

VILLAGE OF COMMERCIAL POINT
PUBLIC HEARING MINUTES ON REZONING OF 111 MAIN STREET
August 17, 2015

Mayor Hammond called the Public Hearing meeting to order. Ms. Hastings took roll call with the following members present: Mr. Sadler, Mr. Geiger, Mr. Laxton, Mr. Wissinger, Ms. Evans and Mr. Shelton. Solicitor Hess was also in attendance.

Solicitor Hess opened the meeting. He said we are here tonight on a zoning application that was filed by Russell and Kristin Clemens regarding property located at 111 Main Street, Commercial Point. He said they are requesting that their property be rezoned from R-1 which it is currently zoned, to B-1. Solicitor Hess said notification had been sent to all the adjacent land owners and publication was been published in the Circleville Herald per our codified ordinances. He said Mr. and Mrs. Clemens are present tonight with their Counsel. He would like to give them the opportunity to address their application and then we will open it up to the public for comments and or questions, as well as to the Council for the same. Solicitor Hess said if there are any questions, he will allow Mr. and Mrs. Clemens and/or their Counsel to address these questions if they see fit.

At this time, Mr. Aaron Glasgow introduced himself stating that he is an attorney from the Isaac Wiles firm from Columbus and he is representing Russell and Kristin Clemens. He said he was going to turn it over to Ms. Clemens for her to tell Council what they want to do on their property. Mr. Glasgow said they want to rezone the property from R-1 to B-1 to permit a garage and office facility for their trucks. He said he knows Council is familiar with this property and he has reviewed the transcripts from BZA meeting. He said one thing that Council was missing from that meeting was what the Clemens' want to do with the property and what it is going to look like and how it will be compatible with the other lots in that area. He said hopefully they are able to give Council that information tonight and answer any questions about why this is a use that fits there. He said there plan is to build an attractive, unobtrusive building on the property that is compatible with very little traffic or noise on the site. He said it is important for Council to understand what the Clemens are wanting to do. He said in talking with Kristin, there has been talk from neighbors and others, that if this goes to B-1, they can put a mini-mart or CVS on the property. He said they are here to tell you, the Clemens are willing to enter into a conditions and limitations agreement to make sure their only doing and only permitted to do what they are asking Council to do, which is what Ms. Clemens will describe. He said they do not want to put in a mini-mart or commercial use that the neighbors would find as objectionable. He said they are willing to enter into restricts that would prevent that. He said these restrictions would include what the property could be used for, particularly this use with area restrictions such as buffering and whatever else to make the property look right. He said he has seen some correspondence stating that this doesn't look good coming in. He said that is debatable. Some people like it, some people don't. He said the bottom line is that the Clemens are willing to address the concerns and make reasonable allowances and agreements to basically make everyone happy with the aesthetics of the site. Mr. Glasgow said Ms. Clemens will speak on the compatibility of the site. She lives here and is a member of our community and knows the site quite well. He confirmed with Ms. Clemens that she grew up here. He said from what he has seen and the studies that he has done, this is not an incompatible use for the neighborhood. He said there are residents on the one side and that is why the Clemens are willing to buffer. He said there are other uses around that are not residential and that is why this is a compatible use. At this time, Mr. Glasgow said he would turn it over to Ms. Clemens and then answer any questions, either the legal side or factual. Ms. Clemens thanked Council for taking the time to listen to what they are saying and trying to be reasonable and use some common sense. She said she was raised in this community and likes this area and takes a lot of pride in this community. She said her intent with that parcel is to construct a building that will conceal any work that is done, changing tires, topping off fluids, whatever needs to be done to appease any concerns. She said the building they want to erect is about a 50'x60' building which will allow ample room for the trucks. She said a small office would be in the building as well. This would allow them to remove the shed that is sitting on the property now. They would tap into water and sewer meaning the port-a-pot would go. She said if need be, they would be glad to erect a fence or shrubbery or trees, whatever is determined in an open and honest forthright discussion. She said she doesn't want to be at odds with her neighbors or the people that represent the Village. She just wants to sit down and figure out what they need to do so that everyone can get on with their lives. She said this issue has taken a lot of Council's time and her time and she doesn't want to do anything that is irresponsible with that parcel or horrifying with the parcel. She said there is a township building that has truck activity all day long with mounds of gravel that is being moved all the time with a backhoe. Ms. Clemens said her activity on her parcel would be just as it is now. The trucks would sit there until the drivers come in and leave their personnel vehicles parked while they do their job. She said all day long there is nothing happening there. She said the drivers come back and do their post checks to make sure there are no issues with their trucks; get in their personnel vehicles and they leave. She said there is no in and out traffic on her parcel and there is no product on the parcel. She said there is no ongoing noise occurring on her property either. Mr. Glasgow asked if there were shift changes taking place. Ms. Clemens said usually the drivers show up on the lot at 6:30 a.m. and are gone by 6:45 a.m.

