

Decatur County Area Plan Commission
Minutes August 2, 2017
1st Floor Meeting Room of Decatur County Courthouse

The regular scheduled meeting for the Decatur County Area Plan Commission was called to order by Jay Hatton at 7:00 p.m. on Wednesday, August 2, 2017. There were 7 board members present. Absent was Jay Schoettmer and Jeff Hermes. Also attending was Melissa Scholl - BZA & APC Attorney, Krista Duvall – Decatur County Area Plan Director, Debbie Martin – Administrative Assistant, Kenny Buening – Decatur County Building Commissioner and Kevin Fleetwood – City of Greensburg APC President.

Jay Hatton read the following: *To comply with Title VI of the Civil Rights Act of 1964, Decatur County requests that participants in this meeting complete a voluntary, anonymous survey that is available on the table in the back of the room.*

A copy of the meeting agenda and the attendance registrar is attached to these minutes and incorporated by reference. By consensus, the APC Board approved the minutes for the meeting on July 5, 2017 as written and mailed.

*** APC Petition 2017-04 – Tom Leising of Leising Excavating, Inc. is petitioning to “rezone”** from an A-1 zoning classification to an I-1 zoning classification to continue to operate and grow a Mulch & Excavating Company with Propane Sales. This request falls under the Decatur County Ordinance Section 1206. The property is owned by the petitioner and is located at 6876 E State Road 46, Greensburg, IN, **Salt Creek Township.**

Tom stated that he started selling propane and needs to be rezoned to do this. Along with the mulch we sell erosion control products like field tile and culvert pipe. **Jay;** so not everyone will be familiar with how this started, will you tell us what you are doing and what is the process, you have all the concrete laying around and you have been bulldozing. Will you go through where the property started and what you have done and bring us to today with what is happening on that property exactly? **Tom;** when we first started we went through the DNR and INDOT to make sure we complied, got a permit to take all solid waste there, we’ve got an underground retention pond with underground piping underneath the concrete. We catch all the water and we use that water to dye our mulch. They want us to keep all of our runoff on our property so we are building the outside edges up so the water will run back in, within the next year we will have our whole property covered with concrete and a foot of road grindings over the top of that so you won’t see any more concrete. I hate looking at it, it’s an eye sore but it’s in progress. The I-74 project is getting ready to start and they will be covering our whole property and will be all blacktopped parking lot when we are done, that will allow 100% runoff to go in our underground retention collection system. When that is completed we won’t be taking in any more concrete and can get rid of all the eye sores. Our mulch facility once we get all the grindings down will not be such a big pile, we will grind it as it comes in and it will be a finished product pile rather than a pile of trees and chips, that will be a lot better appealing to those driving down the road.

Jay; tell me how close that you are putting the concrete base, how close is that to your property line, what is your setbacks, are you keeping that away from the property line or going to your

