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FRANKLIN COUNTY PLANNING AND ZONING  
FRANKLIN COUNTY COMMISSION  
FRANKLIN COUNTY GOVERNMENT CENTER  
SECOND FLOOR COMMISSION CHAMBERS  
400 EAST LOCUST STREET  
UNION, MISSOURI 63084

TRANSCRIPT OF PROCEEDINGS

PUBLIC MEETING

JULY 23, 2015

[Commencing at 1:30 p.m.]

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

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

2 (July 23, 2015)

3 CHAIRMAN GRIESHEIMER: I'm assuming now  
4 we're on the record.

5 Before we start the hearing, we have a situation  
6 where someone -- one of you has a -- wanted to make a PowerPoint  
7 presentation. Okay, right there. And we knew about that  
8 earlier, but the only problem is we don't have the connections to  
9 hook up with. Let me ask you. How long will it take you to --  
10 instead of doing that, to submit written comments? Can you do  
11 that within a week?

12 ATTORNEY BAYLARD: I have written  
13 comments, sir, but to give the actual slides, I can get it done  
14 pretty quickly.

15 CHAIRMAN GRIESHEIMER: Can you get that  
16 within a week?

17 ATTORNEY BAYLARD: Oh, yes.

18 CHAIRMAN GRIESHEIMER: Okay.

19 ATTORNEY BAYLARD: Absolutely.

20 CHAIRMAN GRIESHEIMER: What we'll do is,  
21 we'll extend the record, the public comment period for a week to  
22 a week from now. And that way that'll give you some time and if  
23 somebody else has some written comments they want to -- because  
24 somebody called today and was not able to attend, but they're  
25 sending a letter also.

1                   So we'll extend it a week so you can have ample time  
2 to submit the additional documentation.

3                   ATTORNEY BAYLARD: Thank you, sir.

4                   COMMISSIONER BRINKER: And we'll just keep  
5 it open for that submission period for all and any --

6                   CHAIRMAN GRIESHEIMER: Yes, for all, yeah.

7                   COMMISSIONER BRINKER: So that will be  
8 until 4:30 p.m. on next Thursday, being the what?

9                   CHAIRMAN GRIESHEIMER: 31st -- no, excuse  
10 me, 30th. Well, no, wait a minute.

11                  ATTORNEY BAYLARD: That we all agree to.

12                  COMMISSIONER BRINKER: Comment submission  
13 extends through the 30th July at 4:30 p.m.

14                  CHAIRMAN GRIESHEIMER: Yes, sir. Okay.

15                  CHAIRMAN GRIESHEIMER: We will go ahead  
16 just for anybody...

17                  Presiding Commissioner John Griesheimer. This is  
18 First District Commissioner Tim Brinker and Second District Jeff  
19 Maune. We will go ahead and start the public hearing on File No.  
20 150085 Landvatter Enterprises, L. L. C.

21                  Scottie.

22                  MS. EAGAN: First I'll start with reading  
23 the hearing procedures.

24                  At this time, I would like to place into the record  
25 the Franklin County Unified Land Use Regulations of 2001 as

1 Exhibit A, the official Zoning Map as Exhibit B, the official  
2 Master Plan as Exhibit C, and the case file for each case as  
3 Exhibit D for all the cases to be heard at this hearing.

4 [Thereupon, evidence was marked  
5 for identification as Exhibits A, B, C,  
6 and D.]

7 As each case is opened, the staff report will first  
8 be read by the Planning and Zoning Department, followed by the  
9 Commissioners' questions for the staff.

10 Then if anyone in the audience would like to speak  
11 or comment during this public hearing, they must first print  
12 their name on the sign-in sheet provided and then be sworn in.

13 When it is your turn to speak, you will come to the  
14 front of the room to address the Commission and only the  
15 Commission, not anyone in the audience, with any questions or  
16 comments.

17 Generally, the Applicant is allowed to speak first,  
18 followed by those in support of the rezoning and then those  
19 opposed. The Applicant may speak again after comments from the  
20 general public to address any questions or issues brought up  
21 during the hearing.

22 At the conclusion of all questions, comments, and  
23 discussion concerning each case, the public hearing for each case  
24 will conclude. The decision will generally be made by Commission  
25 order at a later date during the County Commission's regular

1 meeting time.

2 This is File 150085. The Applicant is Landvatter  
3 Enterprises.

4 The Applicant wishes to rezone one-half of a parcel,  
5 approximately 12 acres from Community Development to Commercial  
6 Activity 3 Community Business.

7 The property is located on Old Route 66, West Osage  
8 Street, approximately 7/10 of a mile east of the intersection of  
9 Old Route 66, West Osage Street and Old Gray Summit Road in Boles  
10 Township.

11 The Facts: The total area of the property is  
12 approximately 24.3 acres in size. The applicant's request is to  
13 rezone approximately 12.68 acres. The remaining 11.93 will  
14 remain Community Development.

15 The current zoning of this property is Community  
16 Development. The Applicant would like to rezone a portion of the  
17 parcel to Commercial Activity 3, Community Business.

18 The properties between Old Route 66 and Old Gray  
19 Summit Road are zoned Community Development. The properties  
20 across the road, Old Route 66 and south of Interstate 44 are  
21 zoned Commercial Activity, Highway Service.

22 This property is not part of a subdivision, but  
23 there are subdivisions surrounding the proposed site on the east,  
24 south and southeast.

25 The property is surrounded by commercial property to

1 the west, high-density residential properties to the south and  
2 southwest, and the railroad is on the east.

3 This property is access to Old Route 66.

4 The property is located in within Water District No.  
5 3.

6 At the May 19, 2015 Planning and Zoning meeting, the  
7 Planning and Zoning Commission voted to recommend approval with 9  
8 in fair and 1 opposed.

9 Rezoning are allowed in our regulations due to the  
10 ever-changing conditions that exist in the county and elsewhere.

11 According to Article 14, Section 321, any such change must  
12 promote the health, safety, morals, comfort, and general welfare  
13 of Franklin County by conserving and protecting property and  
14 building values, by securing the most economical use of land and  
15 facilitating the adequate provision of public improvements in  
16 accordance with the Master Plan adopted by Franklin County.

17 That's all for my staff report, but I did hand out  
18 to you all is written testimony submitted by Robert Dean. He's  
19 ill and could not be here. So we went ahead and marked that as  
20 Dean Exhibit 1.

21 [Thereupon, evidence was marked for  
22 identification and submitted for the record  
23 as Dean Exhibit No. 1.]

24 CHAIRMAN GRIESHEIMER: Okay. Is there  
25 anyone in the audience who wishes to testify in favor of the

1 rezoning? As for all of you, when you come up, you will have to  
2 be -- you'll submit your name, and then you'll have to be sworn  
3 in.

4 COMMISSIONER BRINKER: Unless you're an  
5 attorney.

6 CHAIRMAN GRIESHEIMER: Yeah, unless you're  
7 an attorney. That's true. Thank you for that.

8 ATTORNEY DAVE BAYLARD: Good afternoon.  
9 I'm Dave Baylard. I represent Landvatter Enterprises, who is the  
10 Applicant seeking to have this property rezoned to CA3. It is  
11 presently zoned CD.

12 Exhibit 1 basically shows in the yellow outlined and  
13 hatched area the approximately 12 plus acres we're seeking to  
14 have rezoned. North is the top. South is to the floor. The --  
15 this area that is not being sought to be rezoned is mostly  
16 wooded, provides a natural buffer between that area and the  
17 residential properties that are back here further to the south.

18 The other reason why we're seeking only to rezone  
19 the northern portion as shown here is because the topography of  
20 the southern portion and the ground itself doesn't lend itself to  
21 development at all, frankly. So we're seeking strictly the  
22 northern portion here as shown on Exhibit 1.

23 CHAIRMAN GRIESHEIMER: While you've got  
24 that there, where is the MoDOT Gray Summit shed in relation to  
25 that?

1 ATTORNEY BAYLARD: I should know that.

2 CHAIRMAN GRIESHEIMER: Can you tell on  
3 there?

4 ATTORNEY BAYLARD: I thought it was  
5 marked. I'm trying to remember. I think it is in fact on here.  
6 Here is it, Metro Com Commercial Park right here. MoDOT I think  
7 is across the street right here. It's not even shown here, but  
8 yeah, it's right near there.

9 And we do have some aerial photographs which show  
10 where that is.

11 CHAIRMAN GRIESHEIMER: I do appreciate  
12 that.

13 ATTORNEY BAYLARD: Yeah. We have with us,  
14 and of course they were supposed to be on the slides, but we're  
15 not doing the slides today, but we actually have photographs.

16 The request that we're making to rezone to CA3 is in  
17 conformity with the 2012 Future Land Use Map that has been  
18 promulgated by Franklin County Planning and Zoning. My  
19 understanding is is that this Future Land Use Map was developed  
20 by the Planning and Zoning Commission after public input; is that  
21 correct?

22 MS. EAGAN: [Nodding.]

23 ATTORNEY BAYLARD: And I have indicated  
24 here by a black arrow where the Landvatter rezoning is. It is in  
25 red on this Exhibit 2, and that is for the commercial here,

1 slated to be commercial sometime in the in-determinant future,  
2 and basically what we're asking you to do today is to speed up  
3 the time table and allow us that zoning now.

4 [Thereupon, evidence was marked for  
5 identification and submitted for the record  
6 as Exhibit No. 2.]

7 CHAIRMAN GRIESHEIMER: In relation to the  
8 map, --

9 ATTORNEY BAYLARD: Yes, sir.

10 CHAIRMAN GRIESHEIMER: -- okay, where's  
11 the intersection of 100 and Old Route 66?

12 ATTORNEY BAYLARD: That would be to the  
13 west. This is north to the top.

14 CHAIRMAN GRIESHEIMER: Okay.

15 ATTORNEY BAYLARD: I don't think it's  
16 shown on there. Now, the -- the Applicant had previously applied  
17 for and obtained approval from Planning and Zoning Commission for  
18 a Conditional Use Permit. That was challenged in a litigation,  
19 and during the pendency of that litigation, Mr. Landvatter's  
20 contract expired, ran out of time, couldn't close the deal. I  
21 notified the County and opposing counsel, and we had to withdraw  
22 the application for that Conditional Use Permit.

23 Upon further investigating, we stumbled across the  
24 Future Land Use Map, realized that the CA3 zoning would meet our  
25 purposes, and with the cost of preparing the land and the

1 buildings for Mr. Landvatter's use and we thought it be at least  
2 a more certain outcome for him if the rezoning was granted as  
3 opposed to a Conditional Use Permit.

4           Again, we're seeking a rezoning, so the specific use  
5 that Mr. Landvatter intends to make of this property is not  
6 necessarily relevant, but I -- or at least it's not binding upon  
7 Mr. Landvatter, but we think it is relevant for your  
8 consideration as to what he plans to do.

9           Again, that buffer will remain there, and we believe  
10 it will remain there frankly permanently because nobody is going  
11 to want to use that land for anything. It's not enough land  
12 there to go hunting. So it's going to remain in woods and will  
13 help buffer the area. Believe me, that was the first thing I  
14 looked at.

15           We also have -- I have brought and we had a slide  
16 presentation, but I do have them here. Mr. Landvatter also has a  
17 plant in the city of Kirkwood which is right across from the  
18 Museum of Transport and very near Greenbriar Country Club, which  
19 is behind us. I will bring up the photographs that I do have  
20 with me today.

21           There is a subdivision going in right next to  
22 Mr. Landvatter's operation. That subdivision -- they're  
23 currently building new homes there, and that subdivision's  
24 probably average price of those homes is 300 to 400 thousand  
25 dollars each. And the way that those things coexist we think is

1 a fine example and a very big example, very good example as to  
2 what can happen out here as well.

3 If you're familiar with West Osage at all, you know  
4 about the uses. It does have the State of Missouri there. It  
5 does have other commercial uses that are already up and down the  
6 area. It's not we're -- we are not going into -- plus it's a  
7 main thoroughfare, it's, you know, West Osage. We're not going  
8 into a country backwoods roads and saying let -- you know, let us  
9 build a concrete batch plant right in the heart of a residential  
10 area. We are not doing that. We are proposing that it goes on  
11 Old 66 or the outer road. And we think it is natural, and I will  
12 present the witness Mr. Richard Ward, who studies these things,  
13 in support of our application.

14 Mark, do I need to mark these as exhibits.

15 COUNTY ATTORNEY VINCENT: Yes.

16 ATTORNEY BAYLARD: I've marked Exhibit 1. It's  
17 an aerial photograph basically of the area.

18 Exhibit 4 a red outlines where the plant is going to  
19 be.

20 [Thereupon, evidence was marked for  
21 identification and submitted for the record  
22 as Exhibit Nos. 4 and 5.]

23 Exhibit 5 shows down the road towards the  
24 intersection of West Osage and I-44 where the auto parts  
25 dealership commercial use is and where the fireworks dealership

1 is, as well as the Phillips 66 gas station. This is not far from  
2 the subject area. The point being that the request for the  
3 rezoning, in our view, is consistent with the uses that are going  
4 on in the immediately surrounding area.

5 I have other photos of the surrounding area.  
6 Exhibit 6, 7, 8, 9 which is the State of Missouri's, 10 and 11  
7 showing what -- showing the surrounding area. This is -- again,  
8 there is a zoning request that is slated to occur in the future  
9 by the Future Land Use Map, and it is also consistent, very  
10 consistent, with the surrounding neighborhood.

11 [Thereupon, evidence was marked for  
12 identification and submitted for the record  
13 as Exhibits 6 through 11.]

14 And it seems to be a logical extension, at least as  
15 far as we're concerned and as far as Planning and Zoning is  
16 concerned, upon their Future Land Use Map.

17 Now, I would like -- hold on. What was I up to  
18 there? Was I up to nine?

19 MS. REPORTER: Eleven, I think, is what I  
20 have.

21 ATTORNEY BAYLARD: Eleven, okay.

22 CHAIRMAN GRIESHEIMER: Eleven.

23 ATTORNEY BAYLARD: Thank you.

24 Now shifting gears somewhat away from Franklin  
25 County and going to the reference that I made to the Kirkwood

1 plant that Mr. Landvatter operates, Exhibit 12 is the sign of the  
2 subdivision which is right next to his plant in Kirkwood. It's  
3 showing houses starting at \$299,900.

4 Exhibit 13 actually shows a picture of  
5 Mr. Landvatter's plant showing the existing homes or two of the  
6 existing homes that already are up and showing another home of  
7 the same type being built just on the other side of a very small  
8 buffer between Mr. Landvatter's land and the subdivision.

9 And Exhibit 14 is another good view of that showing  
10 his operation and how it has coexisted for years with the --  
11 that's Exhibit 14 -- with the high-priced homes in that  
12 subdivision there.

13 Thank you.

14 MS. EAGAN: You're welcome.

15 [Thereupon, evidence was marked for  
16 identification and submitted for the record as  
17 Exhibit Nos. 12 through 14.]

18 ATTORNEY BAYLARD: Right now I'd like to  
19 present Mr. Richard Ward who was enlisted by the Applicant who  
20 will testify a little bit further in connection. He will tell  
21 you his own credentials.

22 Do you have any questions for me?

23 CHAIRMAN GRIESHEIMER: Any questions  
24 for...

25 COMMISSIONER BRINKER: Not at this time.

1 CHAIRMAN GRIESHEIMER: All right.

2 ATTORNEY BAYLARD: Thank you.

3 MR. RICHARD WARD: Commissioners, my name  
4 is Rich --

5 CHAIRMAN GRIESHEIMER: You'll need to be  
6 sworn in. Are you an attorney?

7 MR. RICHARD WARD: I am not.

8 CHAIRMAN GRIESHEIMER: Okay.

9 MR. WARD: Thank goodness.

10 CHAIRMAN GRIESHEIMER: Then you need to be  
11 sworn in.

12 [Thereupon, the witness was sworn.]

13 MS. EAGAN: You'll need to sign your  
14 name -- print your name.

15 MR. WARD: Okay. Commissioner Griesheimer  
16 and your colleagues, I am glad to be with you this afternoon. My  
17 name is Richard Ward. I have a long track record of experience  
18 as a consultant in real estate, economics and community  
19 development. I've worked for numerous cities and counties in the  
20 greater metropolitan area as well as the state of Missouri. At  
21 one time, I did I think what was your first comprehensive plan or  
22 master plan back in the mid '70s or late '70s. I'd have to go  
23 back and check the dates on that. So I've had some -- I've been  
24 kicking around in this business for a while.

25 I hold a professional certification as an urban

1 planner and one in economic development as well. I have a  
2 graduate degree in urban regional planning.

3 My assignment for Mr. Landvatter and his company is  
4 to advise and assist in securing the -- your approval for the  
5 requisite zoning to enable the establishment of a concrete  
6 manufacturing plant on his property.

7 The Landvatter property, as you've heard, is 25  
8 acres. It's going to be cut in half roughly, and the northern  
9 half of it would be occupied primarily by the concrete plant. I  
10 don't think the concrete plant would occupy all that 12 acres,  
11 but a significant piece of it. It would -- the other half would  
12 lie as a buffer between and remain zoned CD. It's where the  
13 forest land is. That's where the sloping land begins to occur,  
14 going up to Old Gray Summit Road, and that area, another 11 or 12  
15 acres, will remain essentially as it is today for all intents and  
16 purposes.