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She said start times on a job are usually between 7:30 a.m. and 8:00 a.m. and with the traffic that everyone is aware of, you don't wait until the last minute to get to the job site, so they leave approximately 45-60 minutes before they have to be on site. Mr. Glasgow asked about the noise inside the building. Ms. Clemens said any type of maintenance inside the building would be extremely muffled. She said their intent is to put an all metal structure there that will be 16 feet in height and not some 30 foot building that you can see from the Baptist Church. She said that is not what they want. She said they want something that will blend in, not be huge, and serve a purpose and nothing more. She said they are not going to run a business from this parcel; no mulch or gravel or sand. Nothing of this sort on this site. Mr. Glasgow asked if they would need any type of storage. Ms. Clemens said she doesn't think they would need any other type of storage building at this site. She said they have done some improvements to the site. She said grass is growing on both sides of the lot and gets cut regularly. She said there is no trash on that parcel. She said there is not even a cigarette butt in the parking area of the lot. She said the guys are respectful of the property as well as she is respectful of the property. She said all trash is taken from the property for disposal. She said they haven't invested a whole lot of money on this parcel because she doesn't know where this is going to go. She said the intent is to just get this done so that going forward she can put up the building that she needs to, get the port-a-pot out of there and everything cleaned up and things looking like they want it. Mr. Glasgow said in talking to Russ and Kristin, they will do whatever they need to do to make the Village happy. He said they want to work with their neighbors and Council to make the use what they (Council and neighbors) want it to be. He said they do feel strongly that it is an appropriate site. He said this was slated for a small lot subdivision, however that didn't occur and now it is four large lots and definitely different than what was intended. He said they have really expressed a lot of concern and are willing to work with the Village and get this resolved. Solicitor Hess asked if Council were to agree to a rezoning and an agreement was made to make it esthetically pleasing, how long would it take. Example, building, shrubbery etc. Ms. Clemens said some things will be a lot easier to do than others. She said with the size of the building they are wanting to construct, it will be a sizable financial undertaking. She said that in itself would not prohibit her from doing it. She just wants to know that this could be put to bed and the Village could start collecting her taxes, get her tap fees and water and sewer fees every month, she can then start doing what she needs to do to move forward. She said her best guess would be perhaps 2 years. Mr. Glasgow asked her 2 years for the building. She said 2 years for the building specifically. She said they are a fairly new company and she needs to remain solvent for the stability of her drivers and so forth. Ms. Clemens said these are things that can be discussed. She said it could be set up in phases. Mr. Glasgow said in speaking for the Clemens, what Council's concerns are may dictate what the Clemens' concerns are. He gave an example if screening the neighbors was a concern on the front burner for the Village, now it becomes a concern on the front burner for the Clemens and will dictate what is done about it.

