

NEWTON COUNTY PLAN COMMISSION

Tuesday, May 25, 2021

8:00 pm

Newton County Government Center

Agenda

- I. CALL TO ORDER;
- II. APPROVAL OF THE APRIL 27, 2021 MINUTES;
- III. JEFFREY MCKERNAN, JM INDUSTRIAL SERVICES, INC., PC
1-21, CHANGE OF LAND USE FROM B-1 TO B-2;
- IV. OTHER MATTERS;

NEWTON COUNTY PLAN COMMISSION

May 25, 2021

8:00 p.m.

Newton County Government Center

Members Present:

Mr. David (Dave) Miller - President
Ms. Kathryn Weiss
Mr. Harry Hanford
Mr. David Atkinson
Mr. Russell Rigby
Mrs. Terri Pasierb
Mrs. Daisy Cicero – Secretary
Mr. Patrick (Pat) Ryan - Attorney
Mrs. Rebecca (Becky) Goddard - Attorney

Not present:

Mr. Russell (Russ) Collins, Jr.
Mr. Timothy Drenth
Mr. Steve Snell

8:00 PM

I. CALL TO ORDER

PLEDGE OF ALLEGIANCE

II. APPROVAL OF THE APRIL 27, 2021 MINUTES

David Atkinson: Motion to accept.

Terri Pasierb: Seconded

Harry Hanford abstained, due to absence from April meeting.

Motion Carries 5-0

III. JEFFREY MCKERNAN, JM INDUSTRIAL SERVICES, INC., PC 1-21, CHANGE OF LAND USE FROM B-1 TO B-2;

Dave Miller called **Mr. Jeffrey [Jeff] McKernan** to approach the board.

Daisy Cicero: Just to fill everyone in, I did take it to the Commissioners, and they sent it back to Plan Commission, and they requested some type of a site plan, and there was talk about a buffer zone, a fence. Those were the main items, I believe, in addition to storage of materials.

Pat Ryan explained the events of the prior meeting on *April 27*, which resulted in a favorable recommendation for the change of land use. The context for this evening's meeting was based on a concern for the attendance of the current meeting, as well as the recommendation that deviates from the county's master plan.

David Atkinson expressed a request for clarification that B-1 to B-2 is allowed in the Master Plan, to which **Pat** stated deviation from the Master Plan could be reasonable if proper conditions exist, but it's up to the Plan Commission; however, B-1 to Industrial zoning is a deviation from the master plan.

Mr. McKernan: Last time, I introduced myself; Jeff McKernan, JM Industrial Services. I have a business in North Indiana. I'm being bought out by the railroad, eminent domain. I've been here 27 years. I bought a piece of property on 10. I'd like to move part of my operation down here—which I am a demolition and trucking contractor. We're not doing scrap, like I've been accused of doing and making a mess down here.

Mr. McKernan stated that he's lived in the area for 27 years, and that his goal is to build a structure, which has been designed by **FBI Builders, Inc.** He has the plans and is only awaiting approval.

Mr. McKernan explained that he spoke to the Newton County Commissioners, who provided conditions for the pending approval, including a fencing, which **Mr. McKernan** is open to, but uncertain of the requirements, as there are no fencing requirements in Newton County Ordinances.

Mr. McKernan stated that he would not store materials, aside from a small amount of sand, short-term, for pending projects. He stated that he owns heavy equipment, which are comparable in size to tractors or combines.

Harry Hanford stated that he was not present, as well as **Russell Rigby.**

Harry: I don't think it belongs there. It's almost Industrial if it isn't.

Harry and **Mr. McKernan** discussed the current zoned lots in the area.

Harry stated that there is potential for businesses to move to the area, and expressed concern that it belongs in Industrial zoning, and that he intended to watch the property to ensure compliance if it were to be accepted, to which **Mr. McKernan** stated he was welcome to do so, and that there was "nothing to hide."