17 It really has no other appropriate use that it could  
18 be put to. So I don't think there's too much to worry about.  
19 There's a pipeline, a sewer that goes along one side of it, a  
20 major sewer, that would have to be crossed to get to it. You  
21 would have to also deal with a major gas, liquid gas, pipeline,  
22 Conoco Phillips, that goes through the other side of that strip,  
23 and so that land provides an outstanding buffer.

24 It's almost 650 feet in most places from the houses  
25 that are along Gray -- Old Gray Summit and the apartments to the

1 actual -- where the actual plant would be built. That's over two  
2 football fields. That's a long way.

3 West Osage or Old Route 66 south, I-44 frontage  
4 road, has a very definite industrial highway and highway  
5 commercial character. As you leave from the intersection with  
6 Route 100 and 44 and begin to go east from that point, you pass  
7 the service station, you pass a fireworks plant, you pass a  
8 building material contractor. That's Cleary. You pass a payday  
9 loan operation. You pass a gun store. You pass an auto and  
10 truck repair and tire business, big operation mostly for trucks  
11 it appears to me to be. And then you have the MoDOT property  
12 yard, which is very industrial in character, notwithstanding the  
13 fact it's shown on your Comprehensive Plan as institutional  
14 because the State owns it, but you look at it, it's industrial.

15 And you have the Ameren substation at the entrance  
16 to the Landvatter property. You have a storage locker place, and  
17 I think that's -- oh, and a state park and ride lot. So those  
18 are the things that line that road as you go east from Route 100  
19 back toward Pacific and get then to the Union Pacific Railroad  
20 track just in that strip, and there's some more land that can be  
21 developed as well, most likely in the same character.

22 The residential development on the north side of Old  
23 Gray Summit Road orients to the south, basic the south. The  
24 homes face south. So you enter them from the south on Old Summit  
25 Road, but they are on the north side of the road, of course.

1           There is essentially a -- there is the inaccessible  
2 land behind them that somehow subdivided along with the home  
3 lots, but there's no way to get to that property which is part of  
4 the steepest land and where much of the tree cover is that  
5 provides the screening that's already there.

6           Beyond on the south side of Old Gray Summit Road is  
7 the Missouri Botanical Garden. Shaw Nature Reserve I guess is  
8 the proper name for it. Just call it the Nature Reserve.  
9 Wonderful place. I go there. I enjoy it. Something that's  
10 particularly marvelous in our broader community.

11           I would say that -- and I'll say this again as I  
12 complete my remarks. Those uses, the residential use and the  
13 Shaw Nature Reserve, are well protected by distance as well as by  
14 trees as well as by topography from what might -- what would be  
15 built on the Landvatter property.

16           Now let me talk a little bit about Barrett Station  
17 Road in Kirkwood and the Landvatter plant there. I would  
18 recommend you go look at it. I think it's really quite  
19 instructive. It was to me. I wasn't even aware that it was  
20 there. I have a lot of the slides for it I was going to show  
21 you, but I can't do that, unfortunately. But we have a  
22 situation. It's a seven-acre site roughly. It's surrounded on  
23 three sides by single-family residential dwellings. Some of them  
24 were there when the plant was built in 1953. Most of them were  
25 built over the years since then. There are four homes that were

1 just recently built in the last two years right next to the  
2 property. There is no buffer between them other than what's on  
3 their own property and on Landvatter's property, and there is no  
4 other land between them, and not much distance. These have --  
5 one house just -- was just finished in the last month or two.

6 In total, I counted, from aerial photograph, eight  
7 homes that -- the houses, not the property line, but the houses  
8 are within 50 to 300 and maybe 250 -- between 50 and 300 feet  
9 from the actual plant. And half of those are new, and the other  
10 half have been there for sometime. And their prices range from  
11 about 300 up into the 400 and 500 thousand dollar range.

12 So it's an outstanding example of coexistence of  
13 these two land uses, and these houses are much closer, much  
14 closer, in Kirkwood to the actual plant operation than would be  
15 the case here on West Osage.

16 I would assert that the issues of noise, dust, and  
17 visual impacts, as well as stormwater runoff all can be managed  
18 and all can be managed to the satisfaction of the residents and  
19 the local and state regulatory organizations.

20 I then took time and reviewed your Comprehensive  
21 Plan, the plan of 2012. I read the whole thing, and I was very  
22 impressed with it. I wrote down a lot of things in there that I  
23 think pertain directly to this site, but I'm not going to go  
24 through those words here. I can give that to you in written form,  
25 but I pulled out of it a lot of the goals and objectives that

1 directly speak to this circumstance.

2 I would summarize by saying that you clearly -- my  
3 reading of your plan, that you clearly desire to have a community  
4 that's growing, a county -- you don't want the county to stand  
5 still. You don't want it to run in place. You want it to  
6 continue to grow and change. You want that growth and change to  
7 be managed. You want conflicts to be managed, but nevertheless  
8 you're not suggesting in that plan that you want everything to  
9 stay the way it is. You want economic growth to be there in  
10 order to support residential growth and provide the tax base and  
11 the vitality of a vibrant economy. So that's what I read in your  
12 Comprehensive Plan, and you say it over and over again in many  
13 good words -- many better words I would say.

14 I would also note that in map C11, the Future Land  
15 Use Map, that it's very clear you want this property to be  
16 commercial in the broad sense of commercial. That's not retail,  
17 per se, that's not office, per se. That's broadly retail and I  
18 would say light industrial uses as well. And you do list in your  
19 zoning category for the CA3 category which is being applied for  
20 here is commercial district, but you call for manufacturing as a  
21 permitted use. Not a conditional use, a permitted use in that  
22 district. And I would point out that this is a manufacturing  
23 operation. Landvatter makes concrete, produces it, brings in raw  
24 material necessary to produce it or the component materials, and  
25 then sells that product into the community in a commercial sense,

1 but it also makes it because it's manufacturing and commercial in  
2 a retail sense because it's selling that product as well.

3 So it's very much in keeping with your zoning and  
4 with your plan as I would see it.

5 So in summary. I would say that your CA3 zoning for  
6 the master is very much in keeping with the Master Plan. It's no  
7 stretch to consider it in conformance. I would say the proposal  
8 is in keeping with the philosophy of the Master Plan. It's  
9 something that's necessary for growth. Concrete is a product  
10 that is not -- you don't put it on the shelves. You make it and  
11 you sell it and it gets -- it's used within a few hours at most  
12 from the time you mix it. It's no good if you wait very long.  
13 So you have to be on the highways, you have to be able to get from  
14 your highway -- from your plant to your users in a very short  
15 period of time. And so that's -- and that is -- everything you  
16 do needs concrete, every physical manifestation. You build  
17 foundations, you build the structure, you build the basement, you  
18 build the driveways, you build the parking lots, you build  
19 bridges. All of those things rely on concrete. So it's  
20 something that feeds into your economy very naturally.

21 I would emphasize that the land -- this -- I see  
22 this as a perfect transition situation where you have an  
23 industrial character along West Osage, the Old 66 frontage, and  
24 it's there, it's well established, it's not going to change, it's  
25 not going to be residential character ever, would not want it to

1 be. Yet, you've got an industrial -- a manufacturing use that  
2 can be well buffered from residential and the nature reserve. It  
3 doesn't have to affect it, I don't believe, in any significant  
4 way. The distance is great. The slope is great. You've got  
5 about a 50-foot elevation change. You go behind -- look behind  
6 the homes along the roadway where the homes are. You go along  
7 there, the buffering behind them is solid. In the winter, they  
8 have a few shots that show that you can barely see something from  
9 one side to the other in the winter because of the trees, and the  
10 trees will get bigger. It's not like you're going out and  
11 planting a bunch of little trees and waiting for them to grow for  
12 the next 50 years. They are there.

13           And I would add that the truck driving associated  
14 with Landvatter would all be on West Osage, Old Route 66. It  
15 would never need to go onto Old Gray Summit Road. I was  
16 stumbling on Old Gray Summit. And there is no -- there should be  
17 no conflict in terms of concrete trucks going up and down the  
18 street in front of these homes.

19           Finally, I would emphasize aging. I do not -- I  
20 believe that the -- neither the Botanical Gardens Nature Reserve  
21 nor the nearby residences of the homes or apartments along Old  
22 Gray Summit Road will be negatively impacted in any significant  
23 way by implementation of the Landvatter proposal.

24           Thank you very much for your attention and  
25 consideration of my remarks. I will be pleased to answer any

1 questions. I have the same maps that have been shown to you or  
2 the same photographs. I think I'd rather just -- instead of  
3 trying to explain them again, they have been explained by David,  
4 I will wait if you have any questions, and if they will help  
5 answer the questions, I will answer them. Then I will provide  
6 you my slide show that I was not able to provide because of the  
7 Apple connection. I'll have that available to you in hard copy  
8 by the 30th.

9 CHAIRMAN GRIESHEIMER: Jeff, Tim, got any  
10 questions?

11 COMMISSIONER MAUNE: No.

12 COMMISSIONER BRINKER: Not at this time.

13 CHAIRMAN GRIESHEIMER: All right.

14 I just have one. I may have to refer back to Mr.  
15 Baylard, but -- and I know I can't be specific with the type of  
16 use, but bear with me here.

17 The -- with the rezoning and the types of businesses  
18 that can go there, what type of hours of operation are we looking  
19 at as far as the usage?

20 MR. WARD: I don't have the answer to  
21 that. Mr. Landvatter may.

22 CHAIRMAN GRIESHEIMER: Is he going to  
23 testify? Maybe I can ask that of him.

24 ATTORNEY BAYLARD: He can.

25 CHAIRMAN GRIESHEIMER: Okay. I don't know

1 who -- what your hours were.

2 MR. WARD: No, I don't remember. I've  
3 heard it, but I don't remember it. I'll leave it to the experts  
4 on that.

5 CHAIRMAN GRIESHEIMER: Thank you very  
6 much. That's all I have.

7 MR. WARD: Okay. Thank you.

8 [Thereupon, the witness was sworn.]

9 MS. REPORTER: State your name for me,  
10 please.

11 MR. ROGER LANDVATTER: Roger Landvatter.

12 MS. REPORTER: Thank you.

13 CHAIRMAN GRIESHEIMER: Go ahead.

14 MR. LANDVATTER: Okay. Repeat the  
15 question.

16 CHAIRMAN GRIESHEIMER: Yeah, the types of  
17 uses that would be available for the rezoning here, what types  
18 of -- what do you envision the hours of operation would be for  
19 the types of uses?

20 MR. LANDVATTER: Typical hours in the  
21 summertime and based on the ambient temperature, is usually for  
22 loading trucks maybe from six o'clock in the morning and very  
23 seldom does it go past four o'clock, but it has loaded probably  
24 as late as six o'clock in the evening once in a while. Not  
25 typically. Typically it's probably 6:00 to 4:00.

1 CHAIRMAN GRIESHEIMER: That's all I have.

2 Tim, Jeff, any questions?

3 COMMISSIONER BRINKER: No, I mean, the  
4 hearing is regarding rezoning a piece of property not the  
5 function of the property.

6 CHAIRMAN GRIESHEIMER: Well, correct, but  
7 there are different types of uses that can be utilized when you  
8 rezone it. That's why I'm -- generally what the hours of those  
9 types of uses that would be available if upon this rezoning.  
10 So...

11 COMMISSIONER BRINKER: I would direct that  
12 to Scottie. Scottie and I wrote that down, allowable uses with  
13 the new zoning and allowable uses that are currently existing for  
14 this parcel, you know. Today it is commercial.

15 MS. EAGAN: Today it's Community  
16 Development, which is a commercial district.

17 COMMISSIONER BRINKER: And types of  
18 general use?

19 MS. EAGAN: Things that can go there with  
20 a permitted use would be, you know, gas stations, restaurants,  
21 bars, kennels, things of that sort.

22 COMMISSIONER BRINKER: This new zoning  
23 that's being requested allows for the industrial manufacturer?

24 MS. EAGAN: Manufacturing is a new one. I  
25 think it would allow for, I want to say, research laboratories to

1 be in there, but all the permitted uses in Community Development  
2 would be permitted uses in Commercial Activity 3.

3 The new things that are allowed in Commercial  
4 Activity 3 that are not alluded in CD include manufacturing,  
5 printing, research service and laboratories, and I believe the  
6 sale of heavy construction equipment. But other than that,  
7 everything else is the exact same.

8 COMMISSIONER BRINKER: Okay. Thank you.

9 CHAIRMAN GRIESHEIMER: Thank you.

10 ATTORNEY BAYLARD: Just in summary, it's  
11 our belief that this request comports with the Franklin County  
12 requirements for rezoning. It is a natural type of rezoning, and  
13 it also comports exactly with plan -- the Franklin County  
14 Planning and Zoning's 2012 Future Land Use Map. So it is a --  
15 something that, after study, the Planning and Zoning Commission  
16 determined that that's the zoning that they would be -- that this  
17 property would be suited for, and that's what we are seeking.

18 And that's all we have on behalf of the Applicant.

19 COMMISSIONER BRINKER: If I may pose a  
20 question to the Applicant and the representative of the Applicant  
21 Mr. Baylard. The question I have is the goose and the golden  
22 egg. Here is the balance of the property that remains, the  
23 "buffer area" as designated.

24 Would the Applicant have an issue of guaranteeing in  
25 some sort or fashion or way of that existing in terms of in

1 perpetuity the business operating there or not?

2 ATTORNEY BAYLARD: No.

3 COMMISSIONER BRINKER: Okay. I'm just  
4 curious, just trying to get some kum by aye going. All right.

5 ATTORNEY BAYLARD: It's not developable.

6 COMMISSIONER BRINKER: So the reason is  
7 not from an abstinent perspective, it's from a  
8 it-just-won't-function perspective?

9 ATTORNEY BAYLARD: Right, but it -- number  
10 one, it won't function. Number two, you know, whenever you go in  
11 for a conditional use permit or a rezoning, you oftentimes --  
12 which I suspect may happen today -- have opposition. Okay. And  
13 it's opposition sometimes from residents. And oftentimes as you  
14 all know better than I, with conditional use permits, one of the  
15 requirements is a buffer. Here God created the buffer. I mean,  
16 it's already there. I mean, it's just not usable. Plus there's  
17 easements going through it and everything else.

18 And so, you know, we're not even seeking to change  
19 the zoning on that whatsoever. It is not in our plans, and I  
20 don't think it ever could be in our plans. And we're willing to  
21 make that representation.

22 COMMISSIONER BRINKER: Thank you.

23 ATTORNEY BAYLARD: Thank you.

24 CHAIRMAN GRIESHEIMER: Any other  
25 questions? [None] Okay.

1                   Is there anyone else wishing to testify in support  
2 of the rezoning? [None] Okay.

3                   Is there anyone in the audience wishing to testify  
4 in opposition to the rezoning?

5                   ATTORNEY KATHLEEN HENRY: Good afternoon,  
6 Commissioners. I'm Kathleen Henry. I am a lawyer at Great  
7 Rivers Environmental Law Center in St. Louis.

8                   CHAIRMAN GRIESHEIMER: And you don't have  
9 to sworn in. Okay.

10                  ATTORNEY HENRY: And I have had a couple  
11 of questions for Mr. Landvatter and his expert. Is this not the  
12 type of hearing where I can ask them any questions?

13                  CHAIRMAN GRIESHEIMER: No, it is not.

14                  ATTORNEY HENRY: Okay. Then could the  
15 record show I'm not allowed to ask any questions of them?

16                  CHAIRMAN GRIESHEIMER: That's how these  
17 hearings operate.

18                  ATTORNEY HENRY: Okay. Well, just make it  
19 clear in the record.

20                  CHAIRMAN GRIESHEIMER: This is strictly  
21 for -- for our interpretation, for our gathering of facts.

22                  ATTORNEY HENRY: For the Commissioners?

23                  COMMISSIONER BRINKER: Ma'am, to your  
24 satisfaction, that has been stated in advance of the meeting --

25                  ATTORNEY HENRY: Oh.

1 COMMISSIONER BRINKER: -- in testimony  
2 given in the comments made by the Planning and Zoning director  
3 when the meeting opened or when the hearing opened.

4 ATTORNEY HENRY: Oh, okay. I'm sorry. I  
5 missed that. Okay.

6 CHAIRMAN GRIESHEIMER: Now, you can do  
7 this too, okay. There is -- they will have an opportunity for  
8 rebuttal. So if you want to direct something to us, and then  
9 maybe they would rebut that at the end, you could do that.

10 ATTORNEY HENRY: Okay.

11 CHAIRMAN GRIESHEIMER: But that's  
12 allowable, right?

13 COMMISSIONER BRINKER: The design is not  
14 to stifle any communication whatsoever. The design is to prevent  
15 volatility. So in that manner and with that spirit, if you will,  
16 you may certainly query the Commission to potentially query the  
17 Applicant and get it that way.

18 ATTORNEY HENRY: Okay. Well, this wasn't  
19 going to be the time I spoke. The first person speaking against  
20 this is Tom Mitchell.