At this time, Solicitor Hess asked Council if they had any questions for the Clemens or he said the floor could be opened to the public for comment. Mr. Sadler asked Mr. Glasgow about a letter he had written to Solicitor Hess on July 29, 2015. He asked Mr. Glasgow if he considered this letter to still be applicable. Mr. Glasgow said it would depend on which part Mr. Sadler was talking about because he said he talked about a number of things in the letter. Mr. Glasgow said if Mr. Sadler was speaking with regards to the administrative procedure that the BZA had with misunderstandings with their jurisdiction, then yes. He continued to say that he had a conversation with Solicitor Hess and said this is a contentious issue and that is why they wanted to come in and ask for rezoning. He said he believed that some members of this Council brought up the idea of rezoning and that is why they are here. Mayor Hammond asked if there were deed restrictions on this property. He said Council deemed it R-1 and overturned our Zoning Inspectors decision. He said his understanding was there were pretty tight deed restrictions. Solicitor Hess said he and Mr. Glasgow spoke about that earlier today and both agreed based on their discussion that the deed restrictions would not prevent this Council from rezoning the property if they felt it necessary. Solicitor Hess said the deed restrictions would be a private act between the neighbors and the Clemens. He said as for the rezoning, the deed restrictions do not prevent Council from rezoning this parcel. Mr. Glasgow said the deed restrictions are not part of the zoning and are not permitted by law to be part of the zoning process. He said these deed restrictions are dealt in other ways and not just someone bringing a lawsuit and are always negotiable. He said this would be between the Clemens and their neighbors. Mayor Hammond said he had three items written down and one that has been brought to his attention was night shift trucking work has been done pretty regular. They have been working late night shifts with headlights in the neighbor's windows and that sort of stuff. He said secondly, it was brought to Council's attention that they were going to build a house. Mr. Glasgow asked if they could answer the questions one at a time. Mayor Hammond asked if there had been any night shift work done. Ms. Clemens said there had been a period of 4 weeks where they worked the night shift. Mayor Hammond said that is pretty regular for the trucking business. Ms. Clemens said it might be for some trucking companies but not for hers and this was the first time it occurred. She said June was a very rainy month and when you move dirt in the rain it becomes mud and you can't move that. Mr. Glasgow said the lighting and physical items of the property can be dealt with if you have a conversation with the municipality and address these issues. Mayor Hammond said if Council chooses to rezone this parcel, there is nothing to prevent in the

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future this property being sold to someone else. He said once the B-1 zoning is in place, the intent of the present owner might be well and good, however if the property is sold the agreements then become null and void. He said yes there could be a mini-mart there. He said what would be agreed to tonight would be fine as long as the Clemens were the owners, however they have no assurance and we have no assurance that they will always be the owners. Mr. Glasgow said he has not talked to Solicitor Hess about that, however feels it is a legal issue that an agreement could be entered into with restrictions specifically to that property. Solicitor Hess agreed. Mr. Glasgow said Council has the right to make the rezoning conditional which is much more specific than just rezoning from R-1 to B-1. He said he feels that is the confusion and why people would think a mini-mart could go in. He said this is not what the Clemens' are asking for. Mayor Hammond said he clearly understands that and feels their intentions are well intended. Solicitor Hess said he agreed with Mr. Glasgow and if Council agreed we could tailor to conditions that would prevent the future owners from putting in other businesses. Mr. Glasgow said if the Clemens were to agree with what Council wanted, then any future owner of that property would have to come back to Council if they wanted to change what was already in place. Mayor Hammond asked Solicitor Hess to clear something up. Mayor Hammond said we now have deed restrictions that would be removed. Solicitor Hess said no the deed restrictions would not be removed however they were between the neighbors. Mayor Hammond gave an example of where he lives they have deed restrictions where they are not allowed to do certain things. Solicitor Hess said that was correct, however people have still done things that aren't allowed and as neighbors, they could go and challenge them in court. He said it was not the Village's job to enforce the deed restrictions. Mr. Glasgow said there are separate defenses that the Clemens would have that really play no part in this. He said he could go through those if there truly are deed restrictions. He said that is why deed restrictions are not a part of this process and it is a completely legal concept.