property line? **Tom**; that will go to the property line, we are holding it back a little bit from the line, then we will cover all the edges with road grindings where you will not see any of the concrete around the whole perimeter. But yes, it will go to just shy of the property line. **Jay**; tell me what you are doing at the rear of your property, driving down I-74 what can we expect to see, when people are driving to our county or through our county what will they be able to see? **Tom**; they will see blacktop road grindings at a slope from the interstate fence, it will slope up at the existing grade where we have the concrete, from there it will slope back into our property, we have catch basins on the inside of the property. **Jay**; tell us about the propane sales, is that just something you have added, what is the need for it? **Tom**; Premier Ag quit selling propane and it was just something to go along with customers who were coming in for mulch, they had their grill tanks on the back of the trucks so I thought about it and looked into setting a tank so that we could fill the tanks for grills. Suburban Gas, formerly Blue Flame Gas in Batesville just down the road quit filling the tanks as well so there was a need for people to fill their propane tanks rather than go to a convenience store and exchange the tanks. **Jay**; has that been busy since you have added it? **Tom**; yes, real busy. **Jay**; has the fire department in New Point required any special requirements for you to have for your propane tank? **Tom**; we got all of the compliance where we had to meet setbacks, the propane company set up everything according to all of the state requirements, there are fire extinguishers, safety shut offs away from the tank in case something would leak. **Bill**; I have a little bit of a concern, I know you are hauling houses, walls, everything in there. Is there asbestos in all of that stuff? It can be spread around people's houses if there is. I have a public safety concern. **Tom**; we haven't hauled any houses in there. **Bill**; there's walls, studs, I drive by it all the time and see what is there. **Tom**; all of the houses we hauled went to the landfill. If there is clean lumber we have containers sitting in factories that pile the lumber there that we bring in. They are all clean. We have people every day pick up the pallets and any bandings before we push it up in the pile. **Bill**; I don't know that I totally agree with you on that but we will let it go. **Tom H.**; has there been any soil testing or the ag properties adjacent to see if there is any runoff that is affecting them? **Tom**; as far as I know the DNR have come out and inspected what we have done. They make sure everything is fine and we haven't had any complaints from when they were out. **Jay**; how often is that inspection? **Tom**; they come out every six months. As far as runoff, we are sloping everything back into our property. **Jay**; I was glad to hear you say it's an eye sore to you because we get a lot of complaints about why you are still taking in product when it is not completed. I understand you are trying to operate but it seems excessive, too much and seems like it's just a burden for you to get the pad done because there are so many other things going on. **Tom**; I can't wait till we get the road grindings in so that we can get everything finished and like I said it's more labor for us to keep everything back but once we get the road grindings we will do along 46 first and then grind all of that and put in on top of the road grindings and move on to the rest of the property. **Jay**; tell me more about your sales, I see little piles of gravel and septic tiles and different things, what is going on with that? **Tom**; we sell mulch to a company and they resell our mulch, we bring sand and gravel back. People want just a pickup truck load of gravel to do landscaping or fixing a couple of hole in their driveway. We have the dealership for the ADS drainage tile and their chambers that we use in our excavating business. We sell to other contractors as well. **Albert**; what about signage – there is a trailer out next to I-74 with your name on it, is there others signage besides that? **Tom**; we got a permit to put a sign on 46. **Albert**; is the trailer intended as a permanent sign? **Tom**; when we done the trailer I talked to Dave Neuman at the time and he said what we did with the trailer is fine. **Albert**; I don't think our ordinance really reads that way on a trailer setting there, I think it's viewed the same as a billboard. I think that is probably out of compliance according to our ordinance as it stands today. **Jay**; Mr. Neuman is