Russell Rigby asked if it has been approved already, to which **Harry** responded it's come back from the Commissioners.

Harry expressed concern for someone needing to watch the property and provide weekly reports on the activity there.

David Atkinson stated that there is a high population in the area who would be concerned enough to watch and report, as this case has had a social media following.

Mr. McKernan asked **Harry** what his concern is.

Harry: Just the highway; the appearance on the highway. I know we have a couple garages on 10 and 55, just three miles off 65.

Mr. McKernan: There's Goodyear and other places right there.

Harry: That's business, but I don't think he's doing welding and stuff like that.

Mr. McKernan: All of the welding would be done inside the buildings.

Harry asked if it was just storage, which **Mr. McKernan** stated a shop would be built for storage and maintenance of equipment, and that B-2 was suggested by the Building Department, so small maintenance could be done on one vehicle.

Russell: What is kept outside?

Mr. McKernan: Excavators and our trucks.

Russell: So what do you use on the inside? Repair bases?

Mr. McKernan: Yes, that or trucks. Inside is for repair and storage. Anything that isn't going to fit outside would go inside.

Russell stated that the Comprehensive Plan [Master Plan] focused on B-1 zoning in this particular area for the purpose of retail.

David stated that retail was on hold until water and sewage could be brought into the area.

David suggested a chain link fence with green slats.

Harry: Did they ask you [**Mr. McKernan**] for a site plan?

Mr. McKernan: They did, but I was unsure exactly what.

Harry: How far off the highway?

Mr. McKernan: 600 feet. It's 600 by 600.

Mr. McKernan stated that he is looking for suggestions or requirements.

Dave Miller: I think what most people are looking for is we don't want to see aggregate piled up, mountains of steel there, bricks, rocks from a demolition site.

Mr. McKernan: Most of our demolition is in Northwest Indiana: Hammond, East Chicago and Gary. We're not going to bring back demolition debris or scrap all the way back here to store it and then take it all the way back up north.

Dave: I want to see a clean building with a fence around it. Little equipment outside. I don't want to see anything as far as aggregate, or stuff that will grow weeds—piles of dirt that will grow weeds.

Mr. McKernan stated that he works closely with someone who will pave the property over time with asphalt.

Russell inquired about the proposed process for fluids, such as antifreeze and oils.

Mr. McKernan stated that he has a waste oil company that takes care of that.

David inquired on the timeline, to which **Mr. McKernan** responded **FBI** wouldn't begin working for three months, but in the meantime, **Mr. McKernan's** crew could begin site prep immediately.

Dave opened the discussion to the public.

MR. JOHN NARUG, OWNER OF LOTS 57 AND 58 AT TIMBER RIDGE ESTATES.

Mr. Narug: I wanted to come down here to see if we could stop this.

Mr. Narug stated his concern over having a company titled "Industrial Services", and suggested this name does not fit into B-1 and B-2 zoning.

Mr. Narug stated a concern that water and soil quality could be affected, and suggested relocating to County Road 600 East, which is marked in the County Master Plan as an Industrial zone.

Mr. Narug stated that the citizens are concerned with the area's likelihood to thrive, and that there is potential for incoming residents and businesses from larger areas, based on the current housing market in the area. **Mr. Narug** stated a concern that an industrial business would prevent other retail services from coming into the area. **Mr. Narug** expressed concern for the area to decrease in value with an industrial service in the area.

Mr. Narug concluded with a statement regarding residents in the area intending to organize a class-action suit in an effort to retain property values.

MATT ANDERSON, OWNER OF 196 ACRES OF VACANT LOTS ON STATE ROAD 10, ADJACENT TO THE PROPERTY IN QUESTION.

Mr. Anderson expressed concern for the property values in the area, as well as the amount of time and resources dedicated to the County Master Plan, and suggested adhering to the current Master Plan.

Harry: If we have to cover it with a fence, it doesn't belong there.

