And I don't think I have any questions for you.  
6 But do any of the other Board members have any questions of  
7 this witness?

8 MEMBER HOFF: [Negative head shake.]

9 CHAIRMAN UPCHURCH: Thank you.

10 MS. LYNCH: Thank you.

11 CHAIRMAN UPCHURCH: And who next will  
12 speak on behalf of that applicant? Can you sign in please  
13 and be sworn.

14 [Thereupon, the witness was sworn.]

15 MR. NICK NORMAN: Thank you for  
16 allowing us to speak this evening.

17 CHAIRMAN UPCHURCH: Your name for the  
18 record.

19 MR. NORMAN: Nick Norman.

20 N-O-R-M-A-N.

21 First I just want to be clear that we will --  
22 there won't be another opportunity to speak about the file  
23 170051. We're doing it all right now; is that correct?

24 CHAIRMAN UPCHURCH: That's correct.

25 MR. NICK NORMAN: Okay. So let me

1 get my -- this is Exhibit 7 through 11, I believe.

2 MS. EAGAN: So we'll just do Lynch  
3 then?

4 MR. NORMAN: Yes.

5 MS. EAGAN: Continue this.

6 MR. NORMAN: Yes.

7 MS. EAGAN: All right.

8 MR. NORMAN: First I wanted to say  
9 that the letter that you received is from a lawyer  
10 representing our side of the appeal, and it should be  
11 constructed as part of our appeal. So I'm not going to be  
12 redundant. I'm just going to try to bring up new facts.

13 MS. REPORTER:

14 [Thereupon, evidence was marked for  
15 identification and submitted for the  
16 record as Lynch Exhibit Nos. 8 through  
17 11.]

18 Okay. Sorry about that.

19 CHAIRMAN UPCHURCH: Before you get  
20 started, Scottie, what exactly are we doing with the doors  
21 at eight o'clock here?

22 MS. EAGAN: He should be coming up to  
23 close one of them so we know not to leave the room. And  
24 then when we can leave the room, he'll open them again.

25 CHAIRMAN UPCHURCH: Okay.

1 MR. NORMAN: Okay. First thing I  
2 wanted to talk about is the Jeffery Open Pit mine. With  
3 the exhibit that I just gave you, it talks basically about  
4 how --

5 CHAIRMAN UPCHURCH: Are you referring  
6 to Exhibit 7?

7 MR. NORMAN: Eight, correct. It's 8,  
8 but it's labeled 7.

9 CHAIRMAN UPCHURCH: Well, I'm sure  
10 the court reporter and the record's going to be delighted  
11 with that. So as long as we're chatting here, I've got  
12 something in my hands that says Exhibit 7, but you're  
13 telling me we're going to call that tonight?

14 MR. NORMAN: Exhibit 8.

15 CHAIRMAN UPCHURCH: Exhibit 8. And  
16 well, I'll let Scottie figure that out and/or the reporter.

17 MR. NORMAN: Sorry, Scottie.

18 MS. REPORTER: Just refer to them by  
19 the correct number.

20 MR. NORMAN: Okay. Okay. And it  
21 basically built from the last meeting in December, on  
22 December 20th. He brought up a good point about the Jeffery  
23 Open Pit mine still being active while this was all going to  
24 take place, and nothing really ever came of it. And that is  
25 going to add 84 dump trucks per day onto Mill Hill in that

1 very narrow, narrow section of Mill Hill. So that's going  
2 to bring a total of 224 dump trucks per day per 140 at Mine  
3 Number 2 and the 84 at Mine Number 1. And we have Mr.  
4 Kuenzel, Havin's legal representation, on the transcript  
5 saying that the Lyn Havin was completely compliant to finish  
6 out that mine basically until Mine Number 2 opened because  
7 of the extra traffic, but nothing ever happened with it.

8           And this is going to be completely outrageous  
9 for the area adding these a additional 84 dump trucks. You  
10 know, Lyn Havin can say if she's going to, you know, stick  
11 to her word or not, but as we've seen in the past, she  
12 hasn't with the Review Committee situation. So I would like  
13 that in -- as a condition to wait until the Jeffery Open Pit  
14 mine is completed until Mine Number 2 can open because Bill  
15 thought that was a very good point. And if for the rumor  
16 around town is that Havin is in desperate need of sand, that  
17 the Jeffery site isn't producing as much sand as they hoped.  
18 And they are now having to truck from Washington. They're  
19 having to buy sand in Washington and truck it to their -- to  
20 their site. And that means that they're trying to get Mine  
21 Number 2 open as soon as possible, because Mine Number 1,  
22 the Jeffery Mine, isn't producing as much.

23           So that is just adding -- that's just rumor.  
24 I can't confirm that, but that is just going to add some  
25 many more trucks going over Mill Hill and the Meramec

1 bridge. It's incredibly dangerous.

2                   And then also with this appeal, there was the  
3 issue of the repair and maintenance shop that was stated in  
4 the transcript on December 20th. That was never mentioned  
5 in the November meeting. Lyn Havin added in the transcript  
6 that she planned on having a maintenance shop at that  
7 location, but it wasn't on their plan. So they're going to  
8 be maintaining trucks there, which it has, you know,  
9 hydraulic fluids, oil filters, oil, and it's going to be in  
10 a floodplain right next to the Meramec River. It is an  
11 unsuitable spot for a repair shop right next to the river.  
12 And the fact that no one was able to comment on it is not  
13 just.

14                   And you can kind of see in the picture I gave  
15 you of the route that they'll be taking, which would again  
16 have more and more traffic to Mill Hill. And there is also  
17 a letter -- I'm not going to read it -- from the Greggs, who  
18 live at the site of Jeffery Open Pit mine, and it just talks  
19 about their hardship and what they are dealing with and how  
20 it's affecting their family and their lives.

21                   CHAIRMAN UPCHURCH: Just so I'm  
22 clear. were these exhibits not included in the packet?

23                   MR. NORMAN: Not to my knowledge.

24                   CHAIRMAN UPCHURCH: Okay.

25                   MS. EAGAN: Gordon, can I interject

1 real quick.

2                               What is listed as Exhibit 7 is actually going  
3 to be Exhibit 9, and Exhibit 8 is Exhibit 10, and there's  
4 the letter will be Exhibit 11.

5                               MR. NORMAN: You're really going to  
6 hate me now, because I have these similar exhibits for  
7 Permit Number 170051, the appeal for permit -- the appeal  
8 number, 170051, and I have Exhibits 1 through -- because I  
9 though it would be separate since it's separate on the  
10 agenda.

11                              CHAIRMAN UPCHURCH: Why don't we take  
12 a moment and --

13                              MR. NORMAN: Sure.

14                              CHAIRMAN UPCHURCH: I'm trying to  
15 make it easy on everybody.

16                              MR. NORMAN: Absolutely. I like  
17 that.

18  
19                              CHAIRMAN UPCHURCH: And I thought I  
20 was doing that when we started. Hope springs eternal.

21                              Why don't you renumber your -- or why don't you  
22 letter that Exhibit A through whatever it turns out to be.

23                              MR. NORMAN: Okay. Yes, I can do  
24 that.

25                              CHAIRMAN UPCHURCH: Can you -- can

1 you do that, because otherwise, I think we're just going to  
2 compound the confusion.

3 MS. EAGAN: Should we do it by file  
4 number? Should we change these to Lynch --

5 CHAIRMAN UPCHURCH: Inasmuch as we're  
6 taking the evidence up together, which again made perfect  
7 sense earlier, I'm to going to suggest not.

8 MS. EAGAN: Okay. So if you will  
9 please take just a moment and letter those. And I apologize  
10 for asking you to do that, but if you could, I think that's  
11 the simplest way for us to do it to benefit of the record  
12 for everybody

13 MR. NORMAN: I do have probably a  
14 hundred pieces of paper that I have to reletter. So it's  
15 going to take a while.

16 MS. REPORTER: Can we just go off the  
17 record while we do this?

18 CHAIRMAN UPCHURCH: Yes.

19 [OFF THE RECORD AT 8:04 p.m. TO MARK  
20 EXHIBITS.]

21 [Thereupon, evidence was marked for  
22 identification and submitted for the  
23 record as Lynch Exhibits A through I.]

24 [ON THE RECORD AT 8:08 p.m.]

25 CHAIRMAN UPCHURCH: I believe we'll

1 go back on the record now.

2 MR. NORMAN: Okay. So this is  
3 information that is pertaining the wholesale or retail sale  
4 of material, which was one of the conditions on the permit.

5 And first I want to talk about how it was said  
6 nearly ten times during the December 20th meeting. The  
7 transcripts -- I included quite a few of the quotes that Lyn  
8 Havin came up with the conditions and agreed to them during  
9 the Review Committee meeting.

10 She came up with these conditions and agreed to  
11 them during the meeting, and I and my father were at the  
12 Review Committee meeting. We were sitting right next to Lyn  
13 Havin, and I specifically remember her saying, "Can I make  
14 some suggestions that might make everyone happy?"

15 I remember her clearly saying that. There  
16 wasn't a reporter there to make a transcript, but it was  
17 stated nearly ten times on the December 20th transcript,  
18 that she came up with these conditions and she agreed to  
19 them.

20 So why are we appealing conditions that they  
21 agreed to? Why was Franklin County taking conditions that  
22 the developer came up with to make it more safe and a  
23 compromise for the people in the area? It doesn't make any  
24 sense.

25 CHAIRMAN UPCHURCH: Okay. I'm going

1 to let you restate that because whatever you were saying  
2 didn't make any sense to my ears.

3 MR. NORMAN: Okay. I'm sorry the  
4 fact that Commissioners during the December 20th meeting  
5 wanted to take out conditions that the developer came up  
6 with to appease the citizens and to make things safer.

7 CHAIRMAN UPCHURCH: And I heard that.

8 MR. NORMAN: Okay.

9 CHAIRMAN UPCHURCH: What are those  
10 conditions, and were they included in the order, or not  
11 included in the order?

12 MR. NORMAN: They were conditions 9  
13 through 11, and they are appealing condition 9, I believe.

14 CHAIRMAN UPCHURCH: Okay.

15 MR. NORMAN: So on -- so there is  
16 conditions A, B, C, D, E, F are all people quoting that Lyn  
17 Havin came up with these conditions and she agreed to them.

18 So now we're going do talk about Ron Williams  
19 and his quote as to why he wanted to keep that specific  
20 condition that Havin is appeal about their own trucks. And  
21 it is Exhibit G, I believe, that his problem was Highway TT.  
22 He said it's a racetrack and there's a big problem with  
23 that -- with that highway. And he is the Highway  
24 Administrator for the County, so you know, he knows roads.  
25 And that was a big reason as to why, you know, that was left

1 in there, was because of what he believed, and also Bill  
2 believed, that they could control the traffic.

3 That was the main reasoning behind having Havin  
4 owned trucks, so that the traffic -- so Havin can control  
5 the traffic, to take it out the Mill Hill to Highway TT.  
6 When you open up to retail, she can't do that. She can't  
7 control the traffic. People are going to be coming whatever  
8 way they want, and that then goes to deadman's curve, which  
9 is H -- Exhibit H, on your packet. It is a picture of  
10 deadman's curve. It is about 300 feet from Mine Number 2,  
11 this mine, and basically it's a 50-degree angle. The left  
12 side is a sheer rock wall, and the right side a hundred-foot  
13 drop straight down to the Meramec. I's called deadman's  
14 curve for a reason. You know, people have -- in my  
15 lifetime, people have flown off and have died on this curve.  
16 It is incredibly dangerous, and it is impossible for a dump  
17 truck and a school bus to pass one another on this curve.  
18 And you're going to have that happen if you open up to  
19 retail sales because the traffic cannot be controlled  
20 anymore.

21 This area is not suitable for this, and this is  
22 so dangerous. I really advise you to drive it and just to  
23 see people honk around this corner because it's so dangers,  
24 because there is a rock wall and the cliff.

25 And I am just so disappointed and ashamed that

1 in Franklin County I have to fight so hard to defend  
2 children's health, safety and their lives. I am shamed to  
3 live in a place where profits, egos, favors and biases  
4 overshadows the safety of children. And spot is that -- is  
5 what I worry about. This will -- an accident will happen.

6 Please take a look at this picture and would  
7 any of you want your children on a school bus going around  
8 this curb with a open-pit quarry 200, 300 feet away from  
9 this spot, where there's going to be unlimited traffic?

10 It's not if an accident will occur. It's when.  
11 Economic hardship and customer happiness should not dwarf  
12 the lives and safety of children and the residents of  
13 Franklin County. In a year from now, five years from now, a  
14 mother, a father, or daughter or son, husband or wife who  
15 just lost someone they love on deadman's curve or on Highway  
16 TT or on Mill Hill from a dump truck collision will be  
17 reading this transcript.

18 They'll be reading this exact sentence I am  
19 saying right now, and they will look to Franklin County in  
20 response when I ask why would you allow this permit to pass  
21 when there was so much warning, there was so much danger, so  
22 much evidence, so much outcry, no safety studies, no action  
23 taken? Why would you let this happen when so many people  
24 were warning you?