not here to contest that, we are going to say that the trailer is probably going to be a problem, it will have to come back to BZA and will have to be talked about. Do you understand that you're A-1 zoning with the "Special Exception" will go away if we vote on this as an I-1 zoning. You will have to come back to BZA to get the "Special Exception" to do your mulch business, do you understand that? **Tom**; I was not aware of that, no. **Jay**; I'm just explaining it all so I want everyone to understand what you are doing and I want you to understand that I'm being told that the A-1 zoning permitted exceptions, you will need a "Permanent Special Exception" and so you will have to come back to the BZA, if this passes and this is what you have advertised that you will still do and any signage that you may want to address at that time. Krista can get you all of the information that you need. **Tom**; now if we go ahead and do this and then I wouldn't get approved for that, what are you saying? **Jay**; I cannot say, I'm not on the BZA, I'm president of the APC. I'm just telling you, you are no longer an A-1 zoning, we have gone backwards from the whole step of this, we need to rezone you. You are not an A-1 zoning, with things changing with what you are doing out there. I'm just explaining that the rezoning does not carry over the "Special Exception" that you got when you were an A-1. That goes away when you become an I-1 property. **Tom**; so you are saying if I get this changed tonight, if they would deny me that I couldn't run a mulch operation there? If they would not pass that, is that what you are saying? **Jay**; I'm saying that's how it's going to go, I don't know what they (BZA) will do, it's not for me to say. I'm not on that board. I'm just explaining that to you now so that you are not surprised what happens. **Paul**; would it be more of a fit for commercial? I guess what is the recommendation of this board? **Jay**; he completely falls under an I-1 zoning right now, our Comprehensive Plan does spell out that that is an I district, should be an I district and there are other I districts there, so regardless how the board votes, that is how our comprehensive plan is recommending him to go. I don't know why it wouldn't be permitted. **Paul**; am I reading this right, according to article 12, section 1206 the following uses are prohibited unless a "special exception" and letter F is a sawmill or finishing processing wood product. According to this would that basically say that that would fit under a commercial as opposed to an industrial? Is that essentially what that's saying? So why would it be prohibited if it's not supposed to be in there? **Melissa**; that's where it would fit but it requires a second level of approval just because of the nature of the business. I was here back when this was approved originally in the A-1 and it was a much smaller business. It was just mulch sales and so that fell under the A-1, Section 905 (6). What's happened is that the business has evolved from what it was approved for. Not just the propane but the changing of the foundation, the adding of the other products, kind of a multi-function business at this point. Given what's happening there, this I-1 zone is probably the most appropriate to try to encompass all of those things. I think the thing that Jay wanted everyone to understand is that where it is currently zoned, for it to continue to operate then it would have to go back to what it was when it first started. To keep doing what it's doing it will have to bump up here to I-1, but that is not a guarantee by just what this board does. Then it requires the BZA to step on top of it to approve it, just like it did last time. It's a two-step process, not a one-step process. So I think the couple of options are 1) you scale back and operate the way it was when it was approved or 2) try to move forward to the I-1 zone with no guarantees of what will happen with the vote in either one. **Jay**; Paul, you are right, it says it is prohibited unless permitted with a "special exception", there is no reason it couldn't go forward and I don't think the board of any sort is out to put him out of business, I don't think that is our intentions at all. We are just trying to do it so it follows exactly what our intentions of our guidelines of our ordinance says. **Paul**; I don't disagree, act like it's not this situation, essentially you could put a person that has, let's say it was the original size, by rights our comprehensive plan shows that area as being an industrial and I feel like it was an exception the

first time, it probably needs to be and industrial type business, essentially we could back Tom or whomever it might be into a corner by passing that. It just seems like the process would be pretty tough. If I were in Tom's shoes I think I would be kind of nervous about doing this and then possibly be out of business. **Melissa;** in response to that 1) this is very common for how zoning ordinances were written, this isn't a unique way to do it. The BZA Board has certain criteria that they have to judge, Krista just gave the BZA Board a paper reminding them of the criteria that they have to go through with their various petitions. Is it injurious to public health and safety. The BZA is a heightened level of scrutiny, so when you get the double layer it's just because of the nature of the action is such that it needs two sets of eyes looking at it to get approved. 2) you shouldn't operate your business and then come to us, you don't put the cart before the horse, so he put the cart before the horse which is what has backed him into the corner, not anything our board or zoning board has done. **Paul;** let's say it was back to original size, I felt that by rights it would probably be an I-1 type of thing even though it was an A-1 with an exception. **Melissa;** it fits into the category and I don't know what exactly what ordinance was in place at the time his petition came, but it was a fit then for what it was. I drive by it all the time and it has definitely evolved and grown. So it was a fit then but the business has evolved 15 years or 10 years later but he didn't come for the zoning before the evolution. **Paul;** that was way out of the zoning of industrial area? **Jay;** yes, in the previous comprehensive plan it was not an I zoning. While Tom is standing here, he did it incorrectly when Premier Ag was getting out of the business, he should have shown up before the LP tank showed up at his business. And that is what we want the public to do, come to us before you start the business, and then get caught and us have to say, he already has it, that's not how we want the process to go. **Tom;** I was not aware of that, I had the variance to run the business, I didn't think with the propane that I needed anything else. **Jay;** it happens, I'm just informing you, we wished it would not happen that way. We have people dig ponds and then say they didn't know they had to get approval. **Tom;** what brought up this that I needed to go through the other board, the last meeting we had here nothing was mentioned that if I went ahead and had you vote on it and later you could have told me I had to go in front of another board. **Jay;** you would have been instructed after that vote, I just brought it up, not as an argument point but as information so that everyone was not caught off guard. **Tom;** I would not have been caught off guard if you would have told me this at the last meeting. **Jay;** we had not gone that far then. **Andy;** is this the proper procedure to have him come to APC for rezoning and then go to