Dave: Would anybody else in the audience like to speak? If not, I'll bring it back to the board and the rebuttal.

Mr. McKernan stated that no residential zoning is allowed on Route 10, and that **Mr. Anderson's** property would act as a large buffer between his business and residential areas.

Mr. McKernan declared that **Mr. Anderson** has spoken out against him for two months regarding intentions to bring in a scrap yard, and **Mr. McKernan** brought attention to a past project of a potential detention center on **Mr. Anderson's** property, citing this as a bias against **Mr. McKernan**.

Mr. and Mrs. Narug pointed out properties nearby that would easily see **Mr. McKernan's** property.

Mr. McKernan referenced the potential detention center in that same location, which **Harry Hanford** stated would have been in a different location.

Harry: He's not going to own 100 acres just to give you a buffer zone.

Mr. McKernan: I'm not asking that.

Harry: That's what you just said, though. I just don't think it belongs there. That's my opinion.

Mrs. Narug: I agree. It should be by the Highway Department off 600 or something down that way.

Dave Miller: Back at the board for questioning. The public has had their chance to speak when opened. Now back to the board for more questioning.

Harry: I read where the Commissioners put stipulations. No scrap or aggregate. He says he won't. He'll keep everything hidden. Nothing unsightly will be seen because we'll build a fence around it. I just don't like it. They also asked for buffer fencing and a detailed site plan.

David: I don't want a 10' fence. I'm thinking a 5' fence. You can see over it, but it will help blend things in. It's intended to hide it.

Harry: Buffer fencing is what the Commissioners asked for us to request; "buffer fencing."

Pat asked what document **Harry** was referring to, which **Daisy** stated was the minutes from the Commissioner's meeting.

Pat Ryan stated that the Commissioners made said recommendations, but the Plan Commission has the leverage to introduce more effective ideas without the limitations suggested by the County Commissioners.

Pat: In reality, they sent it back without a decision, so if you have better ideas, or more effective ideas to make this work and it's better for the surrounding areas, then don't feel limited by suggestions.

David: If he does proceed, would these conditions be written in the minutes as being part of permanent standing motions?

Pat stated that these would be conditions set forth by the Plan Commission, so they would, as far as application and enforcement, have the force of law. They would run with the property as would the zoning. If any violations in zoning or not meeting requirements occurred, and if compliance could not be met, an injunction could result.

8:27 pm

David: To be clear, I made the motion last time and I'm inclined to do it again. I would want to put in the requests of the Commissioners because, ultimately, it's our recommendation to the Commissioners and they can say yea or nay. So if we don't go along with them, I don't feel it's very smart on our part. So I would move, if I made a motion, to include the requests that the Commissioners would want to see.

David listed the items that the commissioners requested:

1. A privacy fence;
2. No on-site scrap storage or bulk material storage;
3. A detailed site plan showing the location of the building and property lines.

David asked **Daisy** if the Building Department has reviewed the building plans to determine if they conform to codes. **Daisy** stated they have not yet.

Pat asked the reasoning why **Mr. McKernan** is applying specifically for B-2 zoning.

Daisy stated it is the transportation clause in the Ordinance that is dictating this particular route in zoning selection. **Mr. McKernan** had initially requested Industrial zoning when speaking with **Mr. Butch Cain**, the former Building Commissioner, but that was not seen as an appropriate fit with the Master Plan. After further discussion, it was recommended to apply for B-2 zoning.

Pat: If it helps you, it is possible that you could look at, rather than changing the zoning from B-1 to B-2, would a use variance be possible?

Daisy: You could absolutely apply for that. I don't believe that was something discussed.

Pat: You'd have to start over, but that would allow him to tailor that to the uses he needs without changing the zoning, and as it progressed, it would be a non-conforming use. I don't know, practically speaking, if that's worth worrying about. But for some of the people in the area that are concerned with the actual zoning change, it would avoid having to change the zoning. What I'm hearing tonight, though, is that the concern is not really the zoning change; the concern is the use, and whether it's through the change of zoning or through a use variance.