Mr. Shelton said it would take two years for the Clemens to get the building in place. He asked what would happen during these two years. Ms. Clemens said the baby steps that it will take to get to that point. She said a fence or barrier since there seems to have been some concerns with the neighbors over the last 3-4 months. She said whatever it takes to address these concerns, they can do. She said they can't obscure the view around the corner. She said to come up with a project management application with reasonable steps to accomplish her goal. Mr. Glasgow said what the Clemens will do first is dictated by the decision of this Council. He said from what it sounds like, screening would be a very important thing. He said if this is a condition, it would be done ASAP. Mr. Shelton said he has heard complaints of the property being unsightly, very noisy, lights shining in windows all hours of the day and night. Ms. Clemens said they addressed that when the Mayor brought that question up. Mr. Shelton said he understands that she had an answer. Ms. Clemens said if they put up a fence or some other type of a natural barrier on the west end of the property, it will reduce the noise and eliminate the lights shining in the windows. She said she understands what the concerns are. She said they try to be very honest and upfront with the Village and the neighbors about what they wanted to do and now it has come full circle. She said it has become an issue when a year and a half ago, it wasn't an issue. She said there are valid concerns and she will gladly address the concerns however she can't address anything that she doesn't know about. She said she didn't know anything about lights shining in windows until Council brought it up tonight. She will address this by putting up a fence or trees, something that doesn't affect the esthetics of either property.

Ms. Evans said she had reviewed her notes from the last time and noted that the Clemens' were not building a home on the property because of money. Ms. Evans said it was due to a down turn of the economy and they (the Clemens) couldn't afford it. Ms. Clemens said that was in 2008. Ms. Evans said now the Clemens are showing up to do even more to the property with esthetically pleasing things, however not building a residence in a residential area. Ms. Evans said she is confused what the issue is. She feels the Clemens are going on a path and want to continue on that path, however their initial intent was to buy the property to put up a home. She said now they come and want to do something else with the property with an enormous amount of money and put up a 50'x60' 16' tall building on the property. Ms. Clemens said she isn't going to do anything with the property if she can't get it rezoned. Ms. Evans said she could build a home there. Ms. Clemens agreed but said she wasn't here to talk about selling her home. She said she hears what Ms. Evans is saying. She agreed that when they purchased the lot the intent was to build a home. She said life circumstances change and we never know tomorrow where we might end up being. She said she would like to be able to put up a home, however the rezoning will not allow both and B-1 is what she needs now. Ms. Evans said to Ms. Clemens that she uses words like fair, common sense and reasonable and thinking this through there was an intent to build a home on the property and now they are coming and asking for a complete 180. Ms. Clemens said she did not own the trucks in 2008. Mr. Glasgow said this process was suggested to the Clemens due to concerns about trucks being parked on their property. He said he read the transcript and they were engaged to enter into this process to take what some people felt was an objectionable use and make it better through rezoning. He said he doesn't feel that they were changing their intent, but doing what this Council suggested. Ms. Evans said she disagreed with that. She said the original intent was to build a home. She said the Council didn't agree with what the inspector

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has allowed and the only other option was rezoning. She said she doesn't believe that the Council encouraged the rezoning. She said this was the next step in her opinion.

Mr. Wissinger asked what the cost of the building was going to be. Ms. Clemens said her guess would be \$ 50,000-\$60,000. Mr. Wissinger then asked how many trucks were on the lot. Ms. Clemens said there were 6.

Mr. Sadler said the letter stated that the Clemens did not operate their business from this property. He asked if that will change if the property is rezoned to B-1. Ms. Clemens said she would like to say that her business is located at this property where she can do payroll and other paperwork. She said right now, they are very careful what they do on the property. She said they do not conduct business on the property since it is not a business parcel. Mr. Glasgow said if Council would approve the rezoning with conditions to approve the garage for storing the trucks, the Clemens would be OK with that. Ms. Clemens said she runs her business at her home or on her cell phone wherever she is and it is working fine now. Mr. Glasgow confirmed that what Ms. Clemens is seeking is to not mover her business to this property, however to have a storage area for her trucks. Ms. Evans said the Ms. Clemens said she would like to be able to run her business from this parcel. Ms. Clemens agreed that if it was allowed she would like to have the business there. Ms. Clemens said this business could be ran from anywhere. She doesn't have a store front or people coming into the business. She said the main purpose is to have a building where the trucks could be stored and have maintenance on them out of site as well as proper restrooms where the employees can wash their hands. Mr. Glasgow reiterated that the purpose of rezoning this parcel is not so that the Clemens's can move their business to this location. He clarified and said they would love to move their business to this parcel but that is not what they are asking for with the rezoning.