21 CHAIRMAN GRIESHEIMER: Okay.

22 ATTORNEY HENRY: I'm coming up in a bit.

23 CHAIRMAN GRIESHEIMER: Okay

24 COMMISSIONER BRINKER: Thank you.

25 [Thereupon, the witness was sworn.]

1 MS. REPORTER: State your name for me,  
2 please.

3 MR. TOM MITCHELL: My name is Tom  
4 Mitchell. I really don't have any skin in this game, so to  
5 speak. I don't live on Old Gray Summit Road. I don't live in  
6 Franklin County. My mother lives on Old Gray Summit Road. We  
7 moved there when I was in the eighth grade. I used to work at  
8 the Speedy Mart that used to be up there at the corner near this  
9 proposed concrete batch plant, and my mother actually opened and  
10 ran a produce and fruit stand right there by Speedy Mart back in  
11 the early '80s.

12 I grew up running, fishing, hunting all these lands  
13 around the Shaw's Arboretum. When I was younger, I bow hunted  
14 across from the Shaw's Arboretum. I would, I confess, trespass  
15 and bass fish in Shaw's Arboretum. Of course, never kept the  
16 fish -- maybe a couple, but this is a really special county. You  
17 all should be proud of this county.

18 I'm disappointed a little bit in how things have  
19 developed here. When I walked into this building, I saw the  
20 posters downstairs about the Purina Farms and the Shaw's -- I  
21 call it the arboretum -- Nature Reserve. You've got Meramec  
22 Caverns, the Meramec River, the Meramec State Park. You've got  
23 so many great, absolute wonderful natural treasures here that you  
24 could essentially name Franklin County and even Gray Summit the  
25 Gateway to the Ozarks. That's the vision I'm hoping you all

1 have, not a concrete batch plant visible from a very busy section  
2 of a really international interstate Route 66. It's not fit  
3 there.

4 So that's my opening statement. I'm here really to  
5 talk more about decision-making. We live in a great nation of  
6 freedom. Outside of our US military, you gentlemen are at the  
7 front lines of that freedom, you make the decisions for the  
8 people sitting here and the people sitting here, and they rely on  
9 your integrity, your honor to make the right decision.

10 There's really only three ways to arrive at  
11 decisions. You rationalize them, you base your decisions on  
12 evidence, or you base your decisions on faith. Me personally,  
13 most of my decisions are based on faith. It doesn't mean that I  
14 don't look for rational reasons or evidence, but faith is  
15 extremely important, and our nation, as you know, has gotten away  
16 from that.

17 Decisions result in either one of two things. Good  
18 decisions expand future options. Bad decisions limit future  
19 options. This concrete plant is a bad decision. This concrete  
20 plant is going to limit future options for the county. You talk  
21 about the land that God created as the buffer. You're right. He  
22 did fashion that land, but what else you going to do with that  
23 land once it becomes industrial.

24 We can try to find loopholes about industrial versus  
25 commercial. This is an industrial proposition, not a commercial

1 one. So I implore you, gentlemen, make a good decision that will  
2 expand the future options of this county.

3 So the way I want to close my presentation is when I  
4 was doing some research to try to find out what makes these  
5 commissioners tick, what -- who are you, how did you arrive in  
6 these positions, how can I appeal towards what's right here, not  
7 necessary everything up here, what's in your hearts, I saw an  
8 article, or actually a series articles, from 2012 where the  
9 Commission was actually threatened to be sued or going to be sued  
10 by the ACLU for opening with prayer.

11 Unfortunately, that's where we are in this nation.  
12 I thought it was very -- by the way, do I pronounce your name  
13 Griesheimer?

14 CHAIRMAN GRIESHEIMER: Griesheimer.

15 MR. MITCHELL: Griesheimer. I thought it  
16 was ingenious of your solution, and that was to let the person in  
17 the audience open with prayer. So on behalf of the people of Old  
18 Gray Summit Road and the opposition, I would like to open this  
19 Council meeting in this section with a prayer if you don't mind.

20 CITY ATTORNEY BAYLARD: You can't.

21 MR. MITCHELL: Thank you.

22 [Thereupon, a prayer was said by Mr.  
23 Mitchell.]

24 CHAIRMAN GRIESHEIMER: Thank you. I guess  
25 of all the public hearings I've had in the last 33 years of my

1 public service, I've never had a prayer in the middle of it, but  
2 I do something new every day.

3 CITY ATTORNEY BAYLARD: Not supposed to do  
4 it.

5 CHAIRMAN GRIESHEIMER: I hope we don't get  
6 sued.

7 COUNTY ATTORNEY VINCENT: You probably  
8 will get sued.

9 CHAIRMAN GRIESHEIMER: Huh?

10 COUNTY ATTORNEY VINCENT: You probably  
11 will get sued.

12 CHAIRMAN GRIESHEIMER: It will get us  
13 sued?

14 COUNTY ATTORNEY VINCENT: Because as part  
15 of the hearing, it's contrary to the --

16 CHAIRMAN GRIESHEIMER: Oh.

17 MR. MITCHELL: They can come after me if  
18 they want to.

19 COUNTY ATTORNEY VINCENT: No, they'll have  
20 to come after them.

21 CHAIRMAN GRIESHEIMER: Oh, well.

22 Anyone else in the audience would like to testify in  
23 opposition?

24 [Thereupon, the witness was sworn.]

25 MS. REPORTER: State your name for me,

1 please.

2 DR. JASON KNOUFF: My name's Dr. Jayson  
3 Knouff. I am a faculty member in the Department of Biology at  
4 St. Louis University. I study watershed science, particularly in  
5 the Meramec River watershed. I've been doing it for about the  
6 past nine years. The research that goes on in my lab generally  
7 focuses within the Meramec, on how land use changes influence how  
8 much water gets into the river, how quickly it gets in, what type  
9 of pollutants get in, and the sort of end results of that,  
10 whether it be on flooding or biodiversity or those types of  
11 things. And so I've been asked today to comment on the potential  
12 impacts of transformation of this land to industrial,  
13 particularly in the context of the stream that's running through  
14 the property. And so I'll just speak to the potential impacts of  
15 that.

16 So when we -- what we know is that when we transform  
17 land from some sort of vegetation to say an industrial use or an  
18 urban use, the water runs off much more quickly, and the result  
19 of that is, of course, that whatever is on the landscape runs off  
20 with it and, you know, it eventually makes its way into the  
21 watershed depending on, you know, how close a stream or river is.

22 The more quickly -- or when you increase the  
23 impervious surfaces, water runs off more quickly. It gets into  
24 the streams more quickly, then the water comes up more quickly  
25 and it comes down more quickly. And the result of that is

1 it's -- I mean, you can think of it as being much more traumatic  
2 to the stream channel. And so you can -- if you were to draw  
3 your finger through sand and make a little path and drip water  
4 through it, the water would probably, you know, follow that path.  
5 But if you sort of sprayed water at that path, it would  
6 eventually sort of straighten out that channel or straighten out  
7 that stream path. And that's potentially what can happen when  
8 you create these impervious surfaces.

9           And so the result of that is you move from these  
10 natural stream channels which sort of act as a buffer to  
11 flooding, for example, to these sort of the straight ditches.  
12 And when you have these straighter ditches, depending on the time  
13 of the year, whether or not you know it's higher water or lower  
14 water, you can end up with standing water, which presents  
15 problems, whether it be sort of just an odor from standing water  
16 or standing water promotes, you know, mosquitoes, for example.

17           The problem is local, but it's also -- you know,  
18 because we're in watershed, it's a downstream problem in that  
19 regard. So you know the water flows from the stream that runs  
20 through this property and the brush and into the Meramec. And so  
21 the Meramec itself is a unique watershed, particularly in North  
22 America. I won't go into all the different interesting things  
23 about the Meramec, but one is that there are more kinds of  
24 minnows in the Meramec River than any other watershed in North  
25 America. So we've got that going for us.

1 But additionally there are several species of state  
2 and federal endangered organisms in the Meramec. So anything  
3 that happens on this property sort of contributes to the overall  
4 wellbeing of the watershed in general.

5 So the general point of it is you transform land, it  
6 alters the natural hydrological cycle, and those alterations have  
7 both local impacts on the quality of the environment and aquatic  
8 systems that they have impacts downstream, whether it be on  
9 physical processes or biological processes and water quality.

10 CHAIRMAN GRIESHEIMER: Okay. Any  
11 questions for the witness? Seeing none --

12 COMMISSIONER BRINKER: Your testimony is  
13 relative to -- I'm trying to correlate all this testimony to the  
14 issue at hand, that is taking a parcel of forest and changing the  
15 zoning of it.

16 DR. KNOUFF: Right.

17 COMMISSIONER BRINKER: Period. And under  
18 the current zoning structures, asphalt-based, concrete-based can  
19 be added to it. So you're testifying in terms of as it relates  
20 to developing the property, period?

21 DR. KNOUFF: No, well, it -- it can go  
22 both ways. I mean, if you change -- if you develop a landscape  
23 in any way, you're obviously altering it. But the different  
24 types of development are going to impact the degree of certain  
25 impairment of this system, and so you know, at one end, you can

1 -- just very generally speaking, you can have a naturally  
2 forested area. So then the next step, if you move to  
3 agriculture, you know, it's not as good as the forest, but it's  
4 not as bad as the -- and I don't want to say bad, but you know,  
5 there's an alteration there -- as the next step which might be a  
6 suburban lot, you know, with homes and grass and things like  
7 that.

8           And then maybe you move on to, you know, what you're  
9 talking about, like a strip mall which you've got the asphalt,  
10 which is an impervious surface. And then sort of the next step  
11 would be something where you've got that impervious surface but  
12 the activity going on on that impervious surface sort of deposits  
13 materials that then sort of add another issue.

14                           COMMISSIONER BRINKER: When Missouri  
15 Department of Transportation brings their tons and tons of  
16 cinders in and out of the lot across the street, did you address  
17 them or -- because it's similar in terms of --

18                           DR. KNOUFF: Across the street from this  
19 property?

20                           COMMISSIONER BRINKER: Across Osage, yes.  
21 Because some would argue that those items are the same ilk, if  
22 you will.

23                           DR. KNOUFF: Well, the short answer is no,  
24 I didn't. But in terms of how that relates to the issue here is  
25 that the cinders are not -- when you get really fine particles,

1 much, much finer than cinders, those are what really impair the  
2 aquatic system. And so what they do is they float, essentially.  
3 They'll be suspended in the water column, and when they float,  
4 they can be -- there are places where bacteria can grab on. And  
5 bacteria grab onto those suspended particles, they use oxygen.  
6 And when those bacteria use oxygen, they then sort of take the  
7 oxygen out of the water, and that results in sort of this cascade  
8 of problems where, you know, for lack of a better way to put it,  
9 you go from, you know, a nice-looking stream that you would fish  
10 in to kind of a mucky sort of situation because things -- because  
11 there's no oxygen, they die, they fall out of the water column,  
12 and then you get that sort of mucky bottom.

13           So a cinder is one -- is again, you know, for in  
14 terms of the environmental quality, you kind of always want to  
15 have a forest, but then there's a gradient of impacts after that.  
16 So a cinder, you know, is going to sort of act, depending on, you  
17 know, what the cinder is made of, is going to act more like a  
18 stone which is not, you know, a real big problem compared to  
19 something like, you know, dust or, you know, mud and that kind of  
20 stuff, which will be a problem.

21           The other issue is the proximity of the development  
22 to the actual stream, and so things that are farther away are  
23 going to have less of an impact simply because, you know, it's  
24 harder to wash things from far away than it is close up.

25   COMMISSIONER BRINKER: How far is this

1 development from Brush Creek, and then how far is Brush Creek  
2 from the Meramec River? I mean, do you know? I mean, you  
3 studied it.

4 DR. KNOUFF: I don't know the exact  
5 kilometers, but the -- so the one stream is, you know, runs  
6 through the property which then runs into Brush Creek. Which, I  
7 mean, I'll guess a couple of kilometers downstream, and then  
8 Brush Creek, you know, several more kilometers running down into  
9 the Meramec. So -- but don't -- you know, anybody here is more  
10 than welcome to refute that.

11 COMMISSIONER BRINKER: I understand.

12 DR. KNOUFF: Yeah, yeah. So you know,  
13 it's a spatial question, the impact, but it's also a time scale.  
14 So you know, what's happening what's going to happen to this  
15 stream and sort of the quality of the environment locally is  
16 going to happen fairly quickly. Any sort of consequential  
17 effects downstream, you know, you may not see for, you know, a  
18 decade or two. So we work -- I mean, just to give you an idea,  
19 we work in the stream called the Bar Creek, which is -- well,  
20 it's a few miles east of here. But somebody's pond dam broke and  
21 it let a whole bunch of sand into the stream, and so over the  
22 past eight years, we've sort of been -- sort of been watching  
23 this slug of sand like slowly move down the stream. And so it's  
24 been about a decade, and we can actually watch this.

25 So it's -- you know, it may not be a, you know,

1 week-to-week thing. It may be a year-to-year thing, a decade.

2 But I -- you know, frankly I don't know.

3 COMMISSIONER BRINKER: So back to my  
4 original point. Is -- your testimony really correlates more to  
5 the use of the property versus the zoning of the property that's  
6 considered today, because all we're here to do today is consider  
7 the zoning.

8 DR. KNOUFF: Right. Yeah, I would say the  
9 most impactal [sic] issue is the use, but if the zoning defines  
10 the use or sort of alters the potential use, then it -- I think  
11 it's a potential consideration.

12 COMMISSIONER BRINKER: Got you.

13 DR. KNOUFF: Uh-huh.

14 COMMISSIONER BRINKER: Thank you.

15 DR. KNOUFF: Uh-huh.

16 CHAIRMAN GRIESHEIMER: Any other  
17 questions? [None]

18 Thank you very much.

19 Anyone else wishing to testify in opposition to the  
20 rezoning?

21 [Thereupon, the witness was sworn.]

22 MS. REPORTER: And state your name for me,  
23 please.

24 MR. JIM FRISCH: Jim Frisch. My name is  
25 Jim Frisch. I live on the Old Gray Summit Road, I have, of

1 course, I guess this is Exhibit 68.

2 [Thereupon, evidence was marked for  
3 identification and submitted for the record  
4 as Exhibit No. 68.]

5 I could read from it, but I'll tell you real quick  
6 what it is because I have to get back to work.

7 I have two things that were concern -- my concern  
8 being, living on the Old Gray Summit Road was, of course, if  
9 the -- if the industrial is hooked up to the existing Brush Creek  
10 sewer system, that's a concern of mine because I have a manhole  
11 in my backyard that is part of that and consists -- it  
12 consistently overflows. It's been observed by -- the Commission  
13 of the Brush Creek sewer have seen it because of inadequacy of  
14 how it was put together. Fine. This would add to that. So then  
15 that would impact me.

16 Also dust on prevailing winds most of the time are  
17 going to be -- I'm downwind of it. So that's a concern also.

18 So those are basically what I put in my letter to  
19 show my opposition to this.

20 A few things as I was sitting here listening,  
21 basically is that what I would like to have you think about is  
22 all of this really wouldn't have had to happened if Mr.  
23 Landvatter would have come to us and said I would like to put a  
24 batch plant in your area, and I want to make sure that you know  
25 that I'm going to do it right, that I'm going to follow up on any

1 concerns and I will come to you or if you come to me if you've  
2 got concerns, I'll work with you. That hasn't happened, and it  
3 still hasn't happened, and I'm concerned about that. And that's  
4 why I still have opposition. I would bet if you had just the  
5 people sitting here and some of the others who couldn't make it,  
6 if you stood up and asked them if he would have approached us in  
7 the very beginning, this wouldn't -- none of this would be  
8 happening, and he actually would probably have construction going  
9 on now.

10 We are just doing what we as residents of the county  
11 and of our neighborhood -- because we know each other. We have a  
12 good neighborhood. We know each other. We've known each other  
13 for years, and that means a lot to us. And so that's all I  
14 really have to say. I just wanted to make sure that you got my  
15 part of it. Any questions?

16 CHAIRMAN GRIESHEIMER: Any questions for  
17 the witness? [None]

18 Seeing none, we may talk to you otherwise about this  
19 Brush Creek at another time.

20 MR. FRISCH: That'll be just fine, sir.

21 CHAIRMAN GRIESHEIMER: Thank you.

22 Anyone else wishing to testify in opposition to the  
23 rezoning?

24 ATTORNEY HENRY: Kathleen Henry, and I'm  
25 going to speak after we hand out the exhibits.

1 Good afternoon. Can people here me; is this picking  
2 up? Okay.

3 There are four reasons that this Commission should  
4 deny the recommendation of the Planning and Zoning Commission.

5 The first is that the Planning and Zoning Commission  
6 violated the law when it failed to allow people to speak at the  
7 hearing it held on May 19, 2015. Revised Statutes of Missouri  
8 64.860 and 64.863 require the Planning and Zoning Commission to  
9 hold hearings, and I'm going to read from their wording which is  
10 on Exhibit 10 for just a minute. I'm not going to read the whole  
11 statute. 63.860 says -- let's see if I can get the mic in the  
12 right place.

13 [Thereupon, evidence was marked for  
14 identification and submitted for the record  
15 as Exhibit No. 10.]