25 Choose your words very wisely, gentlemen. Your

1 silence and lack of action will only give rise to a future  
2 lawsuit from this mother, father, son, or daughter and only  
3 give evidence to the County's negligence and biasness to a  
4 poor and very senseless cause.

5 Thank you.

6 CHAIRMAN UPCHURCH: Thank you. Hold  
7 on. Are there any questions of this witness? [None]

8 Thank you.

9 MR. NORMAN: Thank you.

10 CHAIRMAN UPCHURCH: Who's next to be  
11 heard?

12 MS. EAGAN: I don't know what to mark  
13 these anymore. We'll go ahead and say Lynch and go with 12.

14 [Thereupon, evidence was marked for  
15 identification and submitted for the  
16 record as Lynch Exhibit No. 12.

17 Thereupon, the witness was sworn.]

18 MR. JEFF DAVIS: My name is Jeff  
19 Davis. I live at 1617 Highway TT, St, Clair, Missouri. And  
20 I oppose the gravel mine for several reasons.

21 The mine is not suitable for the area, and is  
22 unsafer to the residents. Our biggest concerns are safety.  
23 Highway TT is too dangerous for approximately 140 trucks to  
24 be traveling everyday. Highway TT is too narrow, hilly, and  
25 there are no shoulders, and any blind spots in the

1 homeowners' driveways.

2 We have obtained a copy of the accident report  
3 for Highway TT for the last ten years. There have been 130  
4 accidents, 68 injuries in the last 10 years. With  
5 additional traffic, you can guarantee those numbers to  
6 increase.

7 The deterioration of Highway TT is already in a  
8 distressed state, and it cannot handle the addition 140  
9 trucks per day with the possibility of that number to  
10 increase.

11 MoDOT does not have the resources available to  
12 maintain the road. Taxpayers of Missouri should not have to  
13 pay for the highway that will be destroyed by these heavily  
14 loaded gravel trucks.

15 The loud noise and pollution of these trucks  
16 will destroy the peaceful country living.

17 Property values will decrease. All of the  
18 above contributes to the loss of property values. People by  
19 the mine and along the truck route are subject to lose  
20 millions of dollars in property values.

21 Thank you.

22 CHAIRMAN UPCHURCH: Are there other  
23 questions for this witness? [None]

24 And just for the record here, we've obviously  
25 received your exhibit. And while I'm talking about the

1 other exhibits that have been offered, we're receiving all  
2 those, just so there's no confusion about that.

3 MR. DAVIS: Okay.

4 CHAIRMAN UPCHURCH: If there are no  
5 other questions, thank you.

6 MR. DAVIS: Thank you.

7 CHAIRMAN UPCHURCH: And I'll speak  
8 for the Board to thank, not just this witness but the  
9 others, so far in being brief and to the point. And we do  
10 appreciate that. We do want to hear from you, and we  
11 appreciate you being concise.

12 Next witness? [None]

13 If there aren't any other witnesses to be heard  
14 in support of the Kim Lynch appeal or in opposition to the  
15 Meramec Aggregate appeal, then I'm going to turn it over to  
16 the Meramec Aggregate application to be heard at this time.

17 Who will be heard first for Meramec Aggregate?  
18 Cameron, step on up.

19 MR. CAMERON LUEKEN: I'm going to  
20 need a minute just to plug in my PC. So --

21 CHAIRMAN UPCHURCH: Well, it would be  
22 unfair. We having let anybody else set their stuff up.

23 MR. LUEKEN: Right, right.

24 CHAIRMAN UPCHURCH: And I think,  
25 while you're doing that, if anybody needs to take a break,

1 we're going to take about three and a half minutes here for  
2 Cameron. There's a rest room somewhere. So let's take  
3 about three and a half minutes. So if anybody's got to go,  
4 go, and we'll kind of -- we'll sort of wait on you.

5 [Thereupon, a break was taken at  
6 8:20 p.m. to 8:34 p.m.; after which, the  
7 proceedings continued as follows:

8 Thereupon, evidence was marked for  
9 identification and submitted for the  
10 record as Havin Exhibit Nos. 1 through  
11 83.]

12 CHAIRMAN UPCHURCH: I believe we're  
13 going to go back on the record.

14 And I believe we'll need you to sign in and  
15 state your name for the record and be sworn.

16 MR. LUEKEN: Okay. I signed in  
17 earlier. Do I need to sign if again?

18 CHAIRMAN UPCHURCH: If you will.

19 MR. LUEKEN: Sure, sure.

20 [Thereupon, the witness was sworn.]

21 Good evening. My name is Cameron Lueken with  
22 Wunderlich Surveying and Engineering, and we're representing  
23 Havin Material here tonight.

24 So tonight we're going to talk about the  
25 Conditional Use Permit that was issued. We're going to talk

1 about the need, the who, the how, the where, the when, and  
2 then --

3 CHAIRMAN UPCHURCH: Just so the  
4 record makes sense, you said you were here for Havin  
5 Materials, but --

6 MR. LUEKEN: Sorry. I'm here --

7 CHAIRMAN UPCHURCH: -- you're really  
8 here for Meramec Aggregates?

9 MR. LUEKEN: That'd be yes. Thank  
10 you for the correction.

11 CU: The court reporter or somebody's  
12 going to thank me at a later date for doing that.

13 MR. LUEKEN: Thank you for that  
14 correct. Yes. I'm representing Meramec Aggregates tonight.

15 There again, we're -- we're going to talk about  
16 the need, the who, the how, the where, the when, the nearest  
17 residences and the concerns of the public.

18 Let's talk about the need. It's kind of get  
19 the history of this. I've been -- we've been in front of  
20 this Board before, and we discussed the Jeffery Open Pit at  
21 that time. That's a short-term supply to the long-term  
22 demand. Meaning that aggregate supply in the Jeffery's  
23 location is about three to five years. The supply required  
24 -- so this is more about the supply required by future  
25 demand. So the purpose is we're trying to install a new

1 processing facility. It's a longer-term solution, and it's  
2 going to potentially be a 30-year aggregate supply for the  
3 county.

4 So in reference to the two, you'll see on the  
5 above slide that this is the application being discussed  
6 tonight. The Bruns pit. This is the-- on the other side of  
7 the river, the south side of the river, this is what was  
8 previously permitted to Jeffery Open Pit here. You can see  
9 this is quite a larger facility than the Jeffery Open Permit  
10 -- Open Pit.

11 It's been a common practice across the state to  
12 mine this material from the river because of its unique  
13 characteristics. There's Franklin County. I'll talk about  
14 this a few times tonight, but this week Meramec Aggregates  
15 is supplying the only source of this aggregate in the  
16 county.

17 This is a study that was done for our -- some  
18 people further east of here, for Winter Brothers, talking  
19 about the uniquely qualified aggregate source. It talks  
20 about the lack of lignite in this -- in this rock, this  
21 aggregate. The lignite basically causes black spots on the  
22 concrete on flat work and other un- -- other characteristics  
23 that are not inviting to use lignite aggregate.

24 So this is lignite free, is what that is.

25 And again, it's at a specific location. It's

1 basically in the Meramec River basin. This talks about in  
2 the Bourbeuse River and the Missouri River and other rivers  
3 in the area, it's got this lignite. And so it's a uniquely  
4 qualified source from this Meramec River basin.

5 Because lignite is an issue in the state, MoDOT  
6 has a specification that when flat work is going to be used  
7 on their roads and bridges, there's only a certain amount of  
8 coal and lignite to be present in the aggregate.

9 This is an example from their Missouri Standard  
10 Highway Specifications for Highway Construction. So they --  
11 they watch the lignite presence in aggregate, and there  
12 again, this aggregate is lignite free.

13 There's also a American Site Testing Materials  
14 that says 0.5 percent max cannot be -- this kind of  
15 parallels MoDOT. American Site Testing Materials has a  
16 lower percent weight.

17 So the hardness is very unique to this.  
18 Limestone which is typically found in the limestone quarries  
19 is much softer than Meramec sand and gravel. Therefore,  
20 it's -- it's prone to pop out and stuff like that.

21 So there's basically excavation options, either  
22 from the river or from along side the river, and basically  
23 because of DNR regulations, a lot of aggregate in the past  
24 was obtained from the river channel. That's no longer an  
25 option. So it needs to be from alongside the river, which

1 is what the Jeffery's pit was and this proposal is.

2                   The crushed limestone limitations. It's  
3 low-density, as discussed. Since tervase [[h.] is embedded  
4 in the limestone, there's an alkali silica reaction that  
5 occurs, and that's what causes the pop-outs. So basically  
6 when the limestone is present near the top of the flatwork,  
7 the water will interact with the alkali -- or the limestone,  
8 the low-density, cause it to swell and freeze and pop out.  
9 So it looks good when the concrete is poured, but after  
10 years, it'll eventually pop out.

11                   So these -- this limestone has an absorption  
12 rate of anywhere between -- what's high absorption rate?  
13 It's between 0 and 50 percent porous. It causes pop-outs.  
14 It's soluble.

15                   So this has been occurring not only -- it's --  
16 it's an issue as the American Site Testing Materials as  
17 MoDOT talked about, but the real issue has become in areas  
18 like O'Fallon where limestone has been used. So the area on  
19 the right was late 2013, when a new concrete street went in,  
20 and this is June 30, 2016, a few years later. And what's  
21 happening there is that alkali carbonate reaction has  
22 occurred, and O'Fallon has enough problems they've since  
23 adopted an ordinance addressing that, 62/42. It requires  
24 additional aggregate testing. According to ASTM-C295, if  
25 you're going to use anything that's not Meramec rock.

1                   So basically their new ordinance says if you  
2 want to use limestone, you have to get it tested to make  
3 sure -- tested by a third party to make sure that these  
4 nasty properties don't exist in it.

5                   Or in lieu of performing the above testing,  
6 Meramec gravel can be utilized for coarse aggregate in  
7 forming cement pavement. So if you use Meramec gravel in  
8 the concrete, you don't need to test it.

9                   So not only is this an issue in Franklin  
10 County, it's an issue in O'Fallon that's come up, and they  
11 just said hey, Meramec rock is a uniquely qualified source,  
12 and if you use it, you don't need to do further testing.

13                   So the application I talked about are concrete  
14 streets, flatwork driveways, concrete aggregate. It's  
15 basically the higher quality the vendors request. It also  
16 uses a higher quality sandy and limestone concrete in order  
17 to build these better, using exposed aggregate, where washed  
18 stone is require for chip and seal roads, in drain fields,  
19 in wastewater treatment facilities such as landfills.

20                   So when you look at the -- a yard of concrete,  
21 what is it, and a large portion of it, 46 percent, is coarse  
22 aggregate, 35 percent of it's sand. So 81 percent of that  
23 yard of concrete is coming from this uniquely qualified  
24 source that we're talking about tonight.

25                   So here's what it is. So the company

1 background. Havin Materials is the oldest concrete company  
2 in the county. And as I said before, it's the only source  
3 of Meramec aggregate in the county. They've been in  
4 business for 77 years. They currently have over 48  
5 full-time employees operating the plants in Union, St.  
6 Clair, Sullivan, and Owensville.

7 Their purpose is to continue to mine Meramec  
8 sand and gravel in the NUA zoning district, and to obtain  
9 that highly qualified aggregate for commercial products.

10 The history is they're currently a sand and  
11 gravel plant at the Highway 30 location, and that was being  
12 fed by gravel on that site. The Jeffries plant is now  
13 feeding that location. However, the purpose is to open a  
14 new sand and gravel plant at a different location to provide  
15 that aggregate for the county in the future.

16 So how are we going to do this, how, where and  
17 when? So this is a permitting flow chart of the things that  
18 have been done on this particular application, which has  
19 been test drilling completed to make sure there's enough  
20 aggregate there. There's been a wetlands study done. That  
21 leads to the 404 and the 401 here. That is -- that has been  
22 completed.

23 So where is this property at? So before we had  
24 talked about the Jeffries property, which was to the south  
25 here. This is the new Bruns plant, processing facility.

1 We've heard a lot about Mill Hill Road and we've heard a lot  
2 about TT. So I'm sure most of you remember, but I want to  
3 provide this map in proximity to St. Clair. This is  
4 commercial.

5 So the operation details of the facility is  
6 Monday through Friday, 7:30 to 3:30 p.m. Saturday 7:30 to  
7 12:00 p.m. up to 12 times a year. Eight to ten employees.  
8 There's about 7 foot of overburden and about 20 foot of  
9 aggregate in this area. There'll be about a 25-acre lake  
10 once this thing is -- once this permit is -- once this  
11 aggregate is excavated. There is a hundred foot buffer from  
12 the existing bank to the lake.

13 It'll be a secure facility. The office and  
14 plant will be fenced and gated. This is also regulated by  
15 the Mine Safety and Health Administration.

16 So the operational details. Basically it's  
17 going to be about 30 years to complete. DNR recommends a  
18 50-year permit for this. The permit will be for 35 acres.  
19 Includes all disturbed areas. Areas that show is about 30  
20 acres. That includes the roads, office, processing is about  
21 five acres.