Mr. Geiger asked how many trucks the Clemens started out with. Ms. Clemens said 1. He said they are now up to 6 trucks and asked how many more trucks the Clemens felt they would have once the building was done. Ms. Clemens said they have 6 now but operate 5. She said she can't manage any more than 6. She said this could be added as a condition if Council so chooses to limit the number of trucks on the property.

At this time, Solicitor Hess opened the floor to the public. He asked anyone wanting to speak to come to the lector and state their name. Mr. Mike Struckman asked Solicitor Hess with regards to the deed restrictions if the Village could be sued by changing an R-1 district to a B-1 district. Solicitor Hess said no. He said what restrictions are on that property from the deed restrictions, the Village has no control over. Ms. Evans said if she was a R-1 property owner who bought next to a property that was zoned R-1 as well, would she have no say over what the neighbors were proposing to do with their property. Solicitor Hess said that is what the public hearings are for. He said she would not be able to sue the Village over a rezoning decision that was made. Solicitor Hess said it could possibly be challenged in court but he doesn't see how the Village would be subject to that unless it was done in a malicious or arbitrary way. Solicitor Hess asked Mr. Glasgow if he had any input. Ms. Evans just wanted to know if a neighbor could have any recourse on the Village for allowing a rezoning. Mr. Glasgow said in his other part of his job he defends political subdivisions through insurance and he has never seen that happen. He said there could be a recourse if the adjacent property was being used to cause an issue with the way you are enjoying your own property.

Mayor Hammond said a diary has come across his desk that had been generated by Mrs. Reynolds who owns the adjoining property. He said that she is present and last time she didn't know if she could speak and he wanted to let her know that now is the time she can speak. He said they had received a daily diary and now is the time if she has something to say to say it. Mrs. Reynolds said she didn't have any notes. Mayor Hammond said she didn't need any notes. Mrs. Reynolds said she cannot understand...if someone asked the question on whether they were working at night. She said if they were not working at night, why were the trucks off the property? She said they have to be somewhere and this went on for 2-3 weeks. She continued to say the lights shining in her window were not from a car or a truck. She said it was intentional. She said she doesn't like living by stuff like that plus the toilet stinking all the time. She said those were just some of the things that go on. Mrs. Clemens asked if she could address Mrs. Reynolds and Mayor Hammond said Mrs. Reynolds still had the floor. Mr. Glasgow said he thought she was done unless Mayor Hammond wanted to keep forcing her questions. There was some grumbling and laughing at this time. Mrs. Reynolds said she couldn't think of everything. Mayor Hammond said he received a daily diary...Mr. Glasgow said Mrs. Reynolds didn't bring the diary or stand up until you (Mayor Hammond) asked her to stand up. At this time, Mrs. Reynolds stood up and addressed the Council. She again reiterated that someone had asked Mrs. Clemens if the trucks work at night. Mrs. Reynolds said yes they do otherwise she didn't know why you would take all the trucks off the property. She said there is activity on the property sometimes until 2:30 a.m. She said lights were shining in her window and it was not a truck light. She said it was an intentional light that was almost as strong as a search light. Mrs. Reynolds said she doesn't know why she (Mrs. Clemens) comes across with all this stuff that doesn't happen