16 "The County Commission shall provide  
17 for the manner in which the regulations,  
18 restrictions and boundaries of districts  
19 shall be determined, established, and  
20 enforced and, from time to time, amended."

21 And it continues. I'm omitting a few words. That's  
22 the end of that quote. If the -- going on in 860: "If there be  
23 no County Planning Commission, the County Commission shall  
24 appoint a county zoning commission." And it goes on describing  
25 the county zoning commission. It says the zoning commission --

1 the county zoning commission shall make a preliminary report and  
2 propose zoning order and hold public hearings thereon, and afford  
3 persons interested an opportunity to be heard.

4           Going on to read from the 64.863, which title is  
5 Plan or Regulations Not to be Changed Without Notice and Hearing.

6 It says:

7                       "After the adoption of a zoning plan  
8                       or regulations adopted pursuant thereto,  
9                       no use of any parcel of land included in  
10                      the plan or regulations shall be changed  
11                      without a public hearing, and the person  
12                      or body which conducts the hearing shall  
13                      give notice at least 15 days before the  
14                      hearing by regular mail to all owners of  
15                      any real property located within 600 feet  
16                      of the parcel of land for which the  
17                      change is proposed."

18           I submit what those two requirements, the Planning  
19 and Zoning Commission to hold hearings -- in fact, I have the  
20 orders of past Zoning Commission hearings filed as Exhibit 7, and  
21 if you look at two of them specifically, in Exhibit 7 on pages 30  
22 and -- page 30. I'll read that one first. It's Commission Order  
23 of March 4, 2008.

24                               [Thereupon, evidence was marked for  
25                               identification and submitted for the record

1 as Exhibit No. 7.]

2 And down on the third paragraph it says:

3 "Whereas, a public hearing was held  
4 before the Franklin County Planning and  
5 Zoning Commission after notice thereof was  
6 published in the manner required by law."

7 And then if you turn to page 41 of this same  
8 exhibit, you'll see it says in the second paragraph:

9 "Whereas, on the 18 day of July 2006,  
10 the Franklin County Planning and Zoning  
11 Commission conducted a public hearing on  
12 the above matter after publication, testimony  
13 and evidence was presented with a record  
14 thereof preserved as required by law."

15 The Commission -- also in this exhibit, the orders  
16 make clear that two hearings were held, one by the Planning and  
17 Zoning Commission and one by the County Commission in the Order  
18 which is on page 28 of this exhibit.

19 Now, Chapter 64, Sections 800 through 905, which are  
20 included in Exhibit 10, they have not been changed in years, in  
21 decades. These orders that I am quoting from came after the laws  
22 were written. So the law didn't change. All that changed was  
23 that the Planning and Zoning Commission or someone in the  
24 Franklin County government decided that Planning and Zoning  
25 Commissioners should not have to waste time on hearing from



1 page 11, with using my numbers at the bottom of the page of this  
2 exhibit.

3 You have Commissioner McCreary saying:

4 "Right. So we were instructed  
5 to unlearn that, so to speak, of the  
6 testimony, not consider that as part  
7 of our decision-making process."

8 In the above paragraphs, made it clear that they  
9 were discussing the Landvatter deal.

10 "COUNTY ATTORNEY VINCENT: Okay.

11 What I recommended to you guys in the  
12 past is, if you know something else under  
13 the record, you need to share it with  
14 everybody else.

15 "COMMISSIONER McCREARY: Uh-huh.

16 "COUNTY ATTORNEY VINCENT: So that's  
17 -- the record itself was not going to be  
18 considered by you guys because it's a  
19 different case. It's a different file.  
20 No one is going to brainwash you and take  
21 away your memories. While I know people --  
22 Commissioners aren't thinking they're being  
23 told not use their memories or being  
24 brainwash."

25 Okay. Going on to page 12 of my numbers at the

1 bottom, page 45 of the court reporter's transcript. Commissioner  
2 McCreary still discussing the Landvatter deal said:

3 "I mean, I never saw this before,  
4 any of the drawings or anything like that.  
5 And I want to make a decision tonight, but  
6 it's like well, no, let me look at this  
7 first. So it'd be similar to this, only  
8 it wouldn't be written down, it would just  
9 be oral testimony?"

10 And it goes on. Commissioner McCreary goes on to --  
11 on page 46 at the bottom, "So we would get more information to be  
12 able to ask better questions?"

13 And then at the top of the next column, County  
14 Attorney Vincent says, "I'm the one that sticks my neck out  
15 legally on this stuff, and I checked with 17 lawyers, and all but  
16 one agreed with the interpretation that I have on it."

17 And this is where the comments are allowed. "I  
18 don't know who the one was, but I'll make it two if I'm not one  
19 who doesn't agree with you on that."

20 Going on to page 13, Chairman Evans says -- at the  
21 top of the page in the right-hand column, he says:

22 "Again, using Landvatter, bad example  
23 since that was going to be zoned commercial  
24 anyway, but when he came in, we're sitting  
25 there. We know it's a conditional use permit

1 and the CUP ruling is here. Now he comes  
2 back with the rezoning, which means we all know  
3 it's going to be a concrete plant, but it could  
4 be anything in CA3. And we don't have the  
5 ability to place any conditions on it, and  
6 neither does the County Commission."

7 And at the bottom, Commissioner McCreary says,  
8 "Right. Just to -- I understand this is a blueprint, this isn't  
9 set in stone."

10 At the stop of the next page:

11 "This is what we got use-wise,  
12 but industrial commercial, that's not  
13 necessarily -- goes with our code of the  
14 different districts. We can look at  
15 something, but I take it we can blow this  
16 up on-line, because if this is what I got  
17 to go by, I got to get a bigger map."

18 So he is calling it industrial there, even though he  
19 is being told that it's commercial.

20 And then on the right side of page 14, at the bottom  
21 McCrear- -- Commissioner McCreary says:

22 "Right, but okay. Sitting here  
23 saying okay. I have enough information  
24 to make a decision. That's fine. I don't  
25 have enough info. I don't feel comfortable

1 with enough information. I like the idea of  
2 moving the comments forward."

3 And he means at the beginning of the meeting the way  
4 laws say they're supposed to -- the law says they are supposed to  
5 be.

6 Going on to page 15, using my numbers, Commissioner  
7 Evans says -- I mean Chairman Evans says, "We don't have the  
8 privilege of asking questions or taking testimony on rezoning.  
9 So we are a little bit in the blind."

10 Okay. So we've got two quotes here, in the blind  
11 and being brainwashed and told to forget things. This was not a  
12 fair hearing. This is not the type of hearing that the Missouri  
13 Legislature had in mind when it enacted Chapter 64. I have read  
14 a case where the court -- a court of appeals held only one  
15 hearing was required, but it's not a Chapter 64 case. It is not  
16 the same set of facts at all.

17 There is no point in this County following the law  
18 to the extent of mailing cards as shown on Exhibits 3 and 4 to  
19 people within 600 feet if they're not allowed to speak to the  
20 Commissioners at a public hearing.

21 From the excerpts in the exhibit on pages 17 and 18,  
22 which I am going to read from very briefly, we've got at the  
23 bottom of 17 Commissioner McCreary saying:

24 "But, Mark, about that option 3,  
25 if we had a public hearing, we take

1 sworn testimony, and they could come  
2 back when the Commission had a public  
3 hearing and swear to something different."

4 And County Attorney Vincent said:

5 "They've done that. Well, that's  
6 why we have transcripts to impeach people.  
7 You can't prevent people from speaking just  
8 because they might say something different  
9 many months later. We don't know how  
10 significant the difference is."

11 Going on to the page -- to page 18 of my exhibit  
12 numbers, Commissioner McCreary says, "That is a huge problem,"  
13 meaning people changing their testimony, and County Attorney  
14 Vincent says and that, "What happens then I have you to put  
15 together what's called a writ of certiorari." That's  
16 C-E-R-T-I-O-R-A-R-I.

17 "We have to put together one  
18 case that's 40,000 pages just from  
19 the public hearing part here and for  
20 the County Commission. If we had that  
21 twice, which we could, there would be  
22 80,000 pages."

23 Okay, that would obviously be an outlier. Most  
24 cases do not make 40,000 pages worth of testimony. Furthermore,  
25 we all have technology. We have flashes, we have DVDs. You

1 don't have to physically print 40,000 pages, but you can't get  
2 around following the law because you might have a case that has  
3 40,000 pages of testimony.

4           From what I've read in the newspaper and in other  
5 commission hearings, it seems everybody is being punished in this  
6 county because of the work the Labadie Environmental Organization  
7 did. Maybe they created a big record. Maybe some of them said  
8 something different. It doesn't give good cause for this County  
9 to not follow the law and punish everybody else. It's insulting  
10 to people that the clerk hand-selected a few people to file  
11 comments as shown in Exhibit 5, and it's insulting to people and  
12 it doesn't comport with the law in either one of those. They're  
13 insulting and illegal. It's insulting to a lot of people after  
14 the Commission votes as shown in Exhibit 13, the transcript.

15           This commission has a history of approving the  
16 Planning and Zoning Commission 92 percent of the time. Exhibit 7  
17 contains 40 orders of the Commission from 2006 to the present.  
18 In those ten years, there were only three instances where this  
19 Commission reversed the Planning and Zoning Commission.

20           This Commission should want the Planning and Zoning  
21 Commission to make its decision on an informed basis, and allow  
22 representatives to hear from their constituents. The alternative  
23 and what happened in this case is that Planning and Zoning  
24 Commissioners voted on the basis of their feeling without hearing  
25 from people opposed to the project. That is not an informed way

1 to vote. It's not what the Missouri Legislature had in mind when  
2 it enacted Chapter 64.

3 The second reason this Commission should deny the  
4 recommendation from the Planning and Zoning Commission is that  
5 the rezoning is arbitrary, capricious and fraudulent, and it  
6 doesn't rest on a reasonable basis of classification. And if it  
7 is upheld, Franklin County will not be treating similarly  
8 situated applicants equally. The P and Z's Commission, their  
9 recommendation requires the County to rezone the land now zoned  
10 CD to CA3 and allow in land zoned Commercial Activity 3 any time  
11 of manufacturings plant.

12 There is no descriptive word around the word  
13 manufacturing. It's arbitrary, capricious, fraudulent and  
14 inequitable for this County to call a concrete plant a commercial  
15 activity instead of an industrial use.

16 The County interpretation of the word manufacturing  
17 in the Land Use Regulations Article 7, Section 138 is arbitrary,  
18 capricious and fraudulent in that manufacturing as defined in  
19 Article 2 of the Land Use Regulations as "to make or process a  
20 raw material by hand or by machine into a finished or  
21 semi-finished product."

22 This definition of manufacturing is the wording used  
23 for the definition of industrial and not for commercial. In  
24 Exhibit 19, I put in the Merriam Webster dictionary definition, a  
25 few words and I'm going to read them briefly. "Industrial

1 defined as of or relating to industry." So I put in the next  
2 definition on page 3, the definition of industrial, which Merriam  
3 Webster Dictionary defines as the making -- the process of making  
4 products by using machinery and factories. And in the full  
5 definition, it says it's manufacturing activity as a whole.

6 So industry means manufacturing. Manufacturing is  
7 defined -- I pulled it off the on-line dictionary on page 5, is  
8 the process of making products, especially with machines and  
9 factories. And the full definition it says, something made from  
10 raw materials by hand or by machinery.

11 Now commercial on page 7 is defined as related to or  
12 used in the buying and selling of goods and services, and the  
13 full definition says occupied with or engaged in commerce or work  
14 intended for commerce. And commerce is defined as activities  
15 that relate to the buying and selling of goods and services.

16 Franklin County is creating a fiction to say that  
17 all manufacturing is commercial and not industrial. In defining  
18 manufacturing this way included in commercial activity, the Count  
19 is allowing industrial plants in commercial zones instead of  
20 requiring them to be in industrial zones. This classification  
21 does not rest on a reasonable basis of last classification.

22 As I said before, the Planning and Zoning  
23 Commissioners were upset that they weren't allowed to place  
24 conditions on concrete plants, as evidenced by their statement.  
25 Its calling a concrete plant commercial not industrial is a new

1 fiction created by Franklin County. In past years, Franklin  
2 County called concrete plants industrial. See Exhibit 16 of this  
3 packet. Haven Materials needed a conditional use permit to  
4 operate a concrete plant in your county.

5 Exhibit 16, Breckenridge Material needed a  
6 conditional use permit to operate a concrete plant in this  
7 county.

8 [Thereupon, evidence was marked for  
9 identification as Exhibit Nos. 15 and 16.]

10 Landvatter's two other plants are zoned industrial.  
11 Exhibit 17 shows his concrete plant in St. Charles is zoned heavy  
12 industrial.

13 Exhibit 18 shows his plant in Kirkwood is zoned  
14 industrial. Franklin County is not treating similarly situated  
15 applicants equally.

16 Also Exhibit 21 shows Haven's concrete plant in  
17 Union -- I think I'm in Union -- was rezoned from industrial to  
18 heavy industry in 2003. It's not even light industrial.

19 [Thereupon, evidence was marked for  
20 identification as Exhibit Nos. 17 and 21.]

21 Now, if you don't want to accept the Merriam Webster  
22 Dictionary definitions of what industrial is, I've included the  
23 definition from the Missouri Department of Natural Resources. As  
24 you may or may not know, Mr. Landvatter is required to seek a  
25 stormwater permit from the Department of Natural Resources. So

1 in Exhibit 20, I'm going to read the Missouri Department of  
2 Natural Resources' definition which is on page 4 of my exhibit.

3 It says, industrial materials or activities include  
4 but are not limited to material-handling equipment or activity,  
5 industrial machinery, raw material, intermediate products,  
6 by-products, final products or waste products. Material handling  
7 activities include the storage, loading and unloading,  
8 transportation or conveyance of any raw material, intermediate  
9 product, final product or waste product.

10 To qualify for permit exclusion under this  
11 paragraph, the operator of this discharge must -- and it goes on  
12 and on. And then if you look at page 7 of this same exhibit,  
13 down in the bottom left column, it says, industry subject to this  
14 requirement, and the requirement is getting a certain type of  
15 permit, are number one, facilities classified with the following  
16 primary standard industry classification. That's S-I-C in  
17 parentheses. Facilities are considered to be included in this  
18 paragraph. And at the top of the middle column, it says  
19 concrete. Concrete batch plants are an industry.

20 And if you don't like those two definitions, I've  
21 included the United States Environmental Protection Agency's  
22 definition in Exhibit 23, where I put in the table of contents of  
23 the Air Pollutant, Number 42, Fifth Edition, Volume 1, Chapter 11  
24 Mineral Products Industry.

25 [Thereupon, evidence was marked for

1 identification as Exhibit No. 23.]

2 On page 2 of that exhibit, it says Section 11.12 is  
3 concrete batching --

4 COMMISSIONER MAUNE: 23?

5 ATTORNEY HENRY: Exhibit 23. I'm sorry,  
6 22. That's page 2 of 22 says concrete batching. One is the  
7 metal products industries, and pages 4 through -- through 16 go  
8 on to describe the pollutants emitted by concrete batching, the  
9 air pollutants. We're not even talking water right now. If you  
10 look at the bottom of the page 4, it says particulate matter  
11 consisting primarily of cement and pozzolan dust but including  
12 some aggregate and sand dust emissions is the primary pollutant  
13 of concern. In addition, there are emissions of metals that are  
14 associated with this particulate matter. All but one of the  
15 emission points are fugitive in nature, and it goes on for pages  
16 talking about the emissions of concrete batch plants as an  
17 industry.

18 The future problems with this fraudulent labeling  
19 that the County intends to do of calling industry commercial is  
20 that it will have polluting industrial plants near houses. The  
21 County also would have no control over their hours of operation  
22 or the distance from the homes.

23 The point of requiring polluting plants to be in  
24 industrial zones is to ensure that the pollutants don't fall  
25 directly on homeowners. Franklin County will not be protecting

1 its citizens if it engages in this fiction that industrial  
2 polluters are really just manufacturers that belong in commercial  
3 zones.

4 And reason number three that this hearing violates  
5 the law is that it wasn't posted on the Commission's website and  
6 this group is not being treated similarly to others. Exhibit 9  
7 shows the Franklin County Commission website, which includes  
8 listings of many meetings, but inexplicably misses this meeting.

9 [Thereupon, evidence was marked for  
10 identification as Exhibit No. 9.]

11 Last month the Commission's website failed to  
12 include notice of the planned meeting for Landvatter also. Also  
13 this hearing is held in the day when many people can't make it  
14 because their jobs do not permit them. This Commission should  
15 holds its hearings in the evenings.

16 And reason number four this Commission should deny  
17 the recommendation it says the recommended rezoning violates  
18 Missouri laws, the Franklin County Master Plan, and the Franklin  
19 County Land Use Regulations, all of which require the County to  
20 conserve and protect natural resources and to enact zoning  
21 regulations that will not harm public health, safety and welfare  
22 and that will be in the public interest and not be detrimental to  
23 the county, and to ensure compatible uses of neighboring  
24 properties.

25 This rezoning meets none of those requirements. In

1 addition, any benefit of rezoning will be outweighed by the  
2 negative impact to the surrounding area.

3 This evidence also shows that in the past Landvatter  
4 regularly has violated the Missouri Clean Water on several  
5 occasions.