David stated that it appears the issue is over aesthetics and the validity of the claims that it would appear as a scrap yard.

Russell: Even if he gets B-1, he can still build the building.

Mr. McKernan stated that he would still also be able to store heavy equipment. **Mr. McKernan** stated that he was uncertain on the stipulations regarding zoning, which was why he contacted **Mr. Butch Cain** and the Building Department, and decided that the only issue was in regards to the transportation clause and performing work inside the building.

Pat asked for clarification on record of what **Mr. McKernan** intends to do on the property.

Mr. McKernan stated that he runs a scrap yard in Northern Indiana, regulated and licensed through the State and Hammond, with IDEM regular inspections, but this is permanent to that area only, for which the permit is being discontinued.

Mr. McKernan stated his intentions to live in Newton County area for logistical reasons related to his work.

Pat: I'm going to repeat my question. Can you, for the record, explain what uses you intend to conduct on that property?

Mr. McKernan: Storage of heavy equipment and maintenance and repairs of heavy equipment. And, I guess, light equipment. Our trucks aren't heavy equipment.

Dave: Only equipment. It's not any of the demolition?

Mr. McKernan: No, no, we don't even bring demolition debris back to our [current] site. You can't. IDEM, it's against the law, unless you have a permitted landfill, or a transfer station. So, again, you cannot bring demolition debris and stack it and store it on site anywhere in Indiana.

Pat: Are you able to define what heavy equipment is?

Mr. McKernan: Excavators, semi trucks, nothing larger than a combine.

Harry: Cranes?

Mr. McKernan: Yes, I have cranes. I don't know what the concern was about a crane. It's just a piece of heavy equipment.

Harry: You're not going to hide that in a building, are you? You're not going to hide that behind a fence. I wish you were out in the country somewhere. That's the best part of our community.

Mr. McKernan: I do too, Harry. Do you have land right there on 10 and 65 I can trade you? I'd love to be closer to 10 but there's nothing there for sale. There's nothing along 10 for sale. This is it. I understand this Master Plan, but if the property's not available for people to develop in this area, it's kind of hard for people to pick and choose.

Mr. McKernan stated that the crane is deconstructed to look like a regular piece of equipment, so it is compact in size.

Pat: My question was, can you define what heavy equipment is, and you said excavators and semis, and then you started talking about cranes. So is there anything else to the definition other than excavators and semis?

Mr. McKernan: I don't know what else is considered heavy equipment.

David: Are you going to have backhoes, cranes, scrapers, bulldozers?

Mr. McKernan stated that he does not have bulldozers or scrapers. The heavy equipment of **JM Industrial** includes excavators, bobcats, semi trucks, trailers, and wheel loaders.

Mr. McKernan: We don't have any earth-moving equipment. That's not what we do.

-8:36 PM

Pat: So, for reference, this is the law and how it applies to this petition:

In preparing and considering a proposal under the Indiana Code 600-Series, which is a change to the zoning map—which is what he's applying for—what you would consider is you would give reasonable regard in making your decision to:

- (1) the comprehensive plan;
- (2) current conditions and the character of current structures and uses in each district;
- (3) the most desirable use for which the land in each district is adapted;
- (4) the conservation of property values throughout the jurisdiction, and
- (5) reasonable development and growth.

Legally speaking, there's obviously two sides to this issue and I think a reasonable argument could be made on either side. What you're doing is balancing the potential use and the potential nuisance actions and issues that might come about misuse, versus economic growth, a significant investment and building a new building and potentially jobs in the county. So whatever course or motion the board acts upon, I think a reasonable person could fit it in this criteria, but that's what Indiana law says you consider in this decision.

Dave asked for further questions, and opened it back to the public.

Mr. Anderson: At the point that this happens, the only option I have is to come fight for Industrial zoning after this happens to continue what is already going to be taking place on Route 10. Whether that's a slitting machine, Belson Steel may be looking to move out of Illinois. Indiana's got low taxes.

David Atkinson: Is that like a threat?

Mr. Anderson: No, that's not a threat at all.

David: I don't know what you're saying. If we do this? If we do this...

Mr. Anderson: I would be here to try to apply for Industrial zoning.

David: Why would you do that? I don't think your neighbors would appreciate that.

Mr. Anderson: Because I won't have any choice. It isn't like the retail people are going to come build next to this. And it was not a threat.

David: I know. I should have used a different word than "threat."

Mr. Narug stated that this would induce a chain reaction in the area with negative effects.

Teri Pasierb: So the only thing different is he can work on the machinery in his shop. He can still keep the semis outside. He just couldn't pull it inside to work on it. That's the only difference. And we already said it's B-1.

Daisy presented the board with a list of allowed items in B-1 and B-2 Zoning.

Pat stated that B-1 uses are allowed in B-2, but B-2 presents the addition of vehicle maintenance.

Mr. McKernan questioned the nature of a conditional use under B-1, where that would be submitted and the process of that request, which **Pat** responded would result in the same chain of review, and would likely hold the same objections and issues, while avoiding long-term zoning change.

Mr. Narug expressed concern for water pollution to **Mr. McKernan**.

Dave reiterated that questions come to the board, not the petitioner.

Dave closed discussion to public and brought it back to the board.

David stated that the main concern is aesthetics, and there is possibility for retail development in the future once this business is ready to sell, and water and septic are brought in.

Russell stated that the building can be put there regardless, but the only difference is vehicle maintenance.

Mr. McKernan reiterated that he discussed this with the Building Department prior to purchasing the land. **Daisy** reiterated that the initial discussion was over Industrial zoning, and she had told **Mr. McKernan's** realtor that the Industrial zoning does not fit in with the intended use of the Master Plan. **Mr. McKernan** and **Daisy** stated that an agreement was made for B-2 based on the transportation clause.

Dave: The Master Plan is not law, let's put it that way. It's an idea. It's a starting point.

Mr. McKernan asked what year the Master Plan was composed, to which **Daisy** responded, it was 2006.

Russell: He can still build the building and it will still be there anyway. The only difference is we tell him he can't pull it in there and turn the bolt.

Dave: Work on it. Fix a flat.

Teri: It says "major repair."

Mr. McKernan: I guess, what do you define as major and minor repair? Is an oil change or change of flat tire minor or major? I consulted the Building Department so I wouldn't have any problems down the line, and this is what we came up with.

Dave: If there are no more questions for Jeff, we'll entertain a motion.

David: I would make the motion that the Plan Commission recommend approval of change from B-1 to B-2 with the conditions that there's to be no scrap or aggregate storage on site; the site's kept neat and not unsightly; a detailed site plan be filed with the Building Department; and then buffer fencing.

Mr. McKernan: Can you clarify "buffer"?

David clarified that it be aesthetically pleasing, a chain-link slatted fence, not composed of sheet metal, to avoid giving it the appearance of a scrap yard. **Dave** suggested the term “security fence,” which **David** agreed upon.

Harry interjected that he still feels it belongs in I-1 zoning, because of storage of equipment, maintenance and repair.

David stated that repair of one’s own equipment is in accordance with B-2 zoning, but it would be a violation if other people’s equipment was brought onto site.

David: My last stipulation is that repairs of equipment be limited to repairs of his own equipment, that it not be done to others, so as not to be construed as a repair business. Personal repairs. That is my motion.

Dave seconded

Vote:

3 in favor, 3 opposed.

Motion fails;

Agreement to “No Decision from the Board”

Dave: It’s up to the Commissioners.

IV. *OTHER MATTERS;*

None.

David: Motion to adjourn.

Harry seconded.

Meeting adjourned at 8:53 pm.

Secretary

President