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when indeed she lives right there and it does happen. Mrs. Reynolds said it was aggravating, frustrating to have bought a house that they thought they were going to live in for the rest of their lives, she said she didn't know. They may not now. She told Council it was up to them to decide what they wanted to do. She told them they had her notes starting back in June. She said it continues all hours of the night, sometimes... for about 2 weeks. She said there were some very, very bad comments to her husband. She said one comment in particular, they had asked him if he had moved the property pole. She said her husband was probably one of the most honest people in the world. She said that did not sit very well with him. She said, why would someone move a property pole at the back of the property? She said to Council, there are a lot of things that you don't hear or see, but you should live next door... you would be surprised. She thanked Council and told them that was the truth. At this time, Mr. Glasgow and Mrs. Clemens stepped up front again. Mr. Glasgow asked Mrs. Reynolds if she was married. She said yes. Mr. Glasgow asked Mrs. Reynolds if her husband lived with her on the property. Mrs. Reynolds said he did. Mr. Glasgow asked if there was any reason why he wasn't here tonight. Mrs. Reynolds said yes there was. Mr. Glasgow asked Mrs. Reynolds if she knew that Mr. Reynolds had had conversations with Mr. Clemens about his feelings about the property. Mrs. Reynolds said probably not. She said he had told her that Mr. Clemens had asked him about moving the property pole and she asked him what he said to Mr. Clemens. She said Mr. Reynolds told Mr. Clemens no and why would he do something like that. She said those were his exact words. Mr. Clemens said he also said that Mr. Reynolds said he didn't have a problem with what they (the Clemens) were doing on their property. Mrs. Reynolds said she wasn't going to argue. Mr. Clemens continued to say that Mr. Reynolds asked him if he bought his property over there (meaning the Reynolds property) and if Mr. Clemens bought his property over here (meaning the Clemens property). Mr. Clemens said Mr. Reynolds said that he did what he wanted to on his property and Mr. Clemens should do the same. Mr. Glasgow said Mr. Reynolds wasn't here so we aren't sure what was said. Mr. Clemens said they live on the highway with headlights coming in. He asked if she (Mrs. Reynolds) thought they should close 762 down at night. Mr. Glasgow said to bring things back, those are physical things on the property that can be dealt with which in his opinion are the easiest to deal with. Mr. Glasgow asked Mrs. Clemens if she had anything to add regarding the physical things on the property. Mrs. Clemens said no and turned to Mrs. Reynolds and told her that she wanted to address her. She told Mrs. Reynolds that she wishes she would have just come to them (the Clemens) and asked what was going on over there. Mrs. Reynolds said that would be an everyday event. Mrs. Clemens told Mrs. Reynolds that she didn't want to be at odds with her. She said it would have taken Mrs. Reynolds saying something one time and the issue would have been addressed. Mrs. Clemens apologized to Mrs. Reynolds that she was having to deal with these things. Mrs. Reynolds said in June when she spoke to Council, she addressed a lot of those things but did anyone pay attention. Mrs. Clemens said there was no night work going on at that time and the port-a-pot issue has been addressed. Mrs. Clemens said she has record of the toilet being cleaned every Wednesday. Mrs. Clemens said the wind blows west to east and we (the Clemens) are east of the Reynolds. Mr. Glasgow told Mrs. Clemens to tell Council about the port-a-pot. Mrs. Clemens said the wind blows west to east and their property sits to the east of the Reynolds. Mrs. Clemens said she has proof of the port-a-pot being cleaned weekly, every Wednesday. She said they have it on camera. She asked if that was part of the diary, that the port-a-pot was cleaned out. Mayor Hammond said the diary said they couldn't have an outdoor event. Mrs. Clemens said that was one time and there is no proof that the odor came from her property. She said she has lived her for 44 years and the wind always blows from the west. Mrs. Clemens said there was a port-a-pot two doors down, from the west, from the Reynolds that sat there for two months. She also said there was one across the street. Mayor Hammond said there is always one during the construction of a home. Mrs. Clemens said that doesn't address where the odor came from. She said if Mrs. Reynolds came to her property, then she was trespassing. Mrs. Clemens said she doesn't want to be at odds with her neighbor. She said she wants to try and work this out so that they can address the issues. She said that she already stated that they did work nights for one month and she knows that it was a burden. She said her intent was not to aggravate the situation with her neighbor. She said that was not what she wanted at all.

Mr. Glasgow said there were issues like the night issue that they weren't aware of until tonight and are cropping up as a central issue. He said these are things that could be negotiated by statute of limitations for hours. He said rezoning with certain hours and lighting can be dealt with in terms of limitations.