22 So what does this look like? Here's the river  
23 to the south. As Scottie had mentioned, the floodway is  
24 here. There's no activity occurring in the floodway. It's  
25 all in the floodplain. This area in blue is the area in the

1 floodplain. So the entire facility is in the floodplain.  
2 However, any building that is -- needs to be permitted  
3 through the Franklin County Building permit, which is the  
4 scale, the office, repair facility, the trucks or whatever,  
5 any structure that's going to require a permit will be  
6 elevated two foot above the base elevation and built in  
7 according with the County requirements for commercial  
8 structures.

9 So there's some concern earlier about diesel  
10 fuel and oils leaking into the river, but that will be  
11 elevated above the base elevation just like any other  
12 structure anywhere in the county.

13 So how does this actually work, the operation  
14 sequence? Basically in year one, this overburden removed,  
15 stockpiled on site somewhere, and we propose a berm here  
16 along the road to shield the facility from anybody driving  
17 by on Mill Hill and these properties to the north.

18 And then basically the dredge will occur,  
19 activate. The dredge will pull the rock to the processing  
20 facility. The water will then return to the pit that it  
21 came from.

22 This proceeds across the project, year one,  
23 year two, so on and so forth until this facility is  
24 completed.

25 We do have at least a hundred foot buffer all

1 the way around it. There will be a 25-acre lake on the  
2 location.

3 And if any of you have any questions about  
4 anything as I'm going through these slides, please stop me  
5 and ask me.

6 Is there any question about the site plan in  
7 particular? [None] Hearing none, I'm going to go on.

8 So basically the -- as far as this stream  
9 buffer width comparing to other stream buffer widths, most  
10 states require a hundred foot or less. Franklin County's  
11 land use regulations also require about a hundred feet. In  
12 other areas of this, if you look at this one, this one's a  
13 hundred feet. If you look in Pacific, this one's a hundred  
14 feet. If you look at another spot in Pacific, this one's a  
15 hundred feet. So we're in line with what other facilities  
16 that has been permitted.

17 Where's the nearest residences? When you look  
18 at the nearest residences in proximity to the excavation,  
19 we've got a house here at 480 feet. That's where we're  
20 putting that berm in. Another structure 885 feet, another  
21 structure 850 feet. And there's basically these cabins down  
22 here at 500 feet, but Lyn will purchase those cabins with  
23 the purchase of the property.

24 Concerns of the public. Increased traffic  
25 potential. On -- so this is -- this is the loaded truck

1 route we talked about out on Mill Hill Road up TT. And so  
2 basically this about 3/4 of a mile on Mill Hill Road to get  
3 to the intersection of TT from the exit.

4 Most of these drivers will be familiar wit the  
5 road. The plant will be closed during peak recreational  
6 times. Average about 70 trips a day. This is an entrance  
7 looking south on Mill Hill Road at the proposed exit to the  
8 plant and proposed entrance to the plant. This is a view  
9 looking north from the proposed exit and entrance.

10 The concerns of roadway failure. The route is  
11 its normal road is County-maintained. Off State Highway TT  
12 is MoDOT maintained.

13 Going back to MoDOT maintained, at one point,  
14 there was a landfill that operated on State Highway TT. So  
15 this is not the first time State Highway TT has been  
16 subjected to truck traffic. I don't know how long that  
17 landfill operated for sure, but I know it goes back at least  
18 -- it was operating at least 20 years ago, at 22, something  
19 like that. I'm not sure how long -- I'm not sure when it  
20 was decommissioned, but State Highway TT has been subjected  
21 to truck traffic in the past.

22 Protected species and concerns of the public.  
23 The reality is that the U. S. Fish and Wildlife has approved  
24 this. The United States Corps of Engineers has investigated  
25 and approved the site. There is no impact to jurisdictional

1 waters or wetlands of the United States. We will maintain a  
2 hundred foot buffer from the river. A 25-acre lake after  
3 completion.

4 This is the letter from the Missouri Department  
5 -- I'm sorry, the Department of Army Corps of Engineers,  
6 basically saying that there's not going to be an impact to  
7 -- to anything, that it's okay to go ahead. So we got our  
8 404 from Jennifer Stiles. Got that on May 9th last year.

9 This is a letter from Missouri Department of  
10 Natural Resources. Basically this is our 401 saying that  
11 everything is clear. So that's been achieved.

12 This is a wetlands inventory map. Basically  
13 you can see there's no wetlands present on the site, and the  
14 Army Corps of Engineers came out physically with two of  
15 their employees and verified that same thing. I was present  
16 during that investigation of the site, and we looked for  
17 hydric soil as well as wetlands across the site.

18 Noise is a concern. The reality is that this  
19 will be Monday through Friday, 7:30 to 3:30. Saturday up to  
20 12 times a year 7:30 to 12:00. Maintain a hundred foot  
21 buffer from the river. So there's some common sounds out in  
22 the area. So one thing that was major that the dredge has  
23 sound levels of 112 decibels. When the escalator is  
24 operating a hundred feet away, it's about 73 decibels.  
25 That's between a washing machine to the typical speech.

1                   This is with -- this is with the interference  
2 of hills and trees not factored in. This is straight-line  
3 distance and open air. So basically a jet boat at a hundred  
4 deci- -- or at 50 feet is about 100 decibels.

5                   So this is the direct sound path so you can see  
6 that this is the excavation. This is the dredge sitting in  
7 the hole, existing grade. As the dredge operates, the sound  
8 -- the direct path is out like this. The refracted path,  
9 which would be less, will be -- this would be someone  
10 standing right here or driving by, and their refracted path  
11 would be up -- up on the bank.

12                  Particulates in the air. DNR regulates air  
13 emissions. So any fugitive dust that would be leaking on  
14 the site would be regulated by DNR. They limit the  
15 particulate size and amount tested locally. Material will  
16 be moist for the loading. So when these -- when these --  
17 after this material is processed -- it comes out of the  
18 dredge wet, and after the material is processed, it's put in  
19 a pile. It's already been cleaned of that, the more  
20 friable -- the more -- I don't know about friable, but the  
21 more lighter, the -- the matter, you know, is that it is  
22 removed at that time. So when they load these trucks, the  
23 material is going to be free of that matter on site.

24                  The trucks will be tarped. There will be a  
25 large buffer from the property lines. The Meramec rock, as

1 I said, it's a harder rock. So there's minimal dust around  
2 the plant. The site is surrounded by trees and hills.

3 There was a concern with stormwater runoff.  
4 The reality is that DNR takes the sample locally, submitted  
5 quarterly. They have levels for phs in solids like oil and  
6 grease. There is a floodplain that will be required that  
7 will guarantee that this oil and grease, these areas of  
8 potential issue are above the base level of elevation.

9 The concerns of the boaters, fishermen and  
10 floaters. Basically the activities will not occur at peak  
11 recreational times, mostly week -- mostly the boaters,  
12 fishermen and floaters will be out there during the  
13 weekends, holidays and evenings. The elevation treeline  
14 will shield it from the river.

15 There will be summer foliage during those peak  
16 recreational times. When you look at a cross-section of  
17 this, as you look at a -- someone that's in the river, as  
18 they look northwesterly to this processing plant, they're  
19 looking over the top of these trees. The highest part of  
20 the plant, they'd be looking about a hundred -- over a  
21 hundred feet over the top. So they cannot see the plant  
22 from the river. So there won't be a visual impairment of  
23 the stream side for someone floating down the Meramec.

24 As far as concern in decrease in property  
25 values, the reality is that the closest residence is about

1 480 feet away on the other side of Mill Hill Road. As an  
2 example of property values, this is Havin's existing scale  
3 and plant operation on Highway 30 across from the golf  
4 course. There's a residence here about 540 feet away from  
5 operations. This is sales data we pulled from the  
6 assessor's on December 11th of '03.

7                   There was a sale of 210,000. Two years -- not  
8 even two years later, 7/20/05, it sold for 269 [sic]. There  
9 was a plant that is operating there where there is no  
10 apparent degradation of property values. It's actually  
11 increased.

12                   The other property we pulled to the east about  
13 -- about 470 feet away to the east. The sales that were  
14 there goes back to '94: 117.7 in '94, 158.5; \$138,500 in  
15 '02, \$187,000 in '07.

16                   So these -- this is a plant that currently  
17 operates and it's operating by the applicant, Lyn Havin,  
18 Meramec Aggregates, and these are structures that exist on  
19 each side of this, that flank this property, and there's no  
20 apparent decrease in property values. The property values  
21 have been increasing.

22                   The impact to local businesses is a concern.  
23 the closest business is about 11,000 feet away to the  
24 southwest. It's on the other side of Mill Hill Road. It's  
25 screened by hills and trees. It has different hours of

1 operation. It's a wedding venue. And they typically are  
2 going to operate a different peak times than we are. So a  
3 dredge that's operating at 112, if it was a straight-line  
4 distance at that peak, it would practically be about 52  
5 decibels, which is pretty -- which is pretty low.

6 But because it's screened by the hills and  
7 tress, it would actually be less. So what's that. So in  
8 comparison, if there's an event, you know, they operate at a  
9 hundred -- or at 50 feet, it's going to be a hundred  
10 decibels as the motor boat passes by their wedding venue.

11 So what's that look like, the hill we're  
12 talking about. So as you look at the pavilion here, which  
13 is here, you look at the existing grade, there's a big  
14 hillside, which is right here. And so I talked about noise  
15 and noise paths. So basically our site path,s, there's no  
16 way that you can see this processing facility from this  
17 wedding venue. It's about 95 feet below the top of the  
18 hill, and if you looked at a straight line, it would be over  
19 380 feet above the top of the plant. So it's impossible to  
20 see the wedding venue from the plant.

21 This is a further depiction of the same thing.  
22 This is just the illustration to go over the top of the hill  
23 back down, across the flat and it goes back over on the  
24 right.

25 So the impact to local businesses. The reality

1 is it occurs at different peak hours. The wedding venue  
2 versus the open pit. The guests arrive around 3:00. The  
3 ceremony is around 4:00. We're shutting down at 3:30.

4 So now this is looking east from their  
5 facility. That's looking at the Jeffries Open Pit through a  
6 buffer of trees. This is actually to the northwest. You'd  
7 be turning to the left. So there again, this view is  
8 looking east towards the Jeffries pit, and as illustrated  
9 before, you can't see this from looking to the northeast.

10 This is another example looking at the -- to  
11 the east.

12 There was also concern about how it relates to  
13 these rescue haven. To their property line, it's about 670  
14 feet. To their structures, it's about 1,800 feet. To their  
15 -- there's a barn here, and there again, it's located on the  
16 other side of Mill Hill and screened by hills and trees. So  
17 the sound from that dredge will be very diminished.

18 There was concern about disturbing the gray  
19 bats. There was a concern about why didn't we do a study,  
20 to do this or to investigate the gray bats. Gray bats  
21 migrate. It's -- they may or may not come back to this  
22 facility or to this cave. The U. S. Fish and Wildlife have  
23 approved our plan.

24 The gray bats roost in caves during the hours  
25 of operation. The gray bats feed at night after the hours

1 of operation. We felt it wasn't necessary to do a study on  
2 this. I'll give you that in a minute. So basically we think  
3 the lead mine, the old lead mine, it's been testified by the  
4 opposition there's gray bats in the old lead mine. We don't  
5 know exactly where the lead mine is at. We think it's right  
6 here. We're about 930 feet, unverified. We're about 700  
7 feet unverified, based on their testimony, to that -- to  
8 that mine. So the wedding venue is actually closer than we  
9 are.

10 The wedding venue has day and night activity.  
11 We just have day activity. They have crowds, lights and  
12 sound. We're only at 53 decibels at 930 feet.

13 There's vehicle during the night when the bats  
14 feed. We have no traffic at night.

15 So a typical timeline if you compare Meramec  
16 Aggregates to the -- this Lost Hill, you can see that  
17 basically when the bats are feeding on the river is in  
18 conflict with the wedding venue, but not with us. We do not  
19 operate at night.

20 Saturdays typically the same way. The time can  
21 change. And there again, there's a conflict of bats feeding  
22 at night. Traditionally Saturday is the most popular day.

23 So basically from a timeline standpoint, the  
24 reason why we felt it wasn't necessary to do a study is  
25 because we think the study has already been done. By way of

1 example, there's been events occurring while the bats have  
2 been feeding, and you'll see there was a wedding venue that  
3 was done on May 23, '15. This is one that was done on May  
4 21st of '16 with fireworks, and basically they -- when they  
5 involved the bat biologist from MDC, they explained the bats  
6 feed off the river when the insects are most abundant.

7 This was testified in the appeal on June of  
8 '16, and you know, 11/16 it was fireworks there again. But  
9 basically Nick Norman had testified that, you know, they get  
10 three -- now they're getting three to five bats a second.  
11 Ten years ago, they were very rarely ever found. So the  
12 wedding venue has been operating there at night during the  
13 feeding time, and it hasn't affected the bats.

14 I can't imagine our non-conflict time operating  
15 would be affecting the bats.

16 So -- and so with all that said, what -- what  
17 you note from this slide is that DNR issued a permit for  
18 Jeffries' permit on 7/7/2016. They noted the 7/5 MDC bat  
19 population and put it in their report. DNR was aware of  
20 this bat population study when they issued the permit to us,  
21 to Lyn Havin, Meramec Aggregates.