6 Now, I'm not allowed to ask questions, but the  
7 Commissioners said they might ask questions, of Mr. Landvatter or  
8 his expert. I would like to ask the Commission if they're aware  
9 that on the buffer that God created, that a portion of it was  
10 bulldozed already by Mr. Stelzer [phonetic], and that he  
11 threatened my clients that if they didn't drop their lawsuit, he  
12 would bulldoze it. And they didn't drop their lawsuit, and he  
13 bulldozed it.

14 So it's not a buffer. The buffer doesn't exist as  
15 it's being painted to you today.

16 COMMISSIONER BRINKER: To what degree does  
17 it exist; do you know, ma'am?

18 ATTORNEY HENRY: No, I don't, but I think  
19 Kelly can describe that further.

20 And furthermore, I wanted to ask Mr. Landvatter, his  
21 expert, what kind of industry, if there is any kind of industry,  
22 that wouldn't be allowed under the word manufacturing. I think  
23 all the industries listed in the EPA document and in the DNR, I  
24 think they are manufacture. They produce things to sell.  
25 And Mr. Landvatter has no way of knowing this, but my law firm

1 fought a plutonium plant that the Japanese government -- the  
2 predecessor to my law firm fought a plutonium plant the Japanese  
3 government wanted to build in Columbia at the University of  
4 Missouri.

5 So if the Japanese came to Mr. Landvatter and said,  
6 hey, you can make about a thousand times more money selling  
7 plutonium than you could selling concrete, there's not -- you  
8 don't have any way to stop it with your current regulation, and  
9 it's not fiction because it happened in Missouri.

10 Furthermore, Mr. Baylard knows this. The Chinese  
11 government came and wanted to build a pig iron smelter in Crystal  
12 City, and my law firm got involved in that fight.

13 That's manufacturing products, and if you just  
14 rezone to allow for manufacturing to include industrial, you're  
15 going to have no way to stop that because they're going to give  
16 Mr. Landvatter a lot more money than he's going to make on this  
17 concrete plant. So I think that you should ask him and the  
18 expert about -- or maybe the County about what limits there are  
19 on this word manufacture because there are none written down and  
20 I don't see anybody interpreting any in anything that I've found  
21 written.

22 And now we are going to hear from Kelly Mason.

23 CHAIRMAN GRIESHEIMER: Hold, time out.

24 Time out. Any questions?

25 COMMISSIONER BRINKER: I would like to

1 speak to a couple of points made.

2 To sit in this seat as a representative of half of  
3 the citizens of this county and honorably and humbly, I am truly  
4 offended, truly offended, at your remarks as they relate to me  
5 not following the law and me punishing the county.

6 I was born and raised here. I'm a fourth generation  
7 here. My German heritage immigrants came up the Missouri River  
8 and settled in Newport, Missouri. The first County Seat of  
9 Franklin County. I am from here. We live here and we die here.  
10 I represent the people here. I do not, do not, break the law  
11 intentionally. I do not break the law from this Commissioner's  
12 perspective or this Commissioner's seat. I do not punish the  
13 county in any way, shape or form with any intension whatsoever.  
14 For that to be said blanketly as you did, is offensive.

15 I just want for the record, and I think you know  
16 that.

17 You say 92 percent of the decisions made followed  
18 the recommendation of the Planning and Zoning Commission. I  
19 would be so bold as to venture out and state that that occurs  
20 throughout. I know it happened probably in a greater percentage  
21 in my City of Washington City Council seat that I sat on for 17  
22 years, taking recommendations from Planning and Zoning. Very  
23 rarely do boards and commissions override or commissions or  
24 councils override, recommendations of planning and zoning. It  
25 does and obviously the statistics on this particular county that

1 you brought forth 92 percent show that, and that's typically not  
2 relative to the procedure, but is relative to the information put  
3 forth and the determination of that recommending body of the  
4 Planning and Zoning Board.

5 So I just wanted to make sure this is all put forth  
6 on the record from my perspective.

7 Now I certainly want to commend you on your  
8 diligence and your effort and your work thus far on this case.  
9 This is the most impressive file I've seen in quite some time,  
10 but I wanted to let you know that, and that's where I'm going to  
11 stop.

12 ATTORNEY HENRY: Well, let me apologize.  
13 I did not mean to offend anyone. I just didn't think about that  
14 word, and in fact, it might have. Please don't take it out on my  
15 client. I really apologize. Thank you.

16 Does anyone else have any question?

17 CHAIRMAN GRIESHEIMER: I'll just say  
18 something. When you were making your comments, I did a slow burn  
19 at the insinuation that we had anything to do or we were putting  
20 pressure on members of the Planning and Zoning Commission. I  
21 don't know why I can't talk, but anyway. I am very proud of the  
22 work that they do voluntarily. They take -- it's hard for people  
23 to volunteer and to a commission that obviously hears a lot of  
24 opposition and controversial issues.

25 But to sit here and to at least listen to the fact

1 that we put pressure or we don't want to have public hearings or  
2 anything like that is an insult also to me. In my years of  
3 public office, I'm very proud of my record of public service. I  
4 could have a while ago stopped at the -- when Mr. Mitchell did  
5 the prayer. For the record, I didn't know that was coming. It's  
6 hard for me since we've been through the ACLU lawsuit and we've  
7 been in the Supreme Court on what I should allow as testimony and  
8 what I should not. I try to be flexible as I possibly can, but I  
9 will tell you this. You owe -- in my opinion, you owe the  
10 members of the Planning and Zoning Commission an apology because  
11 they take their job very seriously. Obviously they have their  
12 own opinions, but none of us -- and Jeff wasn't here at the time,  
13 but none of us put any pressure either on Mark or anybody,  
14 Scottie or anybody, and they can verify this, that the public  
15 hearings are -- that public hearing was conducted in the way it  
16 was. And it's been that way a long time.

17 And there has been court cases we've been through.  
18 Before I ever got here, there was court cases that decided how  
19 we -- how this -- our Planning and Zoning Commission operates,  
20 maybe not on the rezoning, but I know there was on conditional  
21 uses, and that's why we don't -- that's why they didn't conduct  
22 public hearings on conditional uses anymore.

23 CITY ATTORNEY BAYLARD: They do.

24 CHAIRMAN GRIESHEIMER: Well, excuse me.

25 You're right. I apologize. On conditional uses, they do, but we

1 don't anymore. We used to 20 something years ago I was here.  
2 But I -- just for the record, I make mistakes everyday, but I'm  
3 like Tim, to even insinuate that we knowingly violate the law  
4 absolutely as a public servant is an insult, and I'm sorry but I  
5 will tell you, in my opinion, you owe the Planning and Zoning  
6 members an apology because they do their work very hard and  
7 diligently, and they put up with a lot.

8 It's -- and I will tell you, but anybody here, it  
9 is hard to get people to serve on some of these boards or  
10 commissions when -- when they're volunteering their jobs, and  
11 they have to take sometimes a lot of verbal abuse.

12 But I've said enough here, and I will also tell you  
13 this for the record. You know, I've been -- had my -- I've had  
14 my share of public controversy. Okay. Including having cartoons  
15 written in the St. Louis paper about me. Until a week ago, I  
16 didn't even know exactly where this proposal was going to be  
17 located. I had to asked Scottie, but I've driven there I don't  
18 know how many times down on this site trying to figure out  
19 exactly where this is going to go. So for anybody to insinuate  
20 that I have a position on this up front is an insult to me also.

21 These two will tell you. I've wrestled with this  
22 issue. I really have, and I'm trying to learn and get all the  
23 facts so I can make a decision here. My mind isn't made up by  
24 any stretch of the imagination, but again I'll shut up. But  
25 again, I will say in my opinion, you owe the Planning and Zoning

1 Commissioners an apology for the statements that you made. And I  
2 say I hope and I pray at least as far as public officials go,  
3 that you do take into consideration the work that we do and the  
4 job we try to do sifting through all of this and making an  
5 informed decision.

6 And that's all I will say.

7 COMMISSIONER MAUNE: And I'll put my two  
8 cents in also. I did my best to try to keep up with you and  
9 your exhibits on this and reading through there. And there were  
10 some things that I noticed here that from what I've seen on this,  
11 what happened on the conditional use permit is over. They  
12 withdrew that. None of that has any bearing on this. They're  
13 going in a different direction.

14 So if somebody wanted to put conditions on this  
15 project, they have the opportunity to do that then, and they  
16 rejected that option. Now we're here for a rezoning. The fact  
17 that he wants to put a particular type of business in there is  
18 not necessarily in the forefront. It's a rezoning. And in going  
19 through what you were talking about zoning that where other  
20 plants are, I know from past experience that what the zoning is  
21 on a piece of property does not necessarily reflect what its  
22 actual use is. And so it may just be that a batch plant is  
23 located in a heavy industrial area or in industrial area or in  
24 this case our zoning happens to be CA3. And so to try to make  
25 these comparisons that this is being done unfairly, I think is

1 trying to confuse the issue.

2 And I was definitely trying to keep up with you, and  
3 sometimes it was a challenge, but you know, I'm looking at  
4 everything that you have said here and, you know, I understand  
5 that this is a zoning issue.

6 ATTORNEY HENRY: Okay. Thank you.

7 CHAIRMAN GRIESHEIMER: And if I could use  
8 everybody's indulgence, I would like to take like a five-minute  
9 or ten-minute break here.

10 COUNTY ATTORNEY VINCENT: Okay with me.

11 CHAIRMAN GRIESHEIMER: Just we will --  
12 tell you what. We will come back at 25 after. How's that?  
13 Okay.

14 COMMISSIONER BRINKER: For the record, I  
15 turned the air conditioner down. Sorry. I'm freezing.

16 [Thereupon, a break was taken at  
17 3:13 p.m.; after which, the proceedings  
18 resumed at 3:25 p.m.]

19 CHAIRMAN GRIESHEIMER: Okay. We're going  
20 to reconvene. Thank you all for your indulgence and  
21 understanding there.

22 Anyone else who would like to testify in opposition,  
23 come on forward, come on down.

24 [Thereupon, the witness was sworn.]

25 MS. REPORTER: State your name, please.

1 MS. KELLY MASON: My name is Kelly Mason,  
2 Kelly Brothers Mason, and I drew the short stick on this yard or  
3 this road.

4 CHAIRMAN GRIESHEIMER: You're fine.

5 MS. MASON: And I'm talking for everybody.

6 We had a lot of people that were available in the  
7 June meeting and they were available for the May 19th meeting  
8 that couldn't be here today, and so I'm going to read their  
9 letters also, which are included in the exhibits.

10 The first one is an e-mail from John Baird from  
11 Shaw's Arboretum, the director of Shaw's, stating that he would  
12 be out of town and could not be here.

13 MR. JOHN BAIRD: To Whom it May Concern:  
14 Missouri Botanical Gardens has a series of concerns related to  
15 the proposal by the Ready Mix to be built, a manufacturing plant,  
16 within 600 feet of Shaw's Nature Reserve's property line.

17 Each year over 60,000 people visit Shaw's Nature  
18 Reserve to enjoy the serenity and beauty of the natural world.  
19 Thousands participate in educational programs and classes.  
20 Shaw's Nature Reserve has been serving the region at its present  
21 site since 1925.

22 Shaw Nature Reserve is not opposed to development.  
23 The Reserve worked closely with Franklin County on Brush Creek  
24 sewer project, despite the significant impact it had on our  
25 property.

1 We also willingly worked with Franklin County in the  
2 widening of Gray Summit Road which involved the removal of a  
3 substantial number of trees and fencing along our property.

4 We have given easement for water and fiber optic  
5 lines at no cost; however, it is our belief that the proposed  
6 site for the Ready Mix concrete plant is inappropriate. It  
7 should be located in an industrial park designed for this type of  
8 facility.

9 In addition to the Reserve, numerous residential  
10 properties as well as an apartment complex along Old Gray Summit  
11 Road will be adversely affected if the plant is built at the  
12 proposed site. We strongly recommend that a change in zoning for  
13 the property in question to be denied, and that a location in a  
14 Pacific Industrial Park be considered as an alternative.

15 Respectively submitted, John Baird, Director of Shaw  
16 Nature Reserve.

17 I have a letter from Route 66 -- Historical Route 66  
18 Association.

19 MR. TOMMY SIKES: To all officials  
20 considering this proposed new facility. This letter is regards  
21 to the facility that Landvatter Concrete is located at 7/10 of a  
22 mile east of the intersection of Old Gray Summit Road and  
23 Historic Route 66 Byway, West Osage Street, Franklin County.

24 The Route 66 Association of Missouri has great  
25 concern in connection for the actual route or road of this

1 historic route byway and the citizens and businesses that are  
2 near that location. The purpose of the Route 66 Association of  
3 Missouri, a nonprofit organization established in 1990, is to  
4 preserve, promote, protect, and develop the historic Missouri  
5 Route 66 Byway, the Main Street of America, and the icons of  
6 businesses located by the byway and in the Show-Me state.

7 We are all hearing of the same set of concerns  
8 expressed only in different ways in the news media and from local  
9 residents. I feel it would be very remiss not voicing my  
10 thoughts. I will attempt to comment briefly on these and some of  
11 the anticipated effects of the community from the local  
12 residents.

13 Oh, I'm sorry.

14 I will attempt to comment briefly on these and some  
15 anticipated effects of the community from the Association's view  
16 and as the contact person for the state byway as designed by the  
17 Missouri Department of Transportation.

18 Actual changes: If the road itself in the immediate  
19 Route 66 corridor will have a detrimental effect on the  
20 authenticity of the road, and thus impact the experience of the  
21 Route 66 travelers. This could lead to fewer travelers and less  
22 money being spent in this area causing problems in the economic  
23 development of the area.

24 The changes include the ones that will occur to the  
25 road itself as damage from increased heavy truck traffic, new

1 lanes and entries, new pavement, increase of road safety issues,  
2 and to surrounding areas as site impairment due to necessary  
3 facility construction for use, noise, dust, ash, water runoff and  
4 sewer use.

5           Comments: This water runoff and sewer overuse has  
6 the potential of polluting Brush Creek and eventually the Meramec  
7 River. The concrete plant with several large outside bins for  
8 sand, limestone and concrete blocks, tall smoke stacks and  
9 70-foot concrete storage silos will certainly dominate the site  
10 area. This will be seen by Route 66 travelers as well as  
11 residents on a constant basis, and will add nothing to the area  
12 view.

13           Pollution of the area and the road is the only word  
14 I can think of that describes all of Item 1.

15           Property values for homeowners will likely decrease.  
16 This seems very unfair to those folks who bought their property  
17 in good faith where they thought they were free of these kinds of  
18 problems.

19           Tranquility of the area for residents, and  
20 especially for Shaw Nature Reserve, will be greatly compromised.  
21 The consequences for the Shaw Nature Reserve, a true icon of  
22 Missouri, and the Missouri Historic Route 66 Byway will be tragic  
23 as time goes by.

24           The Route 66 Association of Missouri and the  
25 Missouri Department of Transportation worked together for over

1 two years to gain the state scenic byway status for Historic  
2 Route 66 in Missouri.

3 On November 9th of 2005, the Missouri Highway and  
4 Transportation Commission voted unanimously to designate Historic  
5 Route 66 as a state scenic byway covering over 300 miles of  
6 Missouri's historic state line to Kansas' state line and is  
7 considered a modern byway. This byway contains all byways  
8 intrinsic qualities, archeological, cultural, historic, natural,  
9 recreational and scenic. These are features that are considered  
10 representative, unique, irreplaceable, and distinctly  
11 characteristic of our state.

12 Let us work together to maintain these as long as  
13 possible for travelers, future generations and residents. Before  
14 a decision is made to give the final go-ahead to this Ready Mix  
15 plant, I strongly urge you to stop and do some deep thinking  
16 about the impact of this at the current time and what the future  
17 could hold for this area because of this business.

18 I would also like to remind you that Franklin County  
19 supported making Historic Route 66 in Missouri a byway with a  
20 letter of support when it was being considered for designation.  
21 This means that Franklin County committed to provide actions such  
22 as zoning and other protective measures to preserve integrity of  
23 the byway and adjacent areas.

24 I fully respect you and ask you for your durable  
25 consideration. Tommy G. Sikes, Historic Route 66.

1                   And then he has an amendment where you added the  
2 update prior.

3                   We have the letter from Haven Material that says:

4                                   HAVEN MATERIAL: To Whom This May Concern:  
5 At this time, I would like to voice my concern for the county in  
6 reference to the Landvatter Ready Mix putting a plant in in Gray  
7 Summit.

8                   There are currently three concrete plant companies  
9 in Franklin County now, and there is barely enough work for them  
10 to survive and keep their employees busy. My competitor Franklin  
11 County Concrete has built a plant in Pacific that he cannot even  
12 operate due to lack of work in the area.

13                   The Franklin County area is well served by Franklin  
14 County Concrete, Breckenridge or their non-union company Eastern  
15 Missouri Concrete, and Haven Materials. There is no gap in  
16 service as Mr. Landvatter has stated in the past.

17                   My competitors as well as Landvatter is applying all  
18 have plants in other counties, St. Louis County, St. Charles  
19 County, Warren County, plus others. I am the only one who  
20 totally eats and feeds my entire employees out of Franklin  
21 County. We bank only in Franklin County, and buy 95 percent of  
22 our repair parts here.