Solicitor Hess asked if there were any more comments to be made. He said Council could now vote or take up to 30 days from the public hearing to make a decision to accept the rezoning application or deny it. He said he could prepare legislation based on the Council's vote. He said there are a number of options. 1) Accept the application to rezone from R-1 to B-1 which would allow them to do anything that any other B-1 property is allowed to do. 2) Deny it in total. 3) Accept the application with conditions dealing with barriers, lighting, conditions, etc. Solicitor Hess said he believes these conditions would stay with the property. Mr. Glasgow said in his experience, those conditions would be very exact. He said he would have to do work to hammer out the conditions to make everyone happy with them. Solicitor Hess said that was correct and we wouldn't be accepting the conditions tonight. Mr. Glasgow asked if that

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meant Council would accept it with conditions that are acceptable to Council or would it be tabled so that Council could look at their (the Clemens) conditions to see if they (Council) will accept them. Solicitor Hess said they could vote tonight and if Council accepts it with conditions, we would then negotiate those and bring it back to Council. Mr. Glasgow said if that is what Council is considering then the central condition that they would be proposing would be that the use would be restricted to this particular use. He said he didn't want anyone to think they were voting for an open-ended...well we are going to come back and have conditions to allow us to run this as something else or expand it. He said we are talking about a central condition with a statute of limitation to this building, one building on site for a garage. He said other conditions that they would expect to hear and what they are offering are physical screening, lighting restrictions. He said they would obviously have to adhere to the Village code. He said he knows this is a very sensitive situation. He said people will be very leery to say, oh yeah I will vote for this with open-ended conditions and feel they are going to get hood-winked. He said he wanted to be clear about the one issue and are willing to restrict it to this one single use. He said it is really more of a commercial plan unit development. Solicitor Hess said we would have to have an ordinance regarding the rezoning and that ordinance would adopt all of the conditions that were negotiated. Mr. Glasgow said they would be conditions satisfactory to Council.

Mayor Hammond said at this time, Solicitor Hess had given Council all of the options and he asked Council if they had any questions. Mr. Sadler asked if the Village had a copy of the deed restrictions. Solicitor Hess said we do have them but they aren't a part of what Council should consider. Mr. Sadler asked if the restrictions were on the property today. Solicitor Hess said yes. Mr. Glasgow said there are potentially deed restrictions, but if there are, he would have to get a title search on it to see if they are even enforceable. He said even if they were, it is quite common in zoning for people to have restrictions for neighbors that they negotiate.

Mr. Shelton asked if Mayor Hammond was looking for a motion, one way or another. Mayor Hammond said yes to approve or deny. Solicitor Hess said to approve or deny or approve with conditions to be negotiated. Mr. Sadler confirmed that Council does have 30 days. Solicitor Hess said yes, they have 30 days from this public hearing to either adopt or deny. Mr. Laxton said we have 30 days and he would like to hear some conditions. Mayor Hammond said Council would have to write the conditions. Mr. Glasgow asked Solicitor Hess if he had a problem with tabling the decision and allowing them to propose the conditions and then present the conditions that are being proposed. Solicitor Hess said it was a Council decision if they want to table it or not. Mr. Sadler said it would be a shotgun vote tonight. Mayor Hammond said this has been going on since Spring. Mr. Sadler said this has been going on since 7:00 p.m. and this was the first that he has heard of some of this information. Mayor Hammond asked what Council's pleasure was.

Ms. Evans made a motion, seconded by Mr. Shelton to deny the application in total. A roll call vote was taken: Mr. Laxton – No; Mr. Geiger – No; Mr. Sadler – Yes; Mr. Wissinger – No; Ms. Evans – Yes; Mr. Shelton – Yes. Ms. Hastings said the vote had ended in a tie. Mayor Hammond asked Solicitor Hess if he was able to vote on a zoning issue due to the tie. Solicitor Hess said yes. Mayor Hammond gave a Yes vote to deny the application. The motion passed with a 4-3 vote and the application was denied. Solicitor Hess said he will follow up with documentation reflecting this vote.

Ms. Evans made a motion, seconded by Mr. Shelton to adjourn the meeting. All members were in favor. The meeting adjourned.

Joe Hammond, Mayor

Wendy Hastings, Fiscal Officer