22 So there again, the differences is --  
23 differences are we are not going to impact it as much as the  
24 wedding venue. Therefore, we don't feel like we need to do  
25 a bat study.



1 MR. LUEKEN: Okay.

2 So that concludes basically the justification  
3 for the permit.

4 Now we're going to get into the appeal that Lyn  
5 or that Meramec Aggregates filed, and that basically  
6 surrounds Condition Number 9.

7 So it was recently approved, 160220. There  
8 were nine conditions issued. The purpose was to -- the  
9 purpose of this appeal is Meramec Aggregates is to remove  
10 Condition Number 9. And that is that only Havin/Meramec  
11 Aggregate owned or operated trucks shall be permitted to  
12 haul material from this location.

13 I guess there was -- there was testimony  
14 tonight that the number had substantially increased from  
15 clearly 140 to 2-something. And I guess I wanted to clarify  
16 that, that this is the Jeffries permit. They come down Ely  
17 to Riverbend up 30 to process at the existing wash plant.  
18 So there was testimony that those trucks would appear at --  
19 on TT, and that's not the case. Meaning that basically this  
20 plant would operate here until Jeffries permit expired --  
21 till Jeffries' aggregate is mined and this plant would move  
22 to the process facility here. And then the material would  
23 be hauled up TT and out.

24 What happened was in -- giving Planning and  
25 Zoning a lot of credit. It was a complicated issue, and

1 they inadvertently said, okay, we don't want you to haul  
2 material from here. Meaning that retail sales, we want you  
3 to take the material and process it here. Haul it down Mill  
4 Hill Road down Bethel Church back to and sell it here.  
5 That's handling the material twice as much as it needs to be  
6 handled for a retail sale. And I guess that's what I want  
7 to kind of explore with you tonight is, is that it's -- it's  
8 -- I want to clear up the confusion about we're not talking  
9 about 200 trucks on TT. We're still dealing with the 140,  
10 the subject of today we're talking about, and the confusion  
11 surrounding what's happening at this facility.

12 So let's break this down a little bit. So the  
13 proposed truck route would be out Mill Hill 3/4 of a mile up  
14 TT. So it's only 3/4 of mile on Mill Hill Road. Most  
15 drivers are familiar with these roads. Then we communicate  
16 -- Lyn would communicate that route to the patrons that come  
17 get the material. The plant is closed again during peak  
18 recreational times, about 70 trips a day.

19 So only Havin trucks can haul from the site.  
20 That's the condition we're talking about. This forces the  
21 sales from the existing site. I mean, this forces the sales  
22 from, when I say the existing site, this site. It forces it  
23 -- the aggregate to be mined from here, brought around here,  
24 and sold from there.

25 So what that does is we got to haul the

1 aggregate to the existing site, where she's selling from  
2 now, and that's going to make the wash plant and proposed  
3 site, you know, kind of like inefficient. Meaning that the  
4 raw material, you know, it's possible the raw material would  
5 have to be hauled to existing wash plant if we can't sell it  
6 from this new spot.

7                   There again, 70 trips a day would go down Mill  
8 Hill Road and Bethel Church Road because we're loading the  
9 stuff twice. That increased cost can be passed on to the  
10 customer. So basically by that Condition Number 9, we  
11 travel 2.5 miles down Mill Hill Road, and we have to travel  
12 Bethel Church Road another 1.83 miles to get to Route 30 and  
13 make a left on 30 and go up to the existing wash plant.

14                   So that condition, rather than 3/4 of a mile on  
15 county roads goes to about 4.42 miles on county roads, which  
16 is about a 489 percent increase in the road route length.  
17 There again, 70 trips per day.

18                   So it just doesn't make sense that we need to  
19 pick up this material and move it to another plant to sell  
20 it. That's why we'd like that condition removed. As well  
21 as the way the condition exists right now, is that if we can  
22 still haul out TT, but if a retail customer wants to buy  
23 material, we've got to haul the material here. So now we're  
24 going to be traveling down TT and down Bethel. So the  
25 additional properties are impacted, additional country

1 properties are impacted.

2 So again, the conclusion is, is that if we lift  
3 Condition Number 9, that's going to decrease the impact on  
4 the county roads, you might say, and it will not vastly  
5 affect the people on TT. I guess speaking about TT -- well,  
6 I added those things.

7 Yeah, I just want to mention that Highway TT  
8 handled the truck -- the trash truck routes for many years  
9 over TT.

10 And I guess that concludes what I'm going to  
11 say if anyone has any questions.

12 CHAIRMAN UPCHURCH: I do.

13 MR. LUEKEN: Okay.

14 CHAIRMAN UPCHURCH: So with regard to  
15 the appeal and with regard to Havin and Meramec Aggregates  
16 owned trucks, the complaint there by you all is just that it  
17 would be less efficient. But in fairness, by doing that,  
18 the concerns that have been stated about unfamiliar drivers  
19 or drivers not familiar with the area at all would be  
20 resolved by that, if it was only Havin vehicles, that could  
21 be done. It's going to be a five-mile run to the existing  
22 site on Highway 30, which is a major highway; is that  
23 correct? Am I hearing that right?

24 MR. LUEKEN: So I guess the thing  
25 that we're -- let me take a drink here.

1                   Yes, you're correct in stating that if it's --  
2 if it's done the way it's done right now, Havin drivers  
3 would be halling the material to the existing wash plant.  
4 That's correct.

5                   If the Condition Number 9 is lifted, it would  
6 be the retail could occur at the proposed Bruns property.  
7 But I guess what I'm saying -- I guess our point is that the  
8 consumer is going to pay for that additional double handling  
9 of the material plus in the county roads will be impacted  
10 more by that additional haul length. Rather than 300 --  
11 rather than 3/4 of a mile, it's going to be 490 percent  
12 more. So I guess --

13                   CHAIRMAN UPCHURCH: I'll be the  
14 devil's advocate a little bit. Are you saying that there is  
15 going to be a great impact on the roads?

16                   MR. LUEKEN: I'm saying the  
17 potential -- I'm saying the trips per day on the county  
18 roads are subjected more -- let me back up. There's going  
19 be more miles traveled with the trucks on county roads than  
20 there would be if Condition Number 9 was lifted.

21                   CHAIRMAN UPCHURCH: Okay. Anything  
22 else you want to often on my question?

23                   MR. LUEKEN: No. No, Steve may  
24 have -- or Steve and Lyn may have something they want to  
25 offer, but I do not.

1                   CHAIRMAN UPCHURCH: Okay. You  
2 referred several times to this hundred-foot buffer, but I  
3 don't see that in the order that was entered. Does that  
4 appear in one of the permits and I'm just not seeing it?

5                   MR. LUEKEN: So the hundred foot --

6                   CHAIRMAN UPCHURCH: Buffer.

7                   MR. LUEKEN: -- buffer is in the  
8 latest regulations as relates to different things that are  
9 permitted. The hundred-foot buffer was something we  
10 proposed for this CUP, but I don't know. Is it included in  
11 here? Or basically we drew on the site plans what we did  
12 on -- on the site plan.

13                  CHAIRMAN UPCHURCH: Well, that's my  
14 question because that seems to be the criticism that comes  
15 to us from time to time, is that there is chat about this,  
16 that or whatever, and I'm not seeing the hundred-foot buffer  
17 which everybody seems to be talking about tonight as if that  
18 exists. And I don't see it in the order. So that's my  
19 question. Scottie?

20                  MS. EAGAN: It's not listed on the  
21 conditions, but it is a part of our land use regulations as  
22 something they have to follow.

23                  CHAIRMAN UPCHURCH: Okay. So it  
24 would be required, and not necessarily have to be added to  
25 an order?

1 MS. EAGAN: Correct.

2 CHAIRMAN UPCHURCH: Thank you.

3 In addition to that with regard to the Saturday  
4 business hours, why does there have to be any Saturday  
5 business hours at this location?

6 MR. LUEKEN: So what I'll do is I'll  
7 refer to Steve or Lyn --

8 CHAIRMAN UPCHURCH: Okay.

9 MR. LUEKEN: -- to answer that.

10 CHAIRMAN UPCHURCH: That's fine.

11 I think that's the only questions I have,  
12 Cameron, but I'm going to open it up to other Board members.

13 Are there other questions from other Board  
14 members?

15 MEMBER HEAD: Cameron, I have a  
16 question.

17 MR. LUEKEN: Yes, sir.

18 MEMBER HEAD: What dictates the 70  
19 trips per day? Is that the amount that can be dredged, or  
20 is that anticipated demand, or how do you come up with that?

21 MR. LUEKEN: Not to put words in your  
22 mouth, but yes, it's a product of anticipated demand, number  
23 of employees Lyn's -- Lynn has dedicated to the site, the  
24 ability of the plant to process that material.

25 So it's a factor of supply. It's a factor of

1 demand. It's a factor of employees. It's a factor of the  
2 ability to process the material.

3 Does that answer your question?

4 MEMBER HEAD: Yes. And would that  
5 change if you were successful in lifting Number 9 --  
6 Condition Number 9?

7 MR. LUEKEN: I'll let Lyn answer  
8 that.

9 MR. KUENZEL: I'll answer that.

10 MR. LUEKEN: Okay. Steve will answer  
11 that.

12 MEMBER HEAD: I don't have any other  
13 questions.

14 CHAIRMAN UPCHURCH: Any other  
15 questions?

16 MEMBER SCHRIEWER: Yeah, I just kind  
17 of have a general question.

18 If we're lifting Number 9, your statement was  
19 that county roads will be used less than the way it is  
20 currently presented. How are we ensuring that other  
21 companies are using not Mill Hill all the way into St. Clair  
22 rather than Mill Hill to the church road, or taking TT and  
23 going through Mozel [ph.] to get up closer to the city?

24 MR. LUEKEN: Sure, that's the  
25 question. The answer to that question, you know, the best

1 way I can answer the questions if you're commercial -- you  
2 got -- you have a large truck like that and you drive Mill  
3 Hill compared to driving TT, your production of trips per  
4 day, is going to be greater on TT, and you're not going to  
5 drive Mill Hill.

6 It's just Mill Hill is a horizontal and  
7 vertical movement. Mill Hill is not as good as a horizontal  
8 line with or vertical alignment of TT. So your production  
9 per day is going to be greater on Highway TT. Your  
10 efficiency of hauling trips per day is greater on TT than it  
11 is Mill Hill. So you may drive it once, but if you come  
12 again, you're not going to drive Mill Hill Road.

13 But I can't guarantee that, Derek.

14 CHAIRMAN UPCHURCH: Other questions?

15 [None]

16 Thank you.

17 Next witness?

18 [Thereupon, the witness was sworn.]

19 MR. STEVE KUENZEL: Steve Kuenzel for  
20 Meramec Aggregates. I want to cover just a couple of  
21 issues, and then I want to talk about the very first issue  
22 about the vote that occurred at Planning and Zoning.

23 First of all, why be here now? We were just  
24 here a year ago for the Jeffries property. Why are we back  
25 here?

1                   We're back here because the Jeffries property  
2   has got a three to a five-year life and this is the ability  
3   for Lyn to guarantee that Meramec Aggregate can be available  
4   in Franklin County for al long, long time. This property is  
5   up for sale now. In fact, the ladies in back are the  
6   Brunses who have the property for sale, and it's for sale  
7   now. So this is the preservation of her business. The  
8   opposition has tried to buy the property out from under Lyn  
9   while all of this has been going on. And it is an  
10   opportunity that presents itself now.

11                   Contrary to the rumor that was given about her  
12   being out of sand and having to buy sand from Washington,  
13   there is plenty of sand at the Jeffries location. There is  
14   no need to get into this location until the Jeffries  
15   property is minded out.

16                   However, the property won't be for sale for  
17   three to five years. So it becomes a matter of self  
18   preservation. She has worked for the past seven years to  
19   try to find a location and, quite honestly, folks, obviously  
20   the gravel comes from the river and next to the river.  
21   There aren't any interstate roads that go from the river or  
22   next to it to get into the cities or get into the commercial  
23   establishments.

24                   The problem is it's a road system that's there.  
25   TT is better, the best of the roads that are there. But

1 quite frankly, I don't believe that this Commission or  
2 Planning and Zoning have ever singled out to any one  
3 business that you are responsible for solving traffic on a  
4 road, and you have to pay to widen the road, or you have to  
5 pay to resurface the road.

6 Yes, there's a lot of roads in Missouri.  
7 What's the number one one that MoDOT is looking at as being  
8 in bad shape? It's I-70 going right across our state.  
9 You've read that in the newspapers here in the last week.  
10 It's been all over the "Post Dispatch." Unfortunately there  
11 is no single entity that's being forced to do that. That  
12 becomes a public obligation, not the obligation of anyone  
13 one particular company.

14 The issues that you asked, Mr. Head, about the  
15 number of trucks. The 70 trips is the maximum that this  
16 plant could accommodate Havin trucks in general public. The  
17 demand right now today is six trucks a day. That each --  
18 I'm sorry. let me scratch that. Three trucks a day that  
19 make six trips back and forth to the plant.

20 So right now today the demand for the aggregate  
21 is 18 trips.

22 However, obviously there are a lot of entities  
23 that would like to haul their own aggregate. They don't  
24 want our trucks to go to their job sites. They don't want  
25 to pay us to do it, whether it's an owner/operator who can

1 do it himself cheaper or whether it's a company that can  
2 send their trucks cheaper, the idea is that if the customers  
3 want to buy it, they want to come to your plant to be able  
4 to get it. And what Cameron was getting at is, if we have  
5 to go around, excavate from this site and haul it to our  
6 current plant location, obviously we're going to have to  
7 charge more. Obviously there's double handling because you  
8 dredge it out, you wash it, you load it, you haul it, you  
9 dump it. Now you got to turn around, put it in the  
10 appropriate piles, stack it again. When the customer comes,  
11 you're loading it again. Obviously that's a higher charge  
12 that gets passed on.

13 In your pack from Planning and Zoning, I think  
14 it was somewhere between 30 and 40 contractors, imploring  
15 Planning and Zoning to have Meramec gravel and aggregate  
16 available. When we were fighting the battle last year, we  
17 were out. The only place you could get it was to have  
18 somebody haul in in from St. Louis at an upcharge to be able  
19 to get Meramec gravel.

20 You've heard all about why it's better. Most  
21 of you probably know why it's better without going through  
22 the presentation. But we did it to make the record here.

23 You've heard an awful lot tonight about  
24 traffic. If you follow their logic, then you may as well  
25 tell Franklin County that we will not allow anybody to have

1 any more commercial development if they have any kind of  
2 traffic. So from Union to Washington, we can just shut  
3 that corridor down, because we all know there's an  
4 incredible amount of traffic there. And yet, you know, are  
5 we going to single out one company, you know? Are we going  
6 to tell the school buses that now that they've done these  
7 core drillings, that they have to quite driving Mill Hill?  
8 Are we going to tell whoever that tractor-trailer guy was in  
9 the photo that by golly he better find a different route?

10 I mean, the problem here is if there is a road  
11 issue, it is for the County or the State to address. And no  
12 single company has been denied a public road or access to  
13 use a public road because they alone are going to be the  
14 ones who tear up that road.

15 In fact, if it's so embarrassing to have this  
16 traffic risk on Mill Hill, then I would expect that the  
17 wedding venue would be up here volunteering that they will  
18 no longer have weddings out there on Friday and Saturday  
19 night, inviting 100 to 250 cars to come out Mill Hill  
20 knowing when those same 100 and 250 cars go back after  
21 alcohol is served at the venue, after dark, that they can't  
22 travel that road because they are creating a traffic hazard.

23 If it's going to be sauce for the goose, it  
24 ought to be sauce for the gander when it comes to the  
25 traffic issues here.

1                   Now, what I -- the last thing I want to talk  
2 about is the legal issue that they are raising about whether  
3 or not the vote was proper at Planning and Zoning. And  
4 obviously I may be the one having to defend this in the  
5 court system. So here's the motions that I would like to  
6 suggest to you and the procedure that I would like to  
7 suggest, and I hope I'm not stepping on Gordon's toes. If he  
8 thinks it needs to be corrected, he certainly will correct  
9 it.

10                   I would suggest that you have an informal  
11 discussion to determine how the winds lay here. If you have  
12 four or more votes in favor of granting Meramec Aggregates  
13 the Conditional Use Permit, either with or without Section  
14 9 -- and obviously we hope that it's deleted-- or Condition  
15 9, I would suggest that you have two motions that are taken  
16 or one motion altogether. And the motion would read like  
17 this, and I'll give copy to you, Gordon, when I'm done  
18 reading it, because I can't memorize this. The motion  
19 would be this:

20                   "To the extent that a court  
21 could determine that the Planning  
22 and Zoning vote as a 5 to 5 denial,  
23 then I move to reverse the Planning  
24 and Zoning decision and grant the  
25 Conditional Use Permit without

1 Condition 9.

2 "To the extent that a court  
3 could determine that the Planning  
4 and Zoning vote was 6 to 4 in favor  
5 of granting a Conditional Use Permit  
6 in favor of Meramec Aggregates, then  
7 I move to affirm the Planning and  
8 Zoning granting of the CUP with the  
9 modification to remove Condition 9."

10 I think if you do that, this is a review board.  
11 You review the record, and you get to vote anew to either  
12 affirm, reverse, or modify. Not to get caught in this  
13 little glitch that they want to raise about Planning and  
14 Zoning, then I would make that all in one motion after  
15 you've had an opportunity to informally discuss it, and I  
16 would suggest that that will cure any sort of technicality  
17 that's being raised here.

18 And there may be a better way to do it, Gordon,  
19 but as I'm sitting there thinking ,that's how I think it  
20 would be and would ask the ability to present that to you to  
21 the extent that anybody would like to make those. But I  
22 would make it all at one time.

23 I'm happy to answer any questions. Otherwise,  
24 that's the conclusion of my presentation.

25 CHAIRMAN UPCHURCH: I'll just ask you

1 to two things.

2                   The -- other than the fact that it would be  
3 more efficient for it to be other trucks in addition to  
4 Havin and Meramec Aggregates, it's not that that's fatal to  
5 the operation?

6                   MR. KUENZEL: We'll live with that  
7 condition being in there if that's the ruling of this  
8 organization.

9                   CHAIRMAN UPCHURCH: And two, and  
10 again I'm obviously fishing here and we're going to have  
11 some rebuttal in a little bit.

12                   Is there a reason, all things considered, that  
13 this has to operate at all on Saturdays?

14                   MR. KUENZEL: The reason it has to  
15 operate is, if you have a contractor that's got a big pour  
16 and he wants that material on a Saturday, then we offer it  
17 on Saturday until -- only until noon. And the problem you  
18 have is, you know, you hate to tell any of your customers  
19 that, hey, you can't pour on Saturday, because they may be  
20 at a critical point where they have to have that. And I'm  
21 not going to suggest that we have any contact with the  
22 Missouri River job, but when those guys pour, they're making  
23 pours 24 hours continuous on some of those, and they have to  
24 have everything there and ready to go.

25                   So we're trying to accommodate our customers.

1 the other thing is on Saturdays we don't think we're really  
2 impairing any other operation. There's no school buses on  
3 the road on Saturday mornings. It's properly a better time  
4 to be doing it on Saturday mornings than any other time.

5 CHAIRMAN UPCHURCH: I'm just fishing.  
6 I'm fishing, okay.

7 MR. KUENZEL: Sure.

8 CHAIRMAN UPCHURCH: But in terms of  
9 that Saturday sales, you got another facility right down the  
10 highway at Highway 30, and if it's your trucks, you're going  
11 to be having materials there anyway. What am I missing?

12 MR. KUENZEL: If we're running at  
13 this facility, Gordon, we're not running at the other  
14 facility. In order words, we're not going to run two  
15 plants. If we run at this one down the road, we're running  
16 at this one.

17 CHAIRMAN UPCHURCH: Okay. But I  
18 heard Cameron say that the trucks would haul with Condition  
19 9 over the Highway 30.

20 MR. KUENZEL: That's the way they  
21 would have to haul if we are prohibited from operating at  
22 retail location. The way Planning and Zoning was defining  
23 retail, they were somehow defining it to be at the point of  
24 sale where we loaded somebody else's truck.

25 So the way it was explained to us -- and that's

1 why getting Number 9 removed is pretty critical to us --  
2 that left us with no choice but to take the long way around  
3 and go to Highway 30 to practically operate.

4 CHAIRMAN UPCHURCH: But my point  
5 remains. If this facility wasn't operating on Saturdays,  
6 Highway 30 could be open on Saturdays.

7 MR. KUENZEL: We -- we would close  
8 down that location if we were going to be selling here. I  
9 mean, I guess you're saying keep a stockpile there for  
10 Saturday?

11 CHAIRMAN UPCHURCH: That's what I  
12 assumed.

13 MR. KUENZEL: I guess we could hang  
14 onto that location for Saturday sales. I don't --

15 CHAIRMAN UPCHURCH: It's been there  
16 for as long as I can remember.

17 MR. KUENZEL: Yeah, that -- that was  
18 never an issue in front of Planning and Zoning. The issue  
19 was either winter hours. I mean, there was discussion all  
20 over the place, but there was nobody yelling and screaming  
21 over Saturday morning hours.

22 CHAIRMAN UPCHURCH: Okay.

23 MR. KUENZEL: If impose it, I mean,  
24 we'll have to live with it, but nobody was really asking for  
25 that.

1 CHAIRMAN UPCHURCH: Okay. All right.

2

3 Derek?

4 MEMBER SCHRIEWER: You were just  
5 discussing that Number 9 here and the decision of record  
6 most recent, Number 9 does allow for commercial or retail  
7 sales at the current site. But Number 9 at this reads is  
8 only specific to the trucks. So the previous Number 9  
9 prevented the retail sales.

10 MR. KUENZEL: Right, I --

11 MEMBER SCHRIEWER: And I don't want  
12 to put words in your mouth, but it seems that you guys are  
13 presenting that with the Number 9 as it reads with only the  
14 Havin or Meramec Aggregate's trucks, you feel as if you  
15 cannot do retail sales. But that is, in fact, untrue based  
16 on the decision of record that as I read it.

17 MR. KUENZEL: That is correct, and I  
18 stand corrected. I got mixed up between the number nines,  
19 between the two. The limitation to our trucks prohibits --  
20 the problem you have is, if you're going to be open to the  
21 public at this location and a contractor comes down for the  
22 first time to this location, and you have to say look, I'm  
23 sorry, I can't load you here, it prohibits really retail  
24 sales at that location because -- as a practical matter,  
25 because only our trucks can haul it.

1                   So we have to go to a second location to be  
2   able to load their trucks. So what we're really looking for  
3   is, by opening it up to anybody's trucks, that truly allows  
4   the retail sales at this location.

5                   And am I being clear about that? I'm kind  
6   of --

7                   MEMBER SCHRIEWER: [Nodding]

8                   MR. KUENZEL: It got muddy in front  
9   of Planning and Zoning, and when they got done with the  
10   vote, it was we'll let you sell at retail, but only your  
11   trucks can haul it. That practically means that you're not  
12   going to sell at retail at this location. You have to take  
13   it up to Highway 30 and do the double handling and charge it  
14   accordingly.

15                  So I apology for the confusion. You're  
16   absolutely correct on your interpretation. I'm glad you  
17   brought it up because it - it is a correction. But that's  
18   how we view it, is a practical prohibition of being able to  
19   sell at retail. You can't have it open and have guys show  
20   up with a truck and send them home. I mean, you know that's  
21   -- it's bad business. So...

22                  CHAIRMAN UPCHURCH: Other questions?

23                  MEMBER HOFF: Yeah. If we don't --  
24   if we don't exclude Number 9, we leave it in, how are you  
25   going to handle and remove your topsoil? Are you going to

1 haul it over to 30, or is it going to have to be done a  
2 different way?

3 MR. KUENZEL: I mean, we can't -- as  
4 a practical matter, only our trucks can haul it. So I don't  
5 think there's any distinction between the topsoil and the  
6 gravel and the sand. I think if our trucks have to haul it,  
7 we're going to have to haul it someplace, dump it, reload  
8 it, you know, effectively two loaders, the trucks hauling  
9 it. I mean, there's got to be, you know, an extra cost for  
10 doing that because you're handling it twice.

11 And that's why I was -- I mistakenly, you know,  
12 bespoke about the retail sales. That's what really  
13 prohibits retail sales at this location. Even though it  
14 says we can do it, how do we do it when we're the only guys  
15 who can load the trucks and only our trucks can go out onto  
16 the road. And then we've got to go dump it someplace else,  
17 presumably our Highway 30 location. And then, you know,  
18 store it, reload it, the whole routine.

19 Does that answer your question?

20 MEMBER HOFF: Yeah. Yes, yes, it  
21 does.

22 CHAIRMAN UPCHURCH: I think the  
23 earlier evidence offered indicated that that overburden was  
24 going to remain on site, and maybe I misunderstood the  
25 testimony.

1 MR. KUENZEL: I don't think it's all  
2 staying on site, Gordon.

3 CHAIRMAN UPCHURCH: Okay.

4 MR. KUENZEL: Because obviously we're  
5 going to end up with a lake there.

6 CHAIRMAN UPCHURCH: Okay. Okay,  
7 that's the only question I have.

8 Any other questions? [None]

9 Thank you.

10 MR. KUENZEL: Thank you.

11 CHAIRMAN UPCHURCH: Scottie?

12 MS. EAGAN: Can I just try to clarify  
13 something for you.

14 When you were talking with Mr. Kuenzel about  
15 selling on Saturday at the other plant, I think you guys  
16 were kind of missing each other. Their purpose to remove  
17 Number 9, if Number 9 was removed -- and you can correct me  
18 if I'm wrong -- they would completely shut down the Highway  
19 30 plant and move everything to this plant.

20 If Condition 9 stays in the Conditional Use  
21 Permit, they'll be forced to operate two locations then, the  
22 Highway 30 and this one. So I think that's where you guys  
23 were kind of missing each other when you were trying to talk  
24 to each other.

25 MR. KUENZEL: Thank you.

1                   CHAIRMAN UPCHURCH: Okay. I presumed  
2 30 was going to remain open regardless.

3                   MR. KUENZEL: All right.

4                   CHAIRMAN UPCHURCH: Okay. All right,  
5 thank you.

6                   MR. KUENZEL: Thank you.

7                   CHAIRMAN UPCHURCH: Thank you,  
8 Scottie.

9                   MS. EAGAN: Uh-huh.

10                  CHAIRMAN UPCHURCH: Any testimony in  
11 support of the Havin application, the Meramec Aggregate  
12 application?

13                  MR. KUENZEL: No.

14                  CHAIRMAN UPCHURCH: Seeing none, I'm  
15 going to open it up -- back up to the Kim Lynch application  
16 for any rebuttal evidence that you would care to present.  
17 So is there somebody who wants to be heard in rebuttal, and  
18 rebuttal is not repeat.

19                  MS. LYNCH: Do you need my name  
20 again?

21                  MS. REPORTER: No.

22                  CHAIRMAN UPCHURCH: Your name just  
23 for the record.

24                  MS. LYNCH: She said I didn't have to  
25 do it. Kim Lynch.

1                   CHAIRMAN UPCHURCH: Just give your  
2 name just for the record, and you've been sworn earlier. So  
3 you're still under oath.

4                   MS. LYNCH: Okay.

5                   CHAIRMAN UPCHURCH: And again, this  
6 is rebuttal. Will be additional information that you wish  
7 to offer in response to what has been offered by the other  
8 applicant.

9                   MS. LYNCH: Right. I'm a scientist,  
10 and I don't appreciate alternative facts. And I think we've  
11 had a lot of those throughout all our meetings.

12                   As far as the 5/5 vote, do-overs are done on  
13 playgrounds, not in places of business. So once you have a  
14 5/5 vote that is denied, you cannot go back and accept the  
15 other vote that was illegally and improperly taken.

16                   You can't do that. The only place that's going  
17 to end you up is in court. And I don't want to see that. I  
18 know you don't want to see that. We have to go with that.  
19 So everything that has happened after that 5 to 5 vote has  
20 been improper and illegal. We were forced to appeal a  
21 Conditional Use Permit that was not granted legally.

22                   CHAIRMAN UPCHURCH: And we heard you,  
23 and now we're repeating.

24                   MS. LYNCH: We're repeating only  
25 because Mr. Kuenzel said some things that were incorrect.

1 That's why. So I -- I don't want things to stand that are  
2 incorrect.

3 Okay. So we were talking also about the bats  
4 at the mine. They said they didn't know how close it was.  
5 It's 600 feet, and that has been determined and that is  
6 true. So it's 600 feet from the mining, and here again,  
7 it's the vibration, not the sound.

8 We're talking about roads and we're talking  
9 about safety. Mr. Kuenzel brought out I-70. I-70 was  
10 designed for truck traffic and a lot of it. That's why it  
11 was built, to get things from here to there on large  
12 conveyances. That is not what TT was built for. It's not  
13 designed for that.

14 So when a company wants to come in, even though  
15 they are taxpayers, and use things for usages that they  
16 weren't designed for originally by the County, and nowhere  
17 in your Master Plan, you know, does it say we're going to do  
18 industrial trucks down here, you know. However many they  
19 want to say it's to going to be, it's not in your Master  
20 Plan. It wasn't designed for that. So yeah, we paid for  
21 I-70 because that's what it was designed for, to benefit us  
22 all so we can get goods from one place to another.

23 That's not why TT was designed. So we're  
24 talking about numbers of trucks here, and it's varying  
25 widely. So the number of trucks -- let's see in the

1 December 20th meeting on page 19, Mr. Kuenzel said the  
2 number of trucks he thinks Lyn exaggerated it, but hopefully  
3 it would grow to more. So what is more? How many is more?

4 So at one point he says they'll need 25 trucks,  
5 probably growing to 50, but we'd like more. So I don't know  
6 how to assess how many trucks are coming down because they  
7 don't seem to know either. So that's kind of hard when you  
8 go to a business and say how many trucks do you anticipate  
9 and we get 15 different answers. And it's hard to make a  
10 decision when you don't know, when you can't get a straight  
11 answer.

12 The conditions. Here again, it has been said  
13 time and time again that Ms. Havin's brought all these up.  
14 Nine, ten and eleven are all problematic to her, said Steve,  
15 on the 23rd, and yet -- I mean on the 20th, on page 23.  
16 And yet, here they are and she offered them up. So if they  
17 were all problematic, why did she offer them up? Why didn't  
18 she just say oh, we really -- we really can't do that, and  
19 we want this, this and this? Instead of trying to go get  
20 this permit through the back door.

21 Also on page 24 of the December 20th meeting,  
22 Todd Boland asked if they wanted to -- if we had to have  
23 repairs made to the road things widened, he asked Steve  
24 Kuenzel, "What do you think about that?"

25 And he said, you know, if we have to make it

1 happen to be able to operate, you know, freely down there,  
2 yeah, she would.

3 So he's complaining that he doesn't want to pay  
4 for things, but yet, in a previous meeting, he said yeah, we  
5 could work on that. She would pay for that. So you can't  
6 have it both ways. If you don't want to pay for it and you  
7 shouldn't have to pay for it, are unwilling to pay for it,  
8 we got to have it one way or the other.

9 The hours again of operation. Cameron said  
10 that it would only be during off-peak hours. Yet, they want  
11 12 Saturdays in the summertime a year. Those are not  
12 off-peak hours. That's when everyone is going down to the  
13 river round with their boats. So either you're operating  
14 during off-peak hours, or you're not operating during  
15 off-peak hours. Here again, we can't have it both ways.

16 And then Cunio said on page 38 about Lyn Havin  
17 and the things she offered up, he said, "I understand the  
18 Review Committee took Ms. Havin at her word. Maybe we  
19 shouldn't have."

20 And then the last thing is I like your point  
21 about the truck traffic when he's saying, you know, if we  
22 have to haul it twice. You're not hauling it twice if  
23 someone else is hauling it. So whoever is coming in to get  
24 it is hauling it out of there, and they're using whatever  
25 road they want. So the roads are still being used the same

1 amount of time. It just depends on who's hauling it. So  
2 whether it's, you know, Joe Blow coming in to buy whatever,  
3 he's got to haul it out of there. Or whether it's you  
4 taking it over here, you've got to haul it out of there.

5 So someone has to haul it. It has to get out  
6 of there somehow, and it's got to be by road. So that's how  
7 that's going.

8 DNR. Speaking to the people through DNR, they  
9 say that you can't apply for a permit with them until you  
10 guys have approved the Conditional Use Permit and it's a  
11 done deal. And they say that's when they have the meeting,  
12 and yet, up here at the -- in their presentation, they said  
13 that the DNR permit was already obtained. So I had just  
14 spoken to the DNR about a week ago, and they said there has  
15 been no application yet for this new mine, and there would  
16 be a public hearing before that DNR permit would be issued  
17 and that nothing had come across their desk yet.

18 So they may have a DNR permit, and I'm sure  
19 they do, for the Jeffries mine, but they do not have one for  
20 the Brunses' mine.

21 Also when they said that the U. S. Fish and  
22 Wildlife has approved, just talking to U. S. Fish and  
23 Wildlife they say we don't grant approvals. We tell you to  
24 stop, but we don't grant approvals. And so there is no true  
25 approval to be gotten from the U. S. Fish and Wildlife. So

1 that's a misuse of words, and I think it is misleading.

2                   Lastly, if you consider that Conditional Use  
3 Permit valid, one of the rules in Franklin County Land Use  
4 Regulations is that for a conditional use permit to remain  
5 valid, all the conditions have to be satisfied. If those  
6 conditions aren't satisfied, then the conditional use permit  
7 is null and void.

8                   So if you're taking conditions out, then you're  
9 making your conditional use permit null and void because  
10 your rules for Planning and Zoning state that those  
11 conditions that, if you say it's passed, those conditions in  
12 there have to be satisfied. And if you're not going to  
13 satisfy them and you take them out, then you start all over  
14 again, and reapply for this conditional use permit.

15                   So as I see it, you have two -- two things to  
16 look at here. We have to look at the 5/5 vote. That's  
17 legal. Do we go with that, and then realize that everything  
18 now that's just happened is kind of not legal now because we  
19 didn't follow the rules, and so we shouldn't have to appeal.  
20 They should have had to appeal. The burden of proof should  
21 have been on them because the permit was denied.

22                   Or do we go and make the permit invalid. We  
23 assume it was granted, and make the permit invalid by taking  
24 a condition out of it, which by your own rules and  
25 regulations say if you're not going to satisfy that

1 condition, the permit is invalid.

2 Those are my points.

3 CHAIRMAN UPCHURCH: Okay.

4 MS. LYNCH: Thank you.

5 MEMBER HOFF: I have a question.

6 CHAIRMAN UPCHURCH: Hold it, Kim.

7 We've got a question here from Steve.

8 MEMBER HOFF: When you say there was  
9 a vote of 5/5, what page is that on?

10 MS. LYNCH: I want to say 48. Let me  
11 check.

12 MEMBER SCHRIEWER: Page 46, I  
13 believe, for the first vote. And then the second vote on  
14 those same minutes -- and I got a page marked here -- was  
15 on --

16 MS. LYNCH: Forth-eight is where he  
17 says tie vote. So no majority. So the motion is not  
18 carried.

19 MEMBER HOFF: Thank you.

20 MS. LYNCH: Thank you.

21 CHAIRMAN UPCHURCH: Other questions?

22 [None]

23 Thank you.

24 Your name again for the record.

25 MR. NORMAN: Nick Norman. I'll be

1 brief. I just have a few things to clarify about our  
2 wedding venue. There were some false facts.

3 I think it was stated that there was going to  
4 be -- that our wedding venue provides 250 cars, 200 cars per  
5 wedding, and that's not the case at all. It's typically 50,  
6 maybe a hundred cars, maybe, but maybe once a year.

7 And that is -- we also offer a shuttle service  
8 that we provided to our guests and our brides and grooms.  
9 So we actually cut down the cars significantly for our  
10 shuttle service, and it is more along the lines of 20 to 50  
11 cars at the most.

12 And we are not -- our guests have cars that are  
13 not 20 tons of -- of a dump truck. Significantly different.  
14 It would be like comparing a shrimp to a blue whale. It is  
15 not the same at all. And you know, again, we offer that  
16 shuttle service if guests have been drinking and we provide  
17 that for that exact reason. We have a shuttle service that  
18 takes care of all of that. So that -- that is again, you  
19 know, wasn't true.

20 And also please, when I was hearing terms of  
21 things like more efficient, think of when they're talking  
22 about more efficiency of the moving the gravel, think of  
23 more danger. Less efficient equals more safety. Higher  
24 prices equal more safety.

25 They say that they pass the costs on to the

1 consumer, but the consumer eats that. They don't. And when  
2 you wholesale the product to yourself to make concrete, the  
3 increase -- the costs increase for you, the company, not the  
4 customer.

5 CHAIRMAN UPCHURCH: Any questions?

6 [None]

7 Thank you.

8 MR. NORMAN: Thank you.

9 CHAIRMAN UPCHURCH: Is there anyone  
10 else for rebuttal on the Lynch possession? [None]

11 Seeing none, I'm going to turn back now to the  
12 Meramec for again rebuttal, and that's rebuttal to what  
13 we've heard. Anyone?

14 MR. LUEKEN: I have two things,  
15 Mr. Chairman.

16 CHAIRMAN UPCHURCH: And your name is,  
17 for the record?

18 MR. LUEKEN: Cameron Lueken with  
19 Wunderlich Survey and Engineering.

20 Ms. Lynch testified that as far as DNR was  
21 concerned, she said that she notified DNR and no permit has  
22 been applied for. That is true because if you look at the  
23 flow chart that I presented before, there's all -- there's a  
24 lot of permits that have to be gotten from DNR or from other  
25 agencies. So this permit is part of that process.

1                   So just as in the last Jeffries permit, we have  
2   to have a public hearing with DNR so -- just so you guys  
3   know, after this meeting, we have to petition DNR for an  
4   application and DNR has a whole series of meetings and  
5   testimony and public hearings that we have to go through in  
6   order to achieve the permit to extract the material.

7                   So I just want to make that clear that we're  
8   not done with public hearings in order to mine that  
9   material.

10                  Does anybody have questions about this process?

11                                 CHAIRMAN UPCHURCH: Not from me.

12                                 MR. LUEKEN: Okay. And then also she  
13   said that U. S. Fish and Wildlife has not -- there was some  
14   confusion about that, I guess.

15                                 Well, she referred to as stop. U. S. Fish and  
16   Wildlife are familiar with our plans to excavate this  
17   material. We forwarded that plan. They know what we're  
18   doing. Been in contact with them, and they have not stopped  
19   us. They have not said, hey, there is an issue with there's  
20   some endangered species and issued to stop, cease or desist.  
21   There is no order from U. S. Fish from any component or any  
22   division of U. S. Fish to stop.

23                                 Does anyone have any questions about that?

24                                 CHAIRMAN UPCHURCH: None from me.

25   [None]

1 Thank you.

2 MR. LUEKEN: Thank you.

3 CHAIRMAN UPCHURCH: Other rebuttal  
4 from the Meramec Aggregate possession? [None]

5 Then inasmuch as we've now cycled through  
6 affirm requests from both sides, rebuttal from both sides,  
7 we're going to close that portion of the meeting.

8 At this time, we're going to shift the meeting  
9 over to a discussion, which we normally have here in front  
10 of all you have, which is what we intend, I believe, to do,  
11 this evening.

12 I'm going do start that discussion.

13 I recognize from what has been present that we  
14 have had some -- an issue that's been raised with regards to  
15 the Robert Rules of Order. I claim no expertise in that  
16 regard. This Board is not a court of law, and as I would  
17 guess with many of these, there will be some later court  
18 that will review this matter. We are neither charged with  
19 nor equipped with to address such issues. So I, for one,  
20 will make no attempt to try to glean that this evening. But  
21 there was an offer from Attorney Kuenzel here with regard to  
22 addressing the issue as to whether there either was a denial  
23 or was an approval. I respect his impressions in those  
24 regards.

25 My thinking is that what we might consider

1 doing, again by way of the discussion, is simply to address  
2 the fact that there appears to be some dispute as to what  
3 the underlying order was. And inasmuch as it's my  
4 understanding that this Board does have the ability to  
5 affirm, deny or modify any order that was entered, that any  
6 motion that we may come up with this evening should be so  
7 characterized that we are simply entering a decision with  
8 regard to certain facts and circumstances or declarations  
9 and let the court or a court of law decide whether that's an  
10 affirmation, a rejection or modification.

11 And I don't think we're charged with or under  
12 an obligation to make that determination. And candidly, in  
13 light of the fact that at this moment in time I haven't  
14 heard that any court has ever declared whether there was a  
15 Roberts Rules error at a lower level inasmuch as this body  
16 is charged with the right to review the facts in evidence,  
17 we have freely accepted evidence and facts. And in fact,  
18 we've received every item, including the original packet.  
19 And from that, I believe we are empowered and hopefully a  
20 court would agree that we're empowered to make a  
21 determination as to appropriate orders or conditions as to a  
22 Conditional Use Permit.

23 And it would be my impression that we would  
24 proceed in that regard.

25 I'll add, in no way am I encouraging the Board

1 to follow my suggestion, and I am just trying to start a  
2 discussion amongst us.

3 I, for one, recognize and respect the fact that  
4 we have some competing interests here. I'll take this  
5 moment to thank everybody that was here. I think everybody  
6 has made a real effort to be efficient in their  
7 presentations, and I am thankful for that.

8 I think as a practical matter, everyone has  
9 been very, very courteous in that regard. We clearly have  
10 some competing interests here. We have some business  
11 interests which are legitimate interests. We have some  
12 private and competing business interests which also are very  
13 legitimate. In that regard off the top of my head in terms  
14 of considerations of trying to split the difference, if you  
15 will, I am -- inasmuch as -- I think we have to recognize  
16 that, unlike an operation right on Highway 30 that has been  
17 there for years, this is an operation that's going to be in  
18 a relatively quiet, more reclusive area. And so I'm a  
19 little mystified as to the necessity to run that operation  
20 on Saturday. And although that might make for a more a  
21 efficient operation, I don't know that I'm moved by that on  
22 a personal level.

23 With regard to the earlier order or non-order  
24 as the court may later determine about the trucks being from  
25 Havin only, clearly that made sense to some of a board

1 before us, and it would appear that some of that sense was  
2 that it would limit or create some additional responsibility  
3 or safety on the roads from the trucks that are operating  
4 from this facility.

5 I think we have evidence before us that there  
6 may add some cost to the product, but I think it's also been  
7 pointed out that that would be passed onto the consumer and  
8 not that that would be fatal to the operation.

9 So that's just some musing that I have. I'd  
10 like to open it up now to other Board members for other  
11 thoughts and impressions that we have before we perhaps take  
12 it to the next point of making some actual motions or  
13 suggestions.

14 MEMBER RIDDER: Heavy trucks on  
15 county roads have always been a problem. I grew up in the  
16 western part of this county, and when I was a kid, there  
17 were play pits all over the place and truck after truck  
18 after truck to haul clay. In a few years, that was over  
19 with, and that's before we had blacktop roads. So some of  
20 this I think we have to accept and put up with.

21 MEMBER HEAD: Somebody made the point  
22 and asked if we would want our -- I don't remember if  
23 somebody said it tonight or it was in the transcript -- if  
24 we would want essentially this close to our house with our  
25 kids on the roads on the school buses.

1 I got to tell you my answer is no if I had to  
2 pick, but I'm not so sure that as being part of this Board I  
3 have -- that's my duty, to give that much discretion because  
4 I think that our task is much more limited.

5 And I keep reading our rules over and over, and  
6 in order to deny a conditional use permit, the -- basically  
7 the one remaining prong that sticks out in my head is if  
8 it's proven that this permit would significantly be  
9 detrimental to public health.

10 I guess my -- the point where I'm stuck is if  
11 there was no Highway 30 facility, if everything was  
12 operating out of this plant, I'm not -- I don't think that  
13 it was proven that it would be significantly detrimental to  
14 public health with this conditional -- Conditional Use  
15 Permit without Condition Number 9.

16 I think that I -- I don't think that I was  
17 moved that far under our own rules.

18 CHAIRMAN UPCHURCH: Other discussion?

19 MEMBER SCHRIEWER: On basically  
20 staying in line with what he was just discussing there, I'm  
21 looking at the decision of record, and no matter which one  
22 you're looking at, there's always a statement whereas, as a  
23 result of the public hearing, the following facts were  
24 determined. And so from the Planning and Zoning Commission,  
25 it's determined from their review that the proposed

1 development will not materially endanger the public health  
2 or safety. It will not substantially injure the value of  
3 adjoining or abutting property. The harmony within the area  
4 in which it is located, and it will be in general conformity  
5 with the Master Plan, highway master plan and other plans  
6 officially adopted by the County.

7 I do have real concerns as to how the previous  
8 group and we are going to go about handling validating and  
9 determining that this will not endanger the public health or  
10 safety, that it will not affect property values, and that it  
11 is in line with the harmony of the location.

12 I have a lot of trouble with all three of those  
13 of the four that are required for us to move forward with  
14 either approving the request and appeal from Meramec  
15 Aggregates. A lot of what I read and as I read through this  
16 quite dense packet, I had a lot of trouble understanding how  
17 they arrived at their decision of approving this.

18 And so I would like to hear us have some  
19 dialogue as to how we really think those three are proven to  
20 be matter of fact at this point and then come up with what  
21 we did.

22 CHAIRMAN UPCHURCH: And again, the  
23 original order does refer to those four issues, and there  
24 are substantial obviously competing documentation within the  
25 file. And we -- those of us who sat on here have heard on

1 a rather regular basis with regard to property values, et  
2 cetera, and that's frequently a heated debate with regard to  
3 property values for example.

4 As far as endangering public health, again,  
5 we've heard disputed evidence, which is not uncommon. In  
6 terms of being in harmony with the area it's located in,  
7 under the Master Plan and then this is a concept that I  
8 often introduce these kinds of hearings. And by that, I  
9 mean a conditional use with regard to the Master Plan. As  
10 you read it, this particular use, the mining use, is by  
11 definition within the Master Plan a use which is permitted,  
12 but with conditions.

13 Many people view these as a prohibited use, and  
14 in fact the argument that could have been made or should  
15 have been made if mining should not have been permitted out  
16 here, is when the County Commission was having its hearing  
17 long ago on the Master Plan, which is modified from time to  
18 time. That is the time when the public could have, and if  
19 that was a real issue or a stumbling point, could have and  
20 should have stepped forward and said mining should never be  
21 a conditional use in this area.

22 And the Master Plan already permits that with  
23 conditions, which is by definition what a conditional use  
24 permit is.

25 And with general conformity of the Master Plan,

1 and again, I'm be a little redundant there, but I'm going  
2 through your list of thoughts and concerns.

3 Other thoughts or discussion on the -- on the  
4 issues before us? [None]

5 If none and candidly, I'm just trying to throw  
6 something out to move us forward, and we can discuss it  
7 further because again we have always handled these  
8 informally, and we intend to continue to do so.

9 I am going to propose by way of a motion that  
10 we, in light of the dispute as to whether we have an  
11 underlying denial, approval or perhaps even a void order,  
12 that we, in light of the fact that some order was entered  
13 and we do have what purports to be an order dated  
14 December the 20th of 2016 and as part of my motion, to use  
15 that as a template of our order in which we are empowered to  
16 affirm, deny or modify an order, that we enter our order or  
17 decision in accord with the order that was made with the  
18 deletion of the provision for Saturday hours of operation to  
19 specifically include paragraph 9, and that would be the  
20 motion that I suggest.

21 And before I suggest a second on that, can we  
22 have discussion amongst ourselves on that motion?

23 MEMBER HEAD: I want to make sure I'm  
24 clear on what you're saying. You're saying that your motion  
25 is to modify and eliminate 6-B?

1                                   CHAIRMAN UPCHURCH: 6-B which is the  
2 Saturday hours.

3                                   MEMBER HEAD: And leave the rest  
4 unchanged?

5                                   CHAIRMAN UPCHURCH: Leaving the rest  
6 unchanged. Are there thoughts or impressions with regard to  
7 that?

8                                   MEMBER SCHRIEWER: Yeah, based on  
9 that, my impression would be that, as a group of five that  
10 we are leaning towards some approval of this, and that's a  
11 little presumptive in some manner too. So that's why I'm  
12 just kind of questioning. Are we going to have a discussion  
13 of whether we think we have a collective approval, or should  
14 we just at least get to the point where we all agree that  
15 we're going to have some sort of approval?

16                                   I think we could talk about an approval and  
17 collectively we could say no, we choose to reject as well.  
18 So we might want to get over that hurdle before we need to  
19 go back to it.

20                                   CHAIRMAN UPCHURCH: Okay.

21                                   Other thoughts and impressions?

22                                   MEMBER HEAD: Or maybe we could start  
23 at one end and vote instead of in the middle, then maybe  
24 work our way to a consensus. For instance, vote on whether  
25 or not we --

1 CHAIRMAN UPCHURCH: Well, we won't  
2 vote on a motion until we have a second, and we're not even  
3 to second yet.

4 MEMBER SCHRIEWER: Could we poll?  
5 You said we are going informally.

6 CHAIRMAN UPCHURCH: We are.

7 MEMBER SCHRIEWER: Even Roberts Rules  
8 potentially allows that, but --

9 CHAIRMAN UPCHURCH: We don't do  
10 Roberts Rules.

11 MEMBER SCHRIEWER: Right, that's why  
12 I said we don't have to follow it, but a poll could be  
13 something we could start with.

14 CHAIRMAN UPCHURCH: Okay. And I'm  
15 just asking for impressions at this point in time.

16 MEMBER HOFF: I'm still struggling  
17 with exactly what you're proposing.

18 CHAIRMAN UPCHURCH: I am proposing  
19 that we enter a decision that would read just as the  
20 purported order dated December 20th of 2016 with the  
21 deletion of 6-B from it, and the part of that motion is the  
22 recognition that there is some confusion that a later court  
23 can decide as to whether that was a proper order or an  
24 improper order. And again, I don't think for our purposes  
25 we have to make that determination nor are we authorized to

1 make determination.

2 MEMBER HEAD: I guess it may speed us  
3 up if we -- if we knew everybody's or closer to the  
4 temperature on what they think about leaving in or  
5 extracting Number 9.

6 CHAIRMAN UPCHURCH: Okay.

7 MEMBER HEAD: I think I understand  
8 both sides of it, and I certainly -- I certainly see Derek's  
9 point. But in my view on Number 9 is that this was  
10 presented just at this site. I would have approved the  
11 Conditional Use Permit. So I'm having a hard time  
12 leaving -- I guess I don't see how Number 9, if it's been  
13 proven that is going to give the increased protection. I  
14 guess I didn't hear enough about that, about that point of  
15 what specifically it would do, why it would be left in the  
16 Conditional Use Permit.

17 CHAIRMAN UPCHURCH: And I guess I'm  
18 not -- I'm not following your concern.

19 MEMBER RIDDER: Take it in or take it  
20 out?

21 MEMBER HEAD: I'm saying I would take  
22 it out.

23 CHAIRMAN UPCHURCH: And it's my  
24 understanding that if we were to delete Item 9 from the  
25 evidence that's been presented to us, there could and would

1 be retail sales at this site, there would be other trucks  
2 trucking materials from this site other than Havin, and the  
3 suggestion has been made that there is either a certainty or  
4 high likelihood that Havin would close down its Highway 30  
5 facility and operate somewhat exclusively from this  
6 facility.

7                   Conversely my intent in my suggestion that we  
8 leave it in is clearly we have people who we've heard from  
9 who object to the operation in toto, but in fairness, there  
10 -- some of their concern of drivers not familiar with the  
11 facility and/or an added volume of trucks or trucks at least  
12 drivers unfamiliar would be addressed in part.

13                   I'll be blunt so stay taking out Saturdays,  
14 which we somewhat routinely do here, probably isn't making  
15 either side real happy, and perhaps in my mind's eye, maybe  
16 that's what we ought to be doing in some of these cases, is  
17 to recognize some of the concerns of both sides, one the  
18 interest of the one applicant in terms of having access, but  
19 also respecting those others of who have other opinions and  
20 interests in the area and aren't so interested in just the,  
21 if you will, the immediate business interest of the one  
22 applicant.

23                   Other discussion?

24                   MEMBER HEAD: And I understand that.  
25 I'm just -- I'm stuck with the significantly detrimental to

1 health. And if I read it directly from our pages, and I  
2 certainly understand what you're saying. But that's what  
3 stuck to me, you know.

4 CHAIRMAN UPCHURCH: And again, on its  
5 face, it indicates that whether development would not  
6 materially endanger the public health or safety.

7 MEMBER SCHRIEWER: On that topic of,  
8 you know, endangering public health or safety, I -- one of  
9 my questions and I don't want to digress here in any way,  
10 but when I was reading through the minutes of the last  
11 meeting of the Planning and Zoning, I had kind of a question  
12 of one of the members asked about economics of the matter,  
13 and they got into the whole topic of taxes that would be  
14 generated off this versus the cost of county road. And more  
15 of kind of a point of clarification for me is that something  
16 that we should be looking into because if there is going to  
17 be a future issue with financing poor road repair based on  
18 something we approve, is that something we need to be  
19 concerned about, or is that something for a different group  
20 to be concerned about?

21 Because to me, the fact that no one asked for  
22 an economic analysis of what the road detriment is going to  
23 be compared to the cost of the repair is one of the biggest  
24 blooming absences of the dialogue I've read.

25 CHAIRMAN UPCHURCH: And with regard

1 to the County, we haven't heard anybody testify with regard  
2 to the damage to the roads. And the County is obviously  
3 familiar with the process. We did see a letter within  
4 packet with regard to the State's concern about the  
5 condition of the roads.

6 The only other thing that I had thought there  
7 is making a Conditional Use Permit that we might approve  
8 have a Sunset in five or ten years. And of course, that  
9 doesn't solve a problem quickly, but if the roads are  
10 inadequate in five to ten years. So in terms of that  
11 concern, I use that to myself. But again we don't have any  
12 specific test there, and we've heard many operations and  
13 many applications in which road concerns of some kind were  
14 raised. The suggestion that a single user would pay for the  
15 road I've never heard of that here or otherwise. So -- I  
16 didn't view that as a real credible suggestion.

17 Other discussion? Well, in an effort just to  
18 move us forward -- yes, Steve?

19 MEMBER HOFF: We're talking about  
20 setting up this plant. I guess maybe or maybe not this has  
21 anything to do with it. I'm not sure. In closing the  
22 Highway 30 plant, what timeframe are they going to do this,  
23 and then what time are they going to be operating both while  
24 they're in the midst of it?

25 CHAIRMAN UPCHURCH: And with regard

1 to my motion and the evidence that we have heard and we have  
2 closed the evidence, Highway 30 wouldn't close because they  
3 would be using that facility because they would be operating  
4 their trucks. That's part of my motion.

5 Other discussion? [None]

6 In an effort to move us afterward, perhaps I'm  
7 going to, if there is no other discussion, I'm going to ask  
8 if there is or is not a second to my motion.

9 MEMBER RIDDER: Repeat your motion.

10 CHAIRMAN UPCHURCH: My motion is to  
11 acknowledge that there is some legal dispute as to whether  
12 there is a denial or a valid order before us and leaving it  
13 to a court to make that determination, and in recognition of  
14 our authority to either affirm, reject, or modify whatever  
15 order was entered that we do so by whatever name, and in  
16 doing so, use as a template for our order decision the  
17 decision that was dated December 20th of 2016 in the packet  
18 with the singular deletion under the conditions of 6-B,  
19 which is the Saturday hours.

20 So that would be my motion.

21 MEMBER HOFF: Saturday hours, is that  
22 that location at Mill Hill Road?

23 CHAIRMAN UPCHURCH: That is the hours  
24 for this site.

25 Is there a second? If not it will fail for

1 want of a second.

2 MEMBER RIDDER: Just to get us off of  
3 dead center, I will second it.

4 CHAIRMAN UPCHURCH: There's been a  
5 motion and second. Is there further discussion on that  
6 motion?

7 MEMBER HEAD: I guess procedurally the  
8 only thing that I would -- because I guess I'm concerned  
9 that it will be an issue depending on obviously the outcome  
10 of the vote. It would be my preference to vote first on  
11 whether to affirm P and Z, and then work our way to that if  
12 that fails. If that makes any sense, since we're being more  
13 restrictive, since your motion is more restrictive.

14 CHAIRMAN UPCHURCH: And to move us  
15 forward, I will offer to amend my motion. And again, I'm  
16 not going be caught up in whether we're affirming or not  
17 because the court may ultimately determine whether we did or  
18 didn't. But again, just to move the issue forward, I'll  
19 amend my motion and add back in 6-B.

20 MEMBER HEAD: [Nodding]

21 CHAIRMAN UPCHURCH: In light of my  
22 amendment of my motion -- and does that get us where you  
23 were wanting us to go to start with?

24 MEMBER HEAD: Yes, and I would second  
25 your amended motion.

1                   CHAIRMAN UPCHURCH: Okay. Then we --  
2 if there is no further discussion on that -- yes?

3                   MEMBER SCHRIEWER: I just want to  
4 have a clarification that if we do vote at this point to  
5 kind of uphold what was previously voted, can we really --

6                   CHAIRMAN UPCHURCH: We're not going  
7 to get caught up in the order. We're making an order --  
8 we're leaving it to another court to decide whether there is  
9 an order and whether we're affirming or modifying. We'll  
10 let somebody else put a label on it.

11                   But the proposal is to make a decision at this  
12 moment in time that tracks verbatim that which was included  
13 in the packet and dated December 20th of 2016.

14                   MEMBER SCHRIEWER: I guess my  
15 clarification would be will we be able to change what we are  
16 approving right now? So once we have a vote to stand by  
17 something like this --

18                   CHAIRMAN UPCHURCH: If we take a vote  
19 and if four out of five vote to approve my motion, we're  
20 done.

21                   MEMBER SCHRIEWER: I get that.  
22 That's what I wanted to clarify. This is the final vote,  
23 the discussion that Justin was presenting was we will talk  
24 about editing the Saturday hours after this. And I'm just  
25 clarifying.

1                                   CHAIRMAN UPCHURCH: Not with the  
2 motion that's before us.

3                                   And again, I'm repeating myself, but I want us  
4 to be clear as well as the public who's here. The  
5 requirement for us to take affirmative action on this  
6 particular type of issue requires a vote of four, and as a  
7 result, and it's not an issue tonight, we've had times when  
8 we've had what I'll call a light board of four, and we've  
9 normally let the -- let those before us pass their case to  
10 another day because if there's only four of us here, then  
11 we're asking for -- that we're unanimous in that regard.

12                                  Not an issue tonight. We could have a singular  
13 dissent, but with an affirmative vote of four on the motion  
14 as it's currently stated, we would be done this evening.

15                                  MEMBER HOFF: So basically what I'm  
16 hearing you say is --

17                                  MS. EAGAN: That's not right.

18                                  CHAIRMAN UPCHURCH: No?

19                                  MS. EAGAN: No. If you're voting to  
20 affirm what Planning and Zoning did, it only takes one vote  
21 to pass it. It's 4/5 to reverse or modify, 1/5 to uphold.

22                                  So if, hypothetically, P and Z made a decision,  
23 this is their decision, if you're voting to affirm it and  
24 keep it as is, it doesn't require the 4/5. Only to reverse  
25 and modify does it require a 4/5.

1                   CHAIRMAN UPCHURCH: I thought they  
2    changed that.

3                   MS. EAGAN: I don't believe so.

4                   CHAIRMAN UPCHURCH: Okay.

5                   MS. ZIELKE: We changed the  
6    requirement that you vote a specific way --

7                   MS. EAGAN: Right.

8                   MS. ZIELKE: -- in order to vote  
9    another way

10                  CHAIRMAN UPCHURCH: Okay.

11                  MS. EAGAN: Yeah, we used to have it  
12    where if you made a motion to change the P and Z decision  
13    and it failed to receive the 4/5 vote, then you were  
14    required automatically to make a vote to uphold it.

15                         That's what we got rid of. So you guys could  
16    make continuous vote until you got one that got the votes  
17    needed.

18                  CHAIRMAN UPCHURCH: Okay.

19                  MEMBER SCHRIEWER: As the motion was  
20    amended, Saturday operation will be allowed as it reads on  
21    the document?

22                  CHAIRMAN UPCHURCH: That's where  
23    we're at, and I think Scottie is right. And as a result,  
24    with any affirmative vote from this Board, that will be the  
25    final order of this Board.

1 MS. EAGAN: That's correct.

2 MEMBER HOFF: Did I hear you awhile  
3 ago kind of hinting that -- just kind of getting this  
4 straight in my head -- any most like there's going to be  
5 people take this to court whether -- no matter what our  
6 decisions are?

7 CHAIRMAN UPCHURCH: Some of our Board  
8 is relatively new here, and we should always assume that  
9 there is probably going to be a review in court, and that  
10 process is available to everyone that comes before us.

11 MEMBER HOFF: I understand that.

12 CHAIRMAN UPCHURCH: And we should  
13 always assume a later court will review these matters.

14 I guess with the confusion that precedes us,  
15 now we'll add another layer of confusion because depending  
16 on whether it's determined that we are really affirming or  
17 really reversing, it's going to change the vote. And I  
18 guess that may become moot in just a minute.

19 I guess I'm going to move us forward, unless  
20 there's further discussion on the motion.

21 Scottie, you want to call for the vote?

22 MEMBER RIDDER: Motion as amended?  
23 You're not going to vote on the amendment separate?

24 CHAIRMAN UPCHURCH: As amended. That  
25 amended motion which has been seconded is to enter a

1 decision in full accord with the December 20, 2016 order,  
2 whether a valid order or not, for us to enter our decision  
3 in accord with that.

4 MS. EAGAN: Carl Ridder?

5 MEMBER RIDDER: Yes.

6 MS. EAGAN: Justin Head?

7 MEMBER HEAD: Yes.

8 MS. EAGAN: Derek Schriewer?

9 MEMBER SCHRIEWER: No.

10 MS. EAGAN: Steve Hoff?

11 MEMBER HOFF: Yes.

12 MS. EAGAN: Gordon Upchurch?

13 CHAIRMAN UPCHURCH: No.

14 MS. EAGAN: Okay. With a vote of 3

15 in favor of the motion and 2 in opposition to it, the  
16 Conditional Use Permit is approved by Planning and Zoning is  
17 affirmed.

18 CHAIRMAN UPCHURCH: And for what it's  
19 worth, I'm going to point out the obvious glitch, that if a  
20 reviewing court makes the decision that the order below was  
21 not a valid order, it was the denial instead, then it's  
22 going to be coming back here.

23 MS. EAGAN: Right.

24 CHAIRMAN UPCHURCH: Just so we're  
25 clear on that point of confusion.

1 MS. EAGAN: Clear as mud.

2 CHAIRMAN UPCHURCH: Okay.

3 Well, with that, we have a decision as it is.

4 In addition to that, I believe it concludes the hearing this

5 evening. I'm going to entertain a -- Scottie, before I do

6 that, do he have any collateral housekeeping to do?

7 MS. EAGAN: I don't think so this

8 month. No.

9 CHAIRMAN UPCHURCH: Then I'd

10 entertain motion that we adjourn.

11 MEMBER RIDDER: So moved.

12 CHAIRMAN UPCHURCH: Is there a

13 second?

14 MEMBER HOFF: Second.

15 CHAIRMAN UPCHURCH: Those in favor

16 aye.

17 MEMBER SCHRIEWER: Aye.

18 MEMBER HEAD: Aye.

19 MEMBER RIDDER: Aye.

20 CHAIRMAN UPCHURCH: Aye.

21 MEMBER HOFF: Aye.

22 CHAIRMAN UPCHURCH: Those to opposed

23 same sign. [None]

24 Then we're going to adjourn. I want to thank

25 everybody who came this evening and for their courtesy, et

1 cetera, and we appreciate everything that you've done, and  
2 we have tried our best to try to accommodate all of you.

3 Again, thank you.

4 [Thereupon, the proceedings were  
5 concluded at 10:26 p.m.]

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CERTIFICATE OF REPORTER

I, PATSY A. HERTWECK, Professional Court Reporter and Notary Public within and for the State of Missouri, before whom the foregoing proceeding was taken, do hereby swear that the aforementioned was held at the time and in the place previously described.

IN WITNESS WHEREOF, I have hereunto set my hand.

\_\_\_\_\_  
Patsy A. Hertweck, Court Reporter  
Notary Public, State of Missouri

My Commission Expires:  
August 26, 2018

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