23                   Landvatter, Eastern and Breckenridge in St. Louis.  
24 Their loyalty is not to this community or this county. Mr.  
25 Landvatter states that he will employ 25 people. There is no way

1 possible. He may employ six or seven, but I can almost guarantee  
2 that one of the other Ready Mix companies will be forced to lay  
3 off six or seven in turn.

4 Even when the economy was good in the mid 2000s,  
5 none of the Ready Mix companies locally employed 25 people out of  
6 one plant. In 2004 when I put in the City of Union facility in,  
7 the County told me that they were not allowing any more Ready Mix  
8 companies in Franklin County. If this plant is allowed to come  
9 to the county, the prices of Ready Mix concrete may drop, which  
10 in turn will drop the wages of current employees, as it has to be  
11 made somewhere for the companies to survive.

12 There is not a huge market in concrete as many  
13 think. Therefore, since the employees are making less money,  
14 they will be spending less money in the county and local economy.

15 In closing, I would like to ask the Commission to  
16 think of the pros and cons with Landvatter being allowed to erect  
17 another Ready Mix plant in the county. I believe if you think  
18 this through that you will see there are far more cons than pros.  
19 All in all, Franklin County only has so much concrete to pour  
20 each year. Landvatter being here is not going to change that  
21 whatsoever. All that is going to happen is the economy will be  
22 driven down.

23 At this time, I am asking you to deny this.

24 I went through -- my husband and I spent a Sunday  
25 and we went around and we looked at all of the other plants in

1 the area to see what was around them, how close are they to other  
2 houses, and that's what my Exhibit 72 shows, is pictures.  
3 They're not in people's backyards like this one would be for us.

4 [Thereupon, evidence was marked for  
5 identification and submitted for the record  
6 as Exhibit No. 72.]

7 I have a letter from Phyllis Cook, who is a resident  
8 on our road who is out of town this week and couldn't be here.

9 MS. PHYLLIS COOK: Once again I am  
10 contacting you with the request to protect my property and health  
11 from the proposed concrete plant that Mr. Landvatter is  
12 attempting to build in my area at 2798 Old Gray Summit Road.

13 I have lived here for 50 years, and I don't wish to  
14 see my home or property value and health compromised because of  
15 fallout from pollutants, fly ash, dust, noise and et cetera. We,  
16 the concerned citizens of Old Gray Summit Road, have previously  
17 presented ample information to support concerns of such an  
18 industrial business that hasn't changed.

19 Therefore, I implore you to reject the request of a  
20 zoning change, as it is only an attempt to go around the previous  
21 decision concerning this industrial business, a concrete plant.

22 We firmly believe a concrete plant, industrial  
23 business, would be a negative impact on our property, health and  
24 families. Put yourself, home, health and family in our place,  
25 and I believe you will vote to reject the request to change the

1 zoning to Commercial Activity Community Business as this would  
2 allow for an industrial operation to be established in our area  
3 without input of homeowners.

4 Please reject the request to change the zoning and  
5 keep it Community Development.

6 Sincerely, Phyllis Cook.

7 I have one from Mavis Huff, who her husband was in  
8 the hospital last week, and she's having health issues this week.

9 MS. MAVIS HUFF: My name is Mavis Huff. I  
10 live at 2790 Old Gray Summit Road in Pacific with my husband and  
11 son. I want you to know we are against the rezoning of the  
12 property on Old Route 66, West Osage Street, approximately 7/10  
13 of a mile at the intersection of Old Route 66, West Osage Street,  
14 and the Old Gray Summit Road.

15 We have lived in our home for approximately 48  
16 years, and we love our home and the country and the peace of the  
17 country living. We feel that we have the best neighborhood in  
18 the area. We like the rolling hills and the peaceful time we  
19 spend outdoors. We do not live in a blighted area as was  
20 mentioned in the last Planning and Zoning meeting. Our homes may  
21 not be million-dollar homes, but they are homes of common working  
22 class America. Some have retired and plan on leaving our homes  
23 to our children and our grandchildren.

24 This neighborhood is made up of older people, middle  
25 aged, and younger people, and we now have a new baby in one of

1 the homes. Our neighborhood has many wild animals and many  
2 species of birds. Over the years, many species have left and are  
3 just now starting to return to the area. This is due to the work  
4 of Shaw's Nature Reserve and also due to the work of the  
5 conservation and private and personnel to carry it out.

6 This year we have heard the Bob Whites and the owls  
7 returning to our neighborhood, not to mention the deer and the  
8 turkeys, and this is due to the habit and changes in agriculture  
9 which we have seen carried out. And with the placing of this  
10 proposed concrete plant, this will all change back again, due to  
11 the pollution and noise that this plant will cause.

12 As far as the noise goes, it will be going on as  
13 long as the plant is open or being worked on for the next phase.  
14 We know that there are rules that you cannot turn off or silence  
15 the backup warning equipment on the trucks and the loading  
16 equipment. How would you like to live with this this close to  
17 your home? Why would you consider ruining this area by changing  
18 the zoning for a manufacturing plant? These types of plants  
19 belong in an industrial park.

20 Gentlemen, you may say that this change will not  
21 harm us in any way, but you are wrong. It will. The pollutants  
22 of this type of work that will be done due to the change of  
23 rezoning will be detrimental to the area, people living next to  
24 and around the area, the wildlife, the beautiful woods and to the  
25 citizens living in the area for miles around.

1                   Before you decide to change the zoning, have you  
2 done any studies on the products that this proposed plant will be  
3 using at this site? How about all of the animals and people, and  
4 how about the air pollutants that we all know will be placed into  
5 the air? What will it do to the ozone layer?

6                   Since we already have the interstate and Highway  
7 Department, who wants to add to this problem in our area? Have  
8 you checked to see if the type of chemicals will affect the area?  
9 I'm sure that the owner would say that they will make numerous  
10 safety steps to protect us like the bag to contain contaminants  
11 which break often, or not keeping up with the EPA rules, which  
12 has been shown in previous reports that the proposed plant owner  
13 had not kept up with.

14                   If you have any of these studies, Mavis would like  
15 to see them. If you haven't done the studies, which -- she  
16 asking that you please look into them.

17                   When was the last time you went to the Nature  
18 Reserve and saw the work they have been doing? Have you seen the  
19 children having a safe, non-polluted area in the outdoors where  
20 they can run and play on many trails? Have you seen all the  
21 people there on the weekends? Have you taken to the trails and  
22 drove around to the back of the Reserve? We have visited the  
23 Reserve many, many times. We love the Garden and the peace that  
24 only nature can give you. I have seen people sitting and reading  
25 books or eating their lunches, watching the birds and hiking the

1 trails.

2                   Gentlemen, if your decision of changing zoning and  
3 allowing this manufacturing plant to go in and Shaw's Nature  
4 Reserve is damaged, we will look back and say you were the ones  
5 who changed this area and damaged a safe and beautiful garden.

6                   Why don't we all start looking for other actions to  
7 be built in this area? Has anyone tried to find a store or a  
8 restaurant, something this area needs? Don't turn your back on  
9 our area. Help us to grow with the needed retail, not a  
10 manufacturing plant. Stores and restaurants will also be giving  
11 a place to work more employees than this manufacturing plant Mr.  
12 Landvatter wants to open.

13                   What I'm saying, don't do this to the neighborhood  
14 we love or Shaw's Reserve. I want to be able to go outside and  
15 be able to take a breath of fresh air, not pollutants.

16                   The next one is from Don and Mariann Bracotto  
17 [phonetic], and Mrs. Bracotto fell and broke her hip, and he's at  
18 home taking care of her.

19                   MR. and MRS. DON BRACOTTO [phonetic]:  
20 This is for comments opposing rezoning change. My neighbors and  
21 I are absolutely against this zoning change and the concrete  
22 batch plant that Landvatter Concrete wants to build there.

23                   The express purpose of this zoning is so that they  
24 can build a concrete batch plant on this property. There are  
25 good and powerful arguments that have been made that this plant

1 will produce stuff, that it will create nuisance noises around  
2 our house, and that it will destroy the whole nature of the area  
3 in ways that are not good for us health-wise and otherwise.

4 We have little voice in these matters, and depend on  
5 the integrity of our County officials to protect our interests.  
6 Intuition tells me that if this plant would be built near your  
7 homes, you, like most people, would object as we have done.  
8 There are other places for this business to build so as not to  
9 assault the personal living area of so many good people.

10 The ardent of pro business interest can understand  
11 that people want their homes to be a place of peaceful refuge.  
12 That is the reason they build decks and plant gardens and  
13 flowers, to make their environment pleasant to look at and be  
14 around. Nobody has claimed that this concrete plant is going to  
15 be beautiful or enhance the beauty of the area because they know  
16 that the opposite is true.

17 The notion that all of this can be hidden is  
18 deceiving. It cannot be hidden. The heights of the silos have  
19 been vaguely defined, but they and the whole system of hoppers,  
20 conveyors and attending equipment will be a rude view from our  
21 homes. Industrialization of this property is the exact opposite  
22 of what Shaw's Nature Reserve is trying to show its visitors.  
23 Industrialization is exactly the opposite of what people want and  
24 is not good for the area.

25 You need to decide with the people because

1 Landvatter Concrete can and will find a more acceptable place to  
2 do their business.

3 MS. MASON: And this one is the one that I  
4 had written to bring to the meet- -- I brought to the meeting on  
5 May 19th when we were not allowed to speak.

6 I was at the meeting May 19th of the Planning and  
7 Zoning prepared to speak along with a bunch of my neighbors who  
8 were not able to today due to health issues, vacations, and not  
9 being able to get off work. We were also able to be at the June  
10 meeting that was postponed.

11 I'm appalled that the County would try to allow this  
12 to go through without allowing public comment. How can these  
13 Board members that were at the previous meeting make an informed  
14 decision without hearing both sides? Is it because we already  
15 know how the public feels due to the hearing you had before?  
16 Even the Board members do not feel that public comment should be  
17 allowed. Board Member Dan Haire was quoted in a "Missourian"  
18 article on 6/20 as saying, "I like the idea because it provides  
19 us the direction and a sense of concerns that we might not have  
20 known ourselves so that we can bring it into play with the person  
21 presenting."

22 Mr. Landvatter withdrew from our lawsuit and did not  
23 come back to finish this one to completion, and is now trying to  
24 go at this plant in a different -- in my way -- backhanded or  
25 unfair way. When this all started, a concrete plant was

1 considered industrial, and it seemed fraudulent to me now that it  
2 is considered commercial activity.

3 A concrete plant should be considered industrial and  
4 be in an industrial park like others in Franklin County. The  
5 concrete plant is not in harmony with this area, like Mr.  
6 Landvatter trying to get special privileges you denied the other  
7 plants in the county. Why are the other plants in the county  
8 zoned industrial or have CUPs and Mr. Landvatter's will be  
9 Commercial Activity Community Business?

10 Your staff comments read:

11 "Rezoning are allowed in our  
12 regulations due to the every-changing  
13 conditions that exist in the county and  
14 elsewhere. According to Article 14,  
15 Section 321, any such change must promote  
16 the health, safety, morals, comfort and  
17 general welfare of Franklin County by  
18 conserving and protecting the property and  
19 building values, by securing the most  
20 commercial use of land and facilitating  
21 the adequate provisions of public  
22 improvements in accordance with  
23 the Master Plan adopted by Franklin County."

24 We -- as citizens and neighbors whose property meet  
25 up to this park, we do not feel that this rezone is in the best

1 welfare of Franklin County. In no way will a concrete plant be  
2 promoting health, safety, comfort or general welfare for the  
3 citizens of Franklin County.

4 In no way will rezoning this property Commercial  
5 Activity protect property and building values for any of the  
6 neighbors along our road, all which backup to this property.  
7 There are about 20 property owners whose property touch this  
8 property, and every one of us have voiced our concerns. I do not  
9 understand how the County can allow one business to come in and  
10 ignore the safety and value of 20 other property owners by  
11 allowing this business to cause us harm or loss of property  
12 value, that one business can move in.

13 Some of these residents have lived in their homes  
14 for over 50 years. Why should we all lose property value and  
15 risk our health and safety so that Mr. Landvatter can try to make  
16 money?

17 I would really like to add a sunroom onto my house,  
18 but if I do this, then I'm going to be looking at a concrete  
19 plant. I'm not sure that that's what I want. Where would the  
20 enjoyment in that be?

21 I am very concerned about the traffic that this will  
22 cause, not only on Route 66 but also on Highway 100 when concrete  
23 trucks are entering and exiting Highway 44. This is already a  
24 huge traffic congestion. What is going to happen if we allow 50  
25 extra concrete trucks a day to use it? Who is watching out for

1 the safety of our kids while they are riding the school bus and  
2 encountering these extra concrete trucks? Has there been a  
3 traffic impact study done? If not, who will be responsible if  
4 someone is killed in a traffic accident?

5 I'm sure we've all seen the news from last night and  
6 we've seen what happens when a car comes in contact with a  
7 concrete truck that wasn't even full.

8 This proposed property is within 600 feet of Shaw's  
9 Nature Reserve. Mr. Landvatter has a past history of not staying  
10 under the allowed thresholds for pollutions for his other plant.  
11 What is going to happen to Shaw's, our property and the  
12 environment when Mr. Landvatter is over the threshold through  
13 this plant? Is this going to harm the wildlife we all now enjoy  
14 in our area? Is this going to affect the fish and aquatic life  
15 in the creek that runs through our property and then flow to the  
16 Meramec River?

17 This is going to be a major eyesore for Historic  
18 Route 66. I have been to some of your other Planning and Zoning  
19 meetings, and there have been restrictions and hoops that a used  
20 car lot must go through that are a lot tougher than what Mr.  
21 Landvatter is going to have to do to build a concrete plant that  
22 will be a major eyesore, unsafe, and unhealthy for neighbors,  
23 possibly harming the environment and Shaw's Nature Reserve and  
24 cause the surrounding neighbors' property values to drop  
25 considerably.

1                   There are several loud noises associated with a  
2 concrete plant. Not only are there loud trucks entering and  
3 leaving, slamming dump beds when unloading, beeping of backup  
4 alarms and such, but there is also constant humming and buzzing  
5 of the plant running.

6                   I have visited other plants, and they are noisy.  
7 What about the noise when they are cleaning out the trucks and  
8 have the jackhammers running inside the bellies of these trucks?  
9 Constant noise can lead to many health issues.

10                  How is this area going to look when a constant layer  
11 of dust is covering everything? I have went to the other plant.  
12 There is dust on everything around them. What about the mud that  
13 these trucks will bring in and out of the plant onto Historic  
14 Route 66?

15                  Not only will the homeowners lose if this plant is  
16 allowed to go in, but so will the county. If our property values  
17 drop, the county real estate taxes drop. If Mr. Landvatter does  
18 create 25 new jobs, as he has said in the past, then the other  
19 plants that are not running 40 hours a week now will layoff 25  
20 employees. These are employees that were already living and  
21 working in our county.

22                  Mr. Landvatter will be bringing some of his  
23 employees with him because he made a comment to several of us  
24 after the first meeting in 2014 that after our property values  
25 drop, then his employees can buy homes with the cheap housing.

1                   Mr. Landvatter is saying there are nice homes being  
2 built around his plant. These houses are being built after the  
3 plant is already there. So the homeowners know when they build  
4 the plant -- when they build or buy that the plant is there.  
5 Second, they are not telling you what these houses would be worth  
6 if they were just a mile or two away from his plant.

7                   In talking to several real estate agents, we were  
8 told that the value of our homes could drop by as much as \$10 a  
9 square foot. For my 1,600-square-foot home, that would be  
10 \$16,000, and this is even if I could sell the home.

11                   One house on the road that was for sale lost three  
12 sales because they had to disclose that the concrete plant could  
13 possibly be built there.

14                   I hope that you as Commissioners will do the right  
15 thing for the people of Franklin County and not allow this  
16 property to be rezoned and this plant to be built. Franklin  
17 County has a long way to go to prove to the people of Franklin  
18 County that they are really for the people, and this could be a  
19 start in the right direction.

20                   The Master Plan of Franklin County is supposed to  
21 protect the citizens of the county. In the "Missourian" exhibit,  
22 which is my exhibit, Article 64, Mr. Vincent said the County's  
23 Master Plan is considered when changing zoning regulations, and  
24 part of that plan is to provide adequate electrical services in  
25 the future.

1           Everyone does need electric. They don't always need  
2 concrete. Since there are already plants in the county that are  
3 all in industrial parks and working -- letting their employees  
4 work 40 hours a week or sitting empty, please vote to not rezone  
5 this.

6           Mr. Stelzer [phonetic] sent us a threatening letter  
7 several months back. If we didn't agree to the sale of this  
8 contract, he was going to come in and bulldoze the property down.  
9 He --

10                           COMMISSIONER BRINKER: For my edification,  
11 is he the current owner?

12                           MS. MASON: He is the current owner, yes.

13                           COMMISSIONER BRINKER: Okay. Stelzer --

14                           MS. MASON: Yes, and he has come in and he  
15 has pushed a lot of the trees down, and they're laying down  
16 there. So part of our buffer that everyone is referring to is  
17 gone.

18                           COMMISSIONER BRINKER: Do you have any  
19 kind of dimension as to how much, what kind of swath you're  
20 talking about?

21                           MS. MASON: It's probably the width of  
22 three bulldozer pushes through. I don't know how many feet that  
23 would be.

24                           COMMISSIONER BRINKER: Okay.

25                           MS. MASON: I know that it's enough that

1 it's made -- we can hear the traffic noise now. We can hear, you  
2 know, a lot more than we were hearing before.

3 My other concern is what if we allow this to go  
4 through, what other kind of businesses are going to want to build  
5 next to us. If this -- this basically is industrial. I work in  
6 a manufacturing plant. I know what manufacturing is. We are all  
7 inside. It's all small equipment. It's not heavy equipment.  
8 This will be made with heavy trucks, bulldozers or back-loaders,  
9 heavy equipment.

10 I consider it more industrial. If we allow this to  
11 go out on 66, what else is going to be built out there next to  
12 that then? Are we going to have other industrial businesses to  
13 where then basically Highway 66 is a road through an industrial  
14 park? You know, consider the future of what other people are  
15 going to build there too.

16 Thank you.

17 CHAIRMAN GRIESHEIMER: Thank you. Any  
18 other questions for the witness?

19 One question. Mrs. Huff sent you a letter --

20 MS. MASON: Yes.

21 CHAIRMAN GRIESHEIMER: -- that's in your  
22 packet?

23 MS. MASON: Yes.

24 CHAIRMAN GRIESHEIMER: She did call today  
25 and indicated that she could not make it. So I'm assuming --

1 she said she was sending a letter. So I'm assuming that's the  
2 letter --

3 MS. MASON: That's what this is, yes.

4 CHAIRMAN GRIESHEIMER: Okay.

5 MS. MASON: The letters that I've read  
6 today would be like Exhibit 73 through 80.

7 [Thereupon, evidence was marked for  
8 identification and submitted for the record  
9 as Exhibit Nos. 73-80.]

10 Some of the people I didn't think were going to be  
11 able to make it have showed up. Mr. Frisch that read his earlier  
12 was Exhibit 68.

13 CHAIRMAN GRIESHEIMER: Okay.

14 MS. MASON: And you know, Mr. Baird's was  
15 in here is 67.

16 CHAIRMAN GRIESHEIMER: Just make sure you  
17 have -- give them all to Scottie so they can be entered for the  
18 record.

19 MS. MASON: Yeah, we gave her a book.

20 CHAIRMAN GRIESHEIMER: Good. Thank you.

21 Anyone else wish to testify in opposition to the  
22 rezoning?

23 [Thereupon, the witness was sworn.]

24 MS. REPORTER: State your name for me.

25 MS. KAREN DEAN: Karen Dean.

1 Hello. My name is Karen Dean. I -- my address is  
2 2232 Old Gray Summit Road. We own property there. We do not  
3 reside there. I used to live on that road for many, many years.  
4 As a matter of fact, in the '50s, my grandparents along with the  
5 Taylors, they bought that property. They realized the beauty of  
6 it, and turned it into what is now Garden View Subdivision.

7 So I spent most of my life there, and to date  
8 second- and third-generation families live here, and I hope my  
9 son will be the fourth one. It may not be a feasible option for  
10 him if the zoning issues occur.

11 I wanted to speak in front of the Planning and  
12 Zoning Commission on May 19th, but was not allowed to and was  
13 even surprised that letters couldn't even be submitted for them  
14 to read before the meeting, so I don't know about the opportunity  
15 for them to make an educated decision by not hearing all sides.  
16 This kind of works against the whole system, I think.

17 I do want to mention comments made before to  
18 Kathleen. She was not being critical of the Planning and Zoning  
19 Commission. I think what it was was a statement of how they're  
20 limited in how they can conduct the hearing.

21 And another concern Kathleen had that I think may  
22 have been misunderstood was zoning. Once this is zoned for the  
23 CA3, it's zoned. Whether Mr. Landvatter occupies it or not, it's  
24 zoned and it's open to anything. And I really can't grasp onto  
25 the idea how changing this Community Development to CA3 Indus- --

1 which is called Community Business but really an industrial  
2 business is being proposed for this. It's not a win/win for  
3 everyone, I think on both sides. I don't feel this will -- when  
4 all is said and done, in fact, only one tract of land will  
5 probably go and go into the other tract of land. You can't say,  
6 because the argument then would be made, well, this is zoned CA3.  
7 Why can't this be zoned CA3? They're neighboring.

8 It's a hardship on the environment and a health  
9 hazard and nuisance to the neighbors, and there will be no  
10 restrictions.

11 I spoke with one of the neighbors to the concrete  
12 plant in Kirkwood, and he confirmed yes, it is indeed noisy,  
13 especially when they are doing the jackhammers, cleaning the  
14 trucks. And another point too is Mr. Landvatter's plant for the  
15 most part was there first. Some residences were there, but in  
16 time, they all moved around, and that in my opinion was their  
17 decision. And the golf course, that's above it all and the  
18 community around it. So that's uphill from the plant, where  
19 we're downhill.

20 So I believe the way it's zoned now for commercial  
21 -- or Community Development is open to numerous opportunities  
22 that would be beneficial to the whole, the Route 66 and to the  
23 neighborhood.

24 I would like to know at the current proposed  
25 concrete batch, how many jobs will be generated from the

1 residents of Franklin County. I don't think very many.

2 I believe a heavy industrial business such a  
3 concrete batch plant should be required to operate in an  
4 appropriate location that is already zoned for such, ideally an  
5 industrial park like ones that are already located close by.

6 It shouldn't be placed without regard and  
7 indiscriminately to neighboring residences and businesses and  
8 Shaw's Nature Reserve.

9 I'd like for you to consider a few important  
10 factors, logical, environmental, ethical, and moral issues. At  
11 the very least, have an objective discussion about this, and I  
12 implore our County officials to represent us, respect our  
13 concerns, and in accordance with the Master Plan and stand behind  
14 its citizens and support their wishes and interests.

15 Thank you.

16 CHAIRMAN GRIESHEIMER: Thank you.

17 Any questions for the witness? [None]

18 Seeing none, thank you very much.

19 Anyone else wish to testify in opposition?

20 [Thereupon, the witness was sworn.]

21 MS. REPORTER: State your name for me,  
22 please.

23 MS. SUSAN COLDWELL: My name is Sue  
24 Coldwell, and I live at 974 Decker Road in Labadie, Missouri, but  
25 I own property on Old Gray Summit Road.

1                   We would've liked to voice our concerns at the May  
2 19th meeting, but we were not allowed to do that. We are opposed  
3 to the rezoning of this property for several reasons, but the top  
4 two are traffic and safety issues on the Highway 100 and Route 66  
5 and the loss of property value.

6                   I live over in Labadie. So for me to get anywhere,  
7 I have to go through that, those three lights up on Highway 100.  
8 It's already a zoo now. I can't imagine adding 50 concrete  
9 trucks to that. People from out of town don't have a clue what's  
10 going on, and you have to really watch what you're doing to keep  
11 from getting hit there, and there are a lot of accidents there.

12                   We are worried about that and the property value.  
13 We understand that people who are building these new houses  
14 around his property. That's their decision. That plant was  
15 there first. We've been there, and a lot of the people, over 50  
16 years. He's coming to our neighborhood now. So I mean, I don't  
17 think that has anything to do with it. Those people are choosing  
18 to live near him. We're not given -- being given the opportunity  
19 to make a choice on that.

20                   We'd just like you to please listen to all this and  
21 take it all into consideration and make a fair decision on it.  
22 I'm not adverse to people making money and starting new  
23 businesses, but I don't like it to happen at the expense of other  
24 people and their values.

25                   CHAIRMAN GRIESHEIMER: Any questions for

1 the witness? [None]

2 Seeing none, thank you very much.

3 Anyone else wish to testify in opposition?

4 [Thereupon, the witness was sworn.]

5 MS. REPORTER: State your name, please.

6 MR. MIKE MASON: Mike Mason, and I live on  
7 Old Gray Summit Road.

8 And what I'd like to do is, since we're opposed to  
9 the zoning change, and he -- they have proposed that they're  
10 going to put a concrete plant on it, and that how the  
11 neighborhood, you know, in Kirkwood, you know, has these \$300,000  
12 houses, and how everything is going fine, I would like to read  
13 some of the violations that he has at this plant, and it's  
14 Exhibit 32 through 50 in the book.

15 [Thereupon, evidence was marked for  
16 identification and submitted for the record  
17 as Exhibit Nos. 32 through 50.]

18 I will introduce a portion of the documents we  
19 received from the Department of Natural Resources which show  
20 Landvatter's past violations and which will demonstrate that,  
21 first, the violations are not isolated incidents; instead,  
22 Landvatter has a pattern of violations.

23 Second, the violations are very recent. Some of  
24 these documents are as recent as the late -- as late as last year  
25 with the range between 2013 and 2008.

1                   Finally, many of these violations are severe and  
2 serious in nature.

3                   Exhibit 32 is a business record affiliated with all  
4 of these documents I'm about to show you.

5                   Exhibit 37. Here we have a letter warning from  
6 February 2011. I'd like to direct the Board's attention to the  
7 second paragraph, which states that the influent limitations have  
8 been exceeded, and that Landvatter was violating Missouri Clean  
9 Water law, Section 644.053.1 and 644.0761.1, the Clean Water  
10 Commission Regulation 10 CRS 20-7 and Landvatter's Missouri State  
11 Operating Permit.

12                   Here we have a discharge monitoring report exceeding  
13 list. Landvatter's permit limitations allowed the minimum pH of  
14 6 and a maximum pH of 9. Overall, the range was from 0 to 14,  
15 measures how acidic or basic a substance is. Landvatter's pH  
16 reading of 12.4 is 2,500 times more basic than allowed, and is  
17 only 1.6 pH reading away from reaching ammonia solution, for  
18 example, has a pH reading of 11, and bleach has a pH reading of  
19 12, depending on the manufacturer.

20                   As shown, the total of suspended solids Landvatter's  
21 permit limitations allow for a monthly average and daily maximum  
22 of 70 milligrams per liter. Here we see both of these limits are  
23 violated, and Landvatter has report values of 80 milliliters or  
24 milligrams per liter as a monthly average and also the maximum.

25                   Exhibit 38. Here we have a letter of warning from

1 December 10th, which demonstrates that the previous documents  
2 that were not the first time Landvatter was warned about these  
3 issues and shows Landvatter has -- was continuing to violate the  
4 Missouri Clean Water law, the Clear Water Commission Regulations  
5 and Landvatter's Missouri State Operating Permit despite this  
6 earlier warning.

7 Exhibit 39. The October 2010 discharge monitoring  
8 report shows figures being exactly the same as December 2010  
9 discharge monitoring report; meaning, that nothing has been done  
10 about these violations.

11 Exhibit 40. Here we have a letter of warning from  
12 November of 2009. The report value of 10.4 pH again exceeds the  
13 9.0 limitation. The 10.4 reading is only .6 away from being --  
14 having the pH reading of ammonia solution that he is discharging.

15 Exhibit 33. Thus far, we have three consecutive  
16 years of violation, 2009, 2010, 2011. Here we have a violation  
17 discharge monitoring report for late 2013 showing that Landvatter  
18 was in violation. The non-stormwater discharge has a pH reading  
19 of 9.5 and a stormwater discharge has a pH reading of 10.1, both  
20 exceeding the 9.0 that's shown in the total suspended solids.  
21 The daily maximum and the monthly average are both shown to be  
22 177 milligrams per liter, which is above the 70 milligrams per  
23 liter.

24 Exhibit 34. We have a discharge monitoring report  
25 from the early 2013 which shows total suspended solids of 232

1 milligrams per liter, which as of the 20th exceeds the total  
2 suspended solids limits. As one of these previous documents  
3 showed, Landvatter cannot exceed 70 milligrams per liter, and  
4 that 232 milligrams per liter shows a reading is 3 times above  
5 the limit.

6 Exhibit 35. A letter from June of 2011 shows  
7 another pH reading which has passed the limits. This time the  
8 reading was 9.3.

9 Exhibit 36. Here is a discharge monitoring report  
10 from March of 2011 again shows that the 9.3 pH reading.

11 Exhibit 36, page 2. Here is an April 2011 letter  
12 again explaining that the pH reading of 9.3 exceeds the upper  
13 limit of 9.0. This is the third letter in which pp [sic] is  
14 showing 9.3 reading.

15 Many of the violations were continued for at least  
16 five to six months.

17 Exhibit 42. Moving away from the letters of  
18 warning, violations of the Missouri Clean Water law and Clean  
19 Water Commission Regulations, here we have a Notice of Violation  
20 2637 by the Air Pollution Control Program from June of 2009.  
21 Landvatter was violating 10 CSR 10-5.300 Control of Emissions  
22 from Solvent Metal Cleaning.

23 Exhibit 43. This July 2009 letter explains a Notice  
24 of Violation. I'd like to direct the Board's attention to the  
25 second paragraph, which states that a Notice of Violation was

1 being issued to Landvatter because Landvatter failed to complete  
2 annual parts washing training for two consecutive years. In  
3 other words, two consecutive years Landvatter failed to stop  
4 violating 10 CSR 10-5.300 Control Emissions for Solvent Metal  
5 Cleaning and was not in compliance with the Air Pollution Control  
6 Program.

7 Exhibit 44. Here we have a Notice of Violation 1226  
8 from the June 2008 another violation of the 10 CSR 10-5.300  
9 Control of Emissions from Solvent Metal Cleaning.

10 Exhibit 45. This letter from June of 2008 explains  
11 that Landvatter was receiving Notice of Violation of 1226 because  
12 it failed to complete annual parts washing training. This letter  
13 and Notice of Violation that accompanied it was not enough for  
14 Landvatter to fix its behavior despite having another year to do  
15 so and despite violating the particular sections of the entire  
16 previous year.

17 Exhibit 46. Here we have a letter from October 2006  
18 which shows Landvatter had received a Notice of Violation from  
19 the Enforcement Division of Air Pollution Control Program, APCP,  
20 because Landvatter was not using a bag house to control emissions  
21 from a mixing loader. Although this letter is not as recent as  
22 the rest of the documents, I show it does show another type of  
23 violation for Landvatter, and further indicates that the  
24 violations discussed were not isolated incidents.

25 Exhibit 43. We have a report by the Air Quality

1 Inspector Sarah Mendler [phonetic]. Although the report is  
2 regarding Notice of Violation 2637 and a letter of warning  
3 regarding solvent disposal receipts, I'd like to point out  
4 something else. Under the subtitle Reinspections, Sarah  
5 describes seeing dust being kicked out of the top of the truck  
6 drum during the mixing of the material. Ms. Melende's --  
7 Mendler's [phonetic] observation shows some of the level of  
8 carelessness as a part of Landvatter.

9           If the level of carelessness and the consistency and  
10 severity of which Landvatter has violated laws continue, a unique  
11 nature of this proposed location will mean that that harm will be  
12 widespread, the health, the safety, and inconvenience of the  
13 residents, the local watershed, the Shaw's Nature Reserve, the  
14 birds that use the Nature Reserve, the fish and the wildlife, the  
15 trees and Brush Creek Sewer District, which I'd like to take a  
16 minute or two to discuss.

17           Exhibits 47 through 50 in a nutshell. The Brush  
18 Creek Sewer District, which generally goes over its spillage  
19 discharge limits of 200,000 gallons per day, in that it has been  
20 recently reading about 400,000 gallons a day, Landvatter  
21 operating in this proposed location would be more sewage and an  
22 increase in change of sewage overflow or chance of overflow. It  
23 will also mean an increased chance of sewage backup in the  
24 basements of the residents.

25           This is a Notice of Violation of the Department of

1 Natural Resources under law regulations and permit violations is  
2 a list of all the laws which were violated. And under the nature  
3 of violations, it is descriptions which states watershed was  
4 discharged into the water of the State, referring to Brush Creek,  
5 which reduced the quality of such water below the water quality  
6 standards established by the Missouri Clean Act [sic].

7 There is a Notice of Violation Report for February  
8 2013, as the second to the last paragraph explains. The manholes  
9 were erupting and the discharge was spreading across the field  
10 toward an unnamed tributary approximately 30 feet from the  
11 manhole. Brush Creek is approximately 20 feet from the discharge  
12 entry of an unnamed tributary. Okay. And then it goes on.  
13 There's a slide which February 2013 letter that states a Notice  
14 of Violation being issued.

15 Exhibit 50. Here we have photos of the discharge.  
16 I then zoomed in versus what he showed us. Photo 1 is a photo of  
17 the -- one of the erupting manholes. Photo 2 where we have a  
18 photo of discharge.

19 CHAIRMAN GRIESHEIMER: If I can interrupt  
20 you just a second.

21 MR. MASON: Sure.

22 CHAIRMAN GRIESHEIMER: You've done lost  
23 me. We're not talking about Brush Creek Sewer District here.  
24 We're supposed to be talking about the rezoning.

25 MR. MASON: But he's going to be

1 contributing to that sewer district.

2 CHAIRMAN GRIESHEIMER: Well, let me just  
3 state right now, no, not necessarily. In order for him to hook  
4 up into the Brush Creek Sewer District, he'd have to get  
5 permission from the City of Pacific to do that. So this is not  
6 an automatic --

7 MR. MASON: So if he can't get  
8 permission...

9 CHAIRMAN GRIESHEIMER: He'll have to --  
10 then he would have to or whatever -- let me just say, whatever  
11 goes in the lot, okay, then we have Brush Creek -- and again this  
12 is not part of the rezoning. Where we are is just you mentioned,  
13 okay. If the City of Pacific does not give him -- give us Brush  
14 Creek permission to hook on, then he would have to come up with a  
15 proposal from DNR that's approved by DNR and our Building  
16 Department, okay, to hook on. So it would be proved to the  
17 Building Department whatever is then.

18 But this has nothing to do with the Brush Creek  
19 Sewer District or anything like that.

20 MR. MASON: No, no. I'm just saying it's  
21 got problems, but he could add more problems to it if he hooked  
22 up to it, you know, if this was allowed to go. You know.

23 CHAIRMAN GRIESHEIMER: Okay. Just --

24 MR. MASON: Yeah.

25 CHAIRMAN GRIESHEIMER: This is not at all

1 of any --

2 MR. MASON: All right.

3 CHAIRMAN GRIESHEIMER: Sorry.

4 MR. MASON: That's all right. Any other  
5 questions?

6 COMMISSIONER BRINKER: Do you know, is  
7 there an existing structure on the property now that is currently  
8 as a sanitary -- you know, a toilet?

9 MR. MASON: There is a storage unit that's  
10 been sitting there for years that there was something wrong with  
11 it that they can't use it.

12 COMMISSIONER BRINKER: I'll ask the  
13 Applicant, but I was just throwing it out there.

14 MR. MASON: Yeah.

15 COMMISSIONER BRINKER: Okay. Thank you.

16 MR. MASON: All right.

17 CHAIRMAN GRIESHEIMER: Time out.

18 MR. MASON: Sorry.

19 COMMISSIONER MAUNE: You testified as to  
20 the DNR reports where he had exceeded the limits. What were the  
21 flows on those reports?

22 MR. MASON: The flows -- on which one? On  
23 the --

24 COMMISSIONER MAUNE: Well, the ones that I  
25 could see and where I could locate the flows, it was flows of

1 less than 2,000 gallons a day. But I didn't see anything that  
2 showed what is M-DNR permit allowed for flow.

3 MR. MASON: I don't have that in here  
4 listed on the flow. I just know that they -- you know, they had  
5 the violations of the parts per million or milligrams per liters,  
6 but you know -- so each -- the concentrate in that water that was  
7 being discharged was over the limit.

8 COMMISSIONER MAUNE: Right, but it was  
9 such a small flow that the actual amount there -- I mean, on  
10 suspended solids, if somebody washed their hands and they were,  
11 you know, grimy, you could exceed the suspended solids because it  
12 -- I think it was less than 2,000 gallon flow per day.

13 MR. MASON: I work at an industrial  
14 sampling on the other side of Pacific, and I work in the  
15 maintenance. So I kind of know part of this stuff. When you  
16 exceed, it doesn't -- they don't care if it was a gallon. When  
17 they take a sample and it's over, it's over. You know, when I  
18 say I've -- I work in this dust. I know a concrete plant has  
19 silica sand in it because that's what we do. We mine silica  
20 sand, and I know they're very strict, and they don't care when  
21 you have an upset. You've got fix it, and seeing how many  
22 reports and how many violations, we probably wouldn't be in  
23 business right now. We'd probably be closed.

24 I don't know how he's had this many violations and  
25 got away with it, because we -- we have one and it's -- we pay

1     dearly for it. And we don't get to keep running for a year or  
2     two years before we got to fix it. We got to shut down and fix  
3     it then. So I mean, I don't know. I guess that's in St. Louis  
4     County or wherever it's at, but I don't know how he's continued  
5     to operate, which we couldn't do that out here.

6                     CHAIRMAN GRIESHEIMER: That it? Okay.

7                     Thank you very much.

8                     Anyone else in opposition to the rezoning request?

9                     ATTORNEY HENRY: I just have one  
10     procedural item. I wanted to ask the Commission to take  
11     administrative notice of File No. 14007, which was Mr.  
12     Landvatter's application for a Conditional Use Permit and the  
13     record made in the hearing before the Board of Zoning Adjustment  
14     on the Conditional Use Permit Application on July 22, 2014. In  
15     that file, that contains the original certificate from the  
16     Department of Natural Resources about those records.

17                    CHAIRMAN GRIESHEIMER: Anyone else in  
18     opposition would like to speak in opposition to the rezoning  
19     request? [None] Okay.

20                    Anyone wishing to speak for informational purposes  
21     only on the rezoning request? [None] Okay.

22                    Seeing none, would the Applicants like to do  
23     rebuttal?

24                    ATTORNEY BAYLARD: Yes, sir.

25                    First of all, let me say that I was shocked that a

1 competitor would write in against the proposed use of  
2 Mr. Landvatter. What shocked me is that they all didn't write in  
3 opposition to it. Consider the source.

4 Secondly, the occasion that Mr. Stelzer had  
5 bulldozed down a part of the buffer is news to us. We did not  
6 authorize it. We were not aware of it. We did not ask that it  
7 be done. So wish it hadn't been done if it has been done.

8 Thirdly, let me say that the legal questions that  
9 have been raised as to what can be properly operated in a CA3  
10 zoned area, whether the Planning and Zoning Commission should  
11 have had a public hearing with public comments, and whether or  
12 not manufacturing of this sort should be allowed in CA3 zoning  
13 area or matters that you need to take up with your own attorney.  
14 I'm not here to advise the Board. That's why you have your own  
15 attorney.

16 All I do know is that the Applicant Landvatter  
17 Enterprises is in compliance with your zoning rules and  
18 regulations with respect to his application, and we have done  
19 everything we have been asked to do in order to present our  
20 application to the Planning and Zoning Commission and then also  
21 to this Board.

22 The Applicant is fully aware that he has to comply  
23 with the Missouri Clean Water and Clean Air Acts. He is  
24 monitored. He has to turn in reports. Has it been perfect? No.  
25 Have there been violations? Yes, there have. Have those

1 violations been corrected? Yes. And I will call upon Roger to  
2 testify as to those. Again, that's sort of far removed from the  
3 zoning request.

4 The pictures that we presented to the Board here,  
5 the Commission here, with respect to Kirkwood is to show that --  
6 the Board that Landvatter is in fact a good neighbor. If he  
7 wasn't, there wouldn't be these homes coming up. If he wasn't,  
8 the Museum of Transport [sic] wouldn't be right across the  
9 street.

10 Again, Roger will address that.

11 I will say that this is the first time ever in any  
12 zoning matter that I've been involved in that someone got up and  
13 prayed against my client's application. But it did sort of  
14 remind me of a story about Abraham Lincoln when one of his  
15 constituents came to him and said, "You know, Mr. Lincoln, we're  
16 going to win this war because God is on our side."

17 And Abraham Lincoln said, "Senator, we should be  
18 less concerned with whether God is on our side and more concerned  
19 that we are on His side."

20 There is a time and a place for everything. I  
21 believe in the separation of Church and State.

22 I will call Roger as a witness back. He can answer  
23 any questions you all may have. I do want him to address these  
24 violations of the Clean Air Act and Clean Water Act.

25 CHAIRMAN GRIESHEIMER: Any questions?

1 Looks like seeing none.

2 ATTORNEY BAYLARD: Roger.

3 MR. LANDVATTER: I'm addressing the  
4 alleged violations and the letters that I have dated -- Exhibit  
5 37 is a letter of warning, and what we do is, when they get the  
6 letter -- what we do is do the testing, and then it goes to --

7 CHAIRMAN GRIESHEIMER: Can you speak just  
8 a little bit into the microphone.

9 MR. LANDVATTER: Okay.

10 CHAIRMAN GRIESHEIMER: There you go.

11 MR. LANDVATTER: Okay.

12 What we do is we test the water. We send the  
13 testing to Wellington Laboratories. They do the stuff, so we  
14 don't know what we send them until we get the results back.

15 And then we got a letter of warning that says well,  
16 you're out of compliance, and then we modify and look and see why  
17 we are, what caused it, and do corrective actions to prevent it.

18 The last letter of warning we have here -- I have  
19 and you may correct me because I didn't go through all these --  
20 was February 25th of 2011. Of course, they don't bring in the  
21 testing we do every quarter since then.

22 The St. Louis County violation for the clean air was  
23 years ago. We used to just have a parts washer. We cleaned it  
24 with solvent, and then they changed it so we couldn't do the --  
25 use the solvent. So we have to use some bio-friendly solvent,

1 you know. So when we are not cleaning parts, the part of the  
2 violation -- the only violation we had here was that they didn't  
3 close the lid on the container that we wash the parts in, and  
4 that's where the violation was. And we instructed the mechanics,  
5 put up a notice, you got to close the lid, and that was where the  
6 violation was involved in.

7 So what we do in our Kirkwood plant, and we do not  
8 do it at our St. Charles plant, but in Kirkwood we have a  
9 recycler. So we -- the concrete we bring back we dump it into  
10 the recycle machine. It separates the sand and gravel, and then  
11 the small particles and the cement is contained. There's a  
12 series of five containments. So it all filters out in a timely  
13 fashion. And from, I guess, it just wasn't monitored properly  
14 through our employees, and there was some spillage of the  
15 washout, we call it, and since then we corrected that and  
16 educated them a little bit more, and there's -- we have different  
17 people doing that now.

18 This washout is hauled off the property, and it just  
19 so happens we -- I guess it was last year or year before -- we  
20 hauled a whole bunch of it down to City of Valley Park for a  
21 landfill for the I guess it's a recreational park on the other  
22 side of the flood walls.

23 So that's what happened there. And then now there  
24 is a pipe underneath this system, and we put a culvert pipe,  
25 sealed culvert pipe, around this concrete pipe and concreted that

1 in. And we took steps to further prevent the -- control the  
2 suspended solids and the pH, but we did test the pH from American  
3 Water, and that pH, when we did test it, was exceeding the limits  
4 of nine. So we told the Department of Natural Resources we buy  
5 tons and tons of water, probably 30,000 gallons a day. And they  
6 said well, if that water leaves the -- our site, you know, the pH  
7 is too high. How do you we control the water that we buy? And  
8 of course, their answer is that's your problem. You got to  
9 correct it, and that's what we did.

10 Then -- so that's all I have right now unless you  
11 have some more questions.

12 CHAIRMAN GRIESHEIMER: Any questions for  
13 the Applicant?

14 COMMISSIONER BRINKER: I have a question.

15 As it relates to the rezoning of the 12,  
16 approximately 12, I think it was 11.58 -- let's see -- no, 12.68,  
17 the contiguous property owners -- I'm trying to get in my mind  
18 here. So the tract one as referenced in the P and Z packet, is  
19 the tract that is going to -- that is proposed to be rezoned.  
20 The tract two in the back of the south portion of the property is  
21 going to maintain its current zoning status, that being the CA --  
22 no, the CD.

23 So I'd like to know some dimensions, if someone here  
24 can give them to me, of the proposed property to be rezoned, the  
25 line in the center to the line that goes to the south. That is,

1 I'm going to guess 200 plus -- 250 feet or more on the west end.

2 Is anybody following me, like what I'm trying to get to here?

3 Scottie?

4 MS. EAGAN: Yeah, there is a scale on your  
5 map.

6 COMMISSIONER BRINKER: Yeah, I know, but  
7 I'm half blind. These cheaters aren't working like they probably  
8 could have at with one time.

9 MS. EAGAN: Do you have this one, bigger.

10 COMMISSIONER BRINKER: Does it give the  
11 dimensions? Because I'm trying to get the line from the proposed  
12 zone to the back property line.

13 ATTORNEY BAYLARD: Mr. Brinker. On  
14 Exhibit 1 there is a graphic scale. If this will help, it's a  
15 little bit bigger to read.

16 COMMISSIONER BRINKER: Oh, yeah, much  
17 better. Thank you.

18 ATTORNEY BAYLARD: And the scale's up  
19 here. You want a ruler?

20 COMMISSIONER BRINKER: So an inch is a  
21 hundred feet. I got all kinds of 8 1/2 by 11s here.

22 ATTORNEY BAYLARD: Since that's what's  
23 blown up, I don't think you can say an inch is a hundred feet.  
24 You have to at -- you'd almost have to take the distance on the  
25 bar and apply that to what we blew up.

1                   Hold on. Apparently all the dimensions are on the  
2 back of Exhibit 6. You got a front page of -- or you've got the  
3 folder thing on 6, and then you've got rezoning. Then you got a  
4 drawing of the area, and then in back of that drawing on the area  
5 before the application of Landvatter Enterprises -- these are the  
6 exhibits that the opponents have produced -- are the actual meets  
7 and bounds call as to how many degrees and how many feet they go.  
8 That might help too.

9                   COMMISSIONER BRINKER: Okay, thank you.

10                   The -- and the purpose being that, I think there's  
11 questions out there as to the contiguous properties, and the  
12 contiguous properties to the proposed rezone area, the majority  
13 being the UP and the owner itself. Now, the other properties  
14 within the range of 600 feet include the residents to the south  
15 and Metro Com and Sun Valley Apartments, and I'm trying to figure  
16 out who is to the east off this short end, if you will.

17                   MS. EAGAN: The railroad.

18                   COMMISSIONER BRINKER: The railroad?

19                   ATTORNEY BAYLARD: The railroad.

20                   COMMISSIONER BRINKER: So just for my  
21 edification, nowhere along this property is Shaw's contiguous to  
22 this --

23                   ATTORNEY BAYLARD: No.

24                   COMMISSIONER BRINKER: -- at all?

25                   ATTORNEY BAYLARD: No.

1 COMMISSIONER BRINKER: Okay. I want to  
2 make sure of that, because there is a lot of information out  
3 there stating that it is.

4 ATTORNEY BAYLARD: It is not.

5 COMMISSIONER BRINKER: Okay.

6 MR. LANDVATTER: Also on that same page of  
7 Exhibit 6 what we talk about is the map. It shows the creek area  
8 is -- shows on there, and the creek on the right-hand side where  
9 it starts to leave the page it goes underneath the railroad  
10 tracks and between the end of our property, there is that 30-acre  
11 parcel. See that on the right-hand side?

12 COMMISSIONER BRINKER: Yes.

13 MR. LANDVATTER: And it just goes to that  
14 far corner, and then it goes underneath the railroad tracks, and  
15 all of Shaw's stuff, if you look down the stream, it's always --  
16 it's on the what I call the south side of the railroad tracks,  
17 and the creek at that time is on the north side. It doesn't even  
18 touch it.

19 COMMISSIONER BRINKER: And do you to know,  
20 to my question earlier, the structure that is on the property  
21 now, does it have a sanitary sewer on it?

22 MR. LANDVATTER: No.

23 COMMISSIONER BRINKER: There's no  
24 electricity, it's just a storage facility, right?

25 MR. LANDVATTER: Well, it's unfunctional

1 [sic].

2 COMMISSIONER BRINKER: Right. I'm just  
3 curious if there ever had been --

4 MR. LANDVATTER: No.

5 COMMISSIONER BRINKER: -- a sanitary there  
6 whatsoever on the property.

7 MR. LANDVATTER: No, it wasn't developed  
8 completely.

9 COMMISSIONER BRINKER: Okay. Because  
10 that's, in fact, for whatever this property may be developed  
11 into. That's why I bring it up.

12 ATTORNEY BAYLARD: And that area, if you  
13 look at the map, where it says number 28, that indentation there,  
14 that parcel is owned by the Department of Transportation.

15 COMMISSIONER BRINKER: Okay.

16 ATTORNEY BAYLARD: And that's their --  
17 they put a road in there to make it access when they had to  
18 replace that bridge on Osage.

19 COMMISSIONER BRINKER: That's all I have  
20 on that. Thank you.

21 CHAIRMAN GRIESHEIMER: On the -- let me  
22 ask you. On the buffer zone that can't be developed or anything,  
23 has there been any consideration or any discussion maybe of  
24 possibly, since -- let's say if this would go through, maybe  
25 possibly donating that buffer zone or that property to -- maybe

1 to Shaw's?

2 MR. LANDVATTER: Since it doesn't connect  
3 to Shaw's, and I don't know if they would want to take care of  
4 it, but...

5 CHAIRMAN GRIESHEIMER: And it might be a  
6 consideration, you know --

7 ATTORNEY BAYLARD: Yes.

8 CHAIRMAN GRIESHEIMER: -- as a compromise,  
9 but I don't know, you know. I'm just thinking out loud here.

10 MR. LANDVATTER: Sure and I am also, and I  
11 think it's something worthwhile to look into, to -- because I  
12 don't know what to do with it, and if I keep it, I know Franklin  
13 County is going charge me taxes. So I mean, I have no need for  
14 it.

15 [Off-the-record comments.]

16 CHAIRMAN GRIESHEIMER: Okay.

17 MR. LANDVATTER: That's all I've got.

18 CHAIRMAN GRIESHEIMER: All right. That  
19 will conclude the hearing on File No. 150085.

20 Thank you, and have great day.

21 [Thereupon, the proceedings concluded at

22 4:35 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

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