

APC MINUTES

January 17, 2024

Members present: John Reece, Abby Journey, Gary Friend, Jim Hufford, Terry Alfrey, Steve Hernly, Coy Applegate

Members absent: Amy Alka, Will Greer, Tom Kerns, Adrian Moulton, Don Calhoun, Bob Lahey

Legal Representation: Jason Welch

Staff Present: Debra Johnting, Area Planning Director, Recording Secretary

Others present: Ed Thornburg, Paul Pardo, Shawn Patterson, Brooke Patterson, Vicki Long, Nicole Long, Mark Moody, Penny Ashbaugh

V. President Applegate: Okay, it's seven o'clock so we will start the hearing of the Area Planning Commission of Randolph County. Everybody have a chance to look over the minutes from September 20th, 2023? If so, I would entertain a motion to accept.

J. Hufford: I'll make a motion to accept the minutes as presented.

G. Friend: I'll second.

V. President Applegate: It's been moved and seconded that we accept the minutes. All those in favor say aye. All those opposed, no. Motion passes. First issue on the agenda today is election of your officers for 2024. Anybody want to be President?

D. Johnting: Don said he'd be happy to take it again unless someone else wants to do it.

V. President Applegate: Okay, that's good enough.

J. Hufford: That sounds good, I suggest we leave the President and Vice President as is if that is acceptable? Coy, would you like to be Vice President again?

V. President Applegate: I will be happy to take it unless somebody else wants to do it?

J. Hufford: I move we keep the officers for 2024 the same as last year.

G. Friend: I think that is a good idea, I second the motion.

V. President Applegate: Okay, it's been moved and seconded to keep Don as President and myself as Vice President. All those in favor aye? All those opposed, no? Motion passes. Okay, next item on the agenda is the appointments to the BZA, Board of Zoning Appeals. Right now, it's Don and Jim. Jim do you still want to stay on?

J. Hufford: If anybody else wants it they can have it. I will take it again, but if somebody else would like to do it, I am okay with that.

D. Johnting: The rules state there are two county representatives that are eligible, and three municipal appointments that are eligible. They have to be a citizen appointment. The county citizens are appointed by the county, and the city are appointed by the city. The eligible members for the municipal appointment are John, Jim and Coy, and the eligible county members would be Don, and Abby, they're both the citizen members that are appointed by the county.

G. Friend: The Commissioners have talked about this and we'd like Don to stay on as the appointment from the APC to the BZA. So, I will make a motion to appoint Don Calhoun and Jim Hufford to the Board of Zoning Appeals from the Area Planning Commission for 2024.

S. Hernly: Second.

V. President Applegate: So, it's been moved and seconded to leave the APC appointments as is. All those in favor, aye? All those opposed, no? Motion carries. The next thing on the agenda is our attorney contract with Jason Welch.

J. Welch: It's a new contract every year. So, I think it's presented to everyone. I have to also present to you that I also represent Farmland and Losantville. So, there could be potential conflicts of interest in that. So, I have to present a disclosure to the Board prior to acting on the contract.

V. President Applegate: Any other questions?

J. Welch: There would need to be vote.

V. President Applegate: I will entertain a motion to keep Jason Welch as the Area Planning Commission Attorney.

G. Friend: So moved.

J. Hufford: Second.

V. President Applegate: We have a motion and a second to keep Jason Welch as our attorney. All those in favor, aye? All those opposed, no? Motion passed. Okay, next item on the agenda, we're going to go with APC2024-2-Z. Which is Shawn and Brooke Patterson. If you guys would please come up and state your name, address and what you would like to do please?

S. Patterson: Shawn Patterson, and this is my wife Brooke. We've got some ground in Rural. There's four tenths of an acre. It is zoned residential, it's always been used for agriculture. The back twenty acres is agricultural. What we want to do is have the front four tenths of acre, rezoned to agriculture to add on to an existing building for agriculture use. The gravel lot now is just gravel and that's all it's ever been. It used to be a nursery when her mom and dad ran it. And we decided to clean it up and put it back to agriculture.

V. President Applegate: Any questions from the board? Any questions from the audience? I'd entertain a motion for a Favorable Recommendation. Roll call vote.

J. Hufford: I move for a roll call vote for a Favorable Recommendation to the Randolph County Commissioners.

V. President Applegate: Do I hear a second?

A. Journey: Second.

V. President Applegate: Roll call vote please?

D. Johnting: Steve Hernly, yes, John Reece, yes, Abby Journey, yes, Gary Friend, yes, Jim Hufford, yes, Coy Applegate, yes, and Terry Alfrey, yes. Favorable Recommendation. And Amy Alka, Adrian Moulton, Will Greer, Tom Kearns, Don Calhoun and Bob Lahey are absent. You will go to the

Commissioners next on the first Monday of February, February 5th at 9am to begin the process there to rezone. That's where you'll start.

G. Friend: Right, it could take three different readings.

V. President Applegate: Next on the agenda is APC2024-1-Z. Garrett McDavid petitioned by Paul Pardo. Come on up.

D. Johning: And I have a correction from what was in the notices and newspaper. It stated a change from C-2 to C-3, for a towing business. The actual request was for C-2 to M-2 but it is for a towing business as it said in the newspaper and the letters. I just wanted to enter that into the record. If anybody would like now or after the meeting a list of the uses in C-2, C-3, M-1 and M-2 I have those here. But it is the same use as was stated in the letters and the newspaper. It should be M-2.

G. Friend: So, Jason, is this contrary to what was supposed to the newspaper? Why don't we have to repost?

J. Welch: As long as we have the hearing posted about the property, I don't see any problem with it. And we're just a recommending body. So basically, we'll have the hearing. Anybody who's interested would know that it has been changed by hearing, and then it would then go to the Town of Lynn on this one. They would actually have the final vote. We are just making a recommendation on this. And anybody would have an opportunity to go to that meeting as well.

G. Friend: Thank you.

V. President Applegate: Okay, state your name and address please.

P. Pardo: Paul Pardo. We've been wanting to get up in the Randolph County Area for quite a few years and the Sheriff Department, they call us on the large stuff. And then the Fire Department in Lynn, they call us all the time for rescues. And the chief, they're really anxious to move up there. We're going to clean the place up. Garrett, he's got some stuff sitting around the lot. And we'll put a nice fence up and some lighting. Nice appearing place. So, we'll be in there, probably from like 9:00 am to 4:00 pm in the afternoon. Just to drop off vehicles in middle of the night. And no machine shop or mechanic shop or nothing. Just basically a storage area to store cars and trucks.

V. President Applegate: Anybody from the board have any questions?

G. Friend: If you were to get a Favorable Recommendation here, is this something that you've talked to Lynn about? And are there any curtailments that you put on between you and Lynn? As far as fences and how they want it?

P. Pardo: Yeah, that's what the captain said, or the chief.

J. Hufford: If this goes to Manufacturing 2, how can we make that work? Because I noticed it's all commercial around it. Could you put it back if you could put a condition?

J. Welch: You could put a condition on your recommendation?

J. Hufford: Okay.

J. Welch: You could make a commendation on the condition that it would automatically revert back to what it is now upon sale of the property. That would be one way to track that.

G. Friend: And then Lynn would have that recommendation from us.

J. Welch: Yes.

G. Friend: To either adopt or even remove it?

J. Welch: Correct.

G. Friend: Okay.

J. Welch: Then if they change that or they add something else, then it's going to come back to us for further hearings.

J. Hufford: The reason I brought that up is because M-2 has a pretty good list of things that can go in there and that might be something they don't want.

G. Friend: It is a big jump though.

J. Hufford: Oh yes, it's a big jump.

P. Pardo: What was it zoned done before?

J. Hufford: C-2.

P. Pardo: It's always been C-2?

D. Johnting: So, are you buying this property? Is that in the plan? Or is this a lease?

P. Pardo: We talked about that because, you know Garrett, he's not that young of a guy. I think he's about 82. But I got first option to buy if something ever happens to him.

D. Johnting: What about the lease? What happens if you have a break up in six months?

P. Pardo: We're just word of mouth right now, we're just trying to get things towing in for right now, that's all. Him and my dad was good buddies years ago. So, he's helping me out basically.

J. Welch: Is there a written lease now?

P. Pardo: No. Right now, it's all verbal.

D. Johnting: So, my question is you're going to lease it now, he will still own it.

P. Pardo: Yes.

D. Johnting: If you part ways, and he gets someone else in there with a towing business, and they don't take good care of it...

J. Hufford: So, does he represent the owner?

D. Johnting: The owner signed everything and asked if Paul could represent him.

J. Hufford: Okay, that's what I wondered.

D. Johnting: The owner would have to agree to conditions, when it goes to Lynn. If he's not agreeable you may not want to do that.

J. Welch: If we add a condition, we should actually have another hearing next month if there's going to be a condition added to this, the owner of the building should be here to agree to the condition before it proceeds further because it's a constitutional taking to lower what he's asking for. That's in my opinion is that he should be here if there's going to be a condition put on this then it should be continued. Especially since we only have seven people here tonight.

G. Friend: I guess if it's the will of the board to put a condition there we might as well make that motion that we want to add a condition and defer this into next month.

J. Welch: We may want to go ahead and hear from the folks who came here to speak tonight? Since they've made the trip up here.

P. Pardo: So, we come back next week or so?

J. Welch: I think they want to hear from the folks who came out first. That may change what they decide to do.

V. President Applegate: Is there anyone in the audience who would like to express comments or concerns?

V. Long: I would.

V. President Applegate: Step on up and tell us your name and address please?

V. Long: I have several, actually.

G. Friend: Please state your name.

V. Long: Oh, sorry. Vickie Long, and I'm representing my son, who has two properties that are right on both sides of him.

J. Welch: What is the address?

V. Long: One is 107 West Grant Street, and the other is 204 South Main Street.

D. Johnting: One is to the west, and one is to the south. Right beside the property.

G. Friend: Lynn, correct?

V. Long: Yes. I wonder, how are these rules enforced? I mean, who is in charge of enforcing that what goes on at this property is what's happening?

G. Friend: That's a question for our attorney, I think.

J. Welch: Well, I don't understand the question, you'll have to be more specific? As far as what's happening on the property.

V. Long: Okay, well, right now it's supposed to be zoned C-2, and if I look at the rules of C-2, it's already way, the rules have been pushed immensely. And nobody seems to care about that. So, if it goes to an M-2, how much worse is this going to get?

J. Welch: Well, I don't understand, what is your specific complaint? We need to know what your specific complaint is?

V. Long: Stuff is being stored there already.

J. Welch: By whom?

V. Long: By McDavid.

J. Welch: Have you come up and made a complaint to the Area Planning Commission about what you believe is going on there?

V. Long: I don't know.

J. Welch: That would be if you have a concern or a complaint about a zoning ordinance then we have a procedure at the Area Planning Office where you can come in and you can make a written complaint of your concern...[interrupted]

V. Long: So, nobody asks me what I think about the enforcement?

J. Welch: Ma'am if you'd let me finish. If you want to make a complaint, you'd come in and make a written complaint as far as what you think is going on, the Planning Office will then send a letter giving the landowner the opportunity to make a response, then the office will make a judgement call as far as what should be done. If there is any potential enforcement to be done. If there is any rule being violated, or if there is something that's going wrong then there can be an action filed in the court to correct that. There is not a specific police force for zoning. This is a two person office, so they don't have manpower to go out and patrol the county. So, the only way that we can really have any opportunity to enforce anything is if citizens can notify them that they have noticed something that they don't think is right, and then they can address it.

V. Long: Okay.

J. Welch: Okay?

J. Hufford: Now is there any laws like EPA or environmental or anything like this, then the state or state police will handle it, this type of thing. But if they are breaking any of those laws. But, if it's a zoning law that they are breaking, they have to have a complaint or there is no way for us to know it, unless somebody comes in and mentions it.

V. Long: We thought maybe somebody policed these things.

J. Hufford: No, there's too many ordinances for anybody to go around and just check for violations.

G. Friend: Jason, I don't think this board is the enforcement action anyway is it?

J. Welch: Well, it depends on what the violation would be. If there was a violation of the zoning ordinance, then what would happen upon a complaint is that we would do an investigation as much as we could, we would find out if we believed there was a violation. If we think there is a violation, we would generally send the landowner a letter, stating we believe that there is a violation, please correct this within a period of time. That has taken care of most concerns that we have had brought to our attention. There have been a few times that if that doesn't work, then we have to file a suit in court for an injunction so someone would stop using the property how it is not supposed to be used. So, that's how it would go generally. We've only had to do this a few times. Usually if it's brought to our attention we can send a letter out, notify the landowner and usually we can get some action, but that's about all that we can do is act on citizen complaints. There are some things that are not under the Zoning Ordinance and it's hard for anybody in the community to really know what is and what isn't.

So, if you believe that it's a land use issue then the first place to start with would be Debra. I know she's not happy that I'm telling you that, but...[laughter]

G. Friend: Does the Lynn Town Council have any action in this?

J. Welch: Only if there would be some other type of violation that does not go with their ordinance. If it's a county zoning ordinance then we would enforce those.

G. Friend: Got it.

J. Hufford: Now they can underwrite a county ordinance, can't they? You know, where we do in the city a lot of times, where we may go a little stricter?

J. Welch: You can go stricter, yes.

J. Hufford: Then we had penalties phases to that where our ordinance officer can take care of it.

J. Welch: Yes.

J. Hufford: But the county doesn't have an ordinance officer so we don't do that.

V. Long: And I couldn't hear what Mr. Pardo was saying, you talked about a fence?

P. Pardo: Yes.

V. Long: And that's a given?

P. Pardo: Lynn has approved it, and I believe it's gotta be so far from the property line too. We're just taking baby steps.

D. Johnting: The ordinance requires trees, a berm, or a fence between the property and any residential use. The front, and across the street is not residential, to the Post Office is not residential. So that would require screening but not necessarily a fence on those sides. You may agree to that, that could be a condition, but a fence is not required there.

P. Pardo: Where the fence is at is just going to be at the south side of the building. The building is 94 foot long, if I remember right. And we're going to go a little bit past that and then over to the south to the property line and just box that area in from the south side of the building.

D. Johnting: South and west are residential, they will have to be screened with either a fence or a berm or trees planted.

J. Reece: Is this going to be an impound area?

P. Pardo: Yeah, for storage.

J. Reece: So, it'll have to have be fenced.

P. Pardo: Well, look at Shores. That stuff's out in the middle of the field.

J. Reece: I know, but that doesn't make it right. For insurance purposes if you tow someone's vehicle in there and you are going to impound it and you're going to be responsible for it, right?

P. Pardo: Sure.

J. Reece: Is it going to be all fenced?

P. Pardo: Yes, the back part.

V. Long: So, you're saying you are going to fence all of it, all four sides?

P. Pardo: Just on the south side of the grocery store, of the building.

V. Long: But it will be enclosed, right?

P. Pardo: Yes. With two gates, one in the back, and you live behind it right next door to it right?

V. Long: My son's property is west and south, right next door to it.

N. Long: I live in the house that's right behind it.

P. Pardo: Is that in the brick house

N. Long: No, the brick house is down the street.

V. Long: It's closer than the brick house.

N. Long: I am right between the brick house and the Thornburg's grocery store. All of the alley is actually ours.

J. Reece: Will there be an entrance? In what direction?

P. Pardo: Yes, right there in front, off 27. We pull into the lot, and we'll go in from there.

J. Reece: But you are not going to be pulling in from the north? There won't be any entrance that way?

P. Pardo: No, we're butting up against the building to the south.

J. Reece: Because the house that's right behind it, had a big dispute about the driveway.

V. Long: That's my son's house.

J. Reece: Yeah.

P. Pardo: Yeah, they can still go up the alley and up towards their driveway.

J. Reece: I'd get that in writing. That was a mess.

V. Long: It was, and that's why I am also very concerned that you are just going to be a renter because McDavid doesn't seem to think he has to follow rules at all.

P. Pardo: I don't know anything about that.

V. Long: Well, I know, but he will still be the owner.

P. Pardo: Yes.

V. Long: And to me that will still be a problem.

J. Welch: You should be specific with the board on why you have those concerns and what concerns you have and...[Interrupted]

V. Long: Because he has parked big vehicles there. He's parked big pieces of equipment there, he brings them right over as close to the property line as he possibly can get them. And he's just basically been hard to deal with. We had to have it surveyed because he thought he owned the whole blacktop to

the west and he didn't. So, I don't trust him at all with what he says. Now, you, I have no problem with. If you say you are going to do something you're going to do it. But if you leave there and it reverts back, he's not following C-2 rules, so why would he follow M-2 rules? That's our biggest concern. It's been a challenge, a definite challenge and I have had to sometimes, you know we had to have it surveyed and I still don't think he believes the line. So, he parks, right now there's a big RV with a boat hooked on the back of it and somebody said someone was living in it. It's been a several year problem. And he will still own that property.

J. Welch: I don't have a vote.

G. Friend: So, your lease for the property, is it one hundred percent all the property? Or is part of the M-2 going to bleed over to other areas?

P. Pardo: Just the parking lot.

G. Friend: Are we looking at changing the property or the parking lot?

D. Johnting: The entire property.

G. Friend: You're just renting the parking lot?

D. Johnting: Not the building?

G. Friend: Not the building?

P. Pardo: No.

G. Friend: This doesn't work.

D. Johnting: No.

J. Hufford: You have marked the building and everything here.

V. Long: And like I said, he just, I mean I am sure that we can find things. We can come up here and talk about things that are not in the C-2 rules that's happening all the time. He had somebody parked out behind the left side of the property in this RV and we think they were living in it.

G. Friend: Jason, we need to make them aware, that no matter how this board votes, if we were to vote unfavorable, Lynn still has the right to do it.

J. Welch: They still have the right to do it.

D. Johnting: Paul, do you want to amend your request for just the parking lot?

J. Welch: He really can't amend the request as he is not the owner.

P. Pardo: Let me and Garrett get back together and come up with something a little bit more solid.

J. Welch: Are you requesting a continuance of the hearing? The board would have to vote to continue the meeting until next month.

P. Pardo: Yes.

J. Hufford: I make that motion that we continue this hearing until the February meeting.

J. Reece: Second.

V. President Applegate: Roll call vote for a continuance?

D. Johnting: Roll call for a continuance, Abby Journay, yes, Gary Friend, yes, Jim Hufford, yes, Coy Applegate, yes, Terry Alfrey, Steve Hernly, yes, John Reece, yes, and Amy Alka, Will Greer, Don Calhoun, Tom Kerns, Bob Lahey, and Adrian Moulton are absent. We will continue this next month.

V. Long: We'll be notified or is it the same?

J. Welch: You won't get another notice, it will be the February hearing.

G. Friend: Jason, can we request that the owner be here for that?

J. Welch: I think that we need to let him know that he needs to be here if he wants to change anything.

G. Friend: I don't think we need to do it by paperwork, I think we need to see the owner.

D. Johnting: It will be February 21st at 7pm.

V. Long: Will it be here?

D. Johnting: Yes.

M. Moody: Will it be posted in the newspaper?

D. Johnting: Yes, it's in the paper monthly that there will be a hearing but the petitions are not listed.

V. President Applegate: Is there any old business we need to discuss? Any new business? Do I hear a motion to adjourn?

J. Hufford: So made.

V. President Applegate: We are adjourned. Thank you everyone.

President Don Calhoun

Vice President Coy Applegate

Area Plan Director/Recording Secretary, Debra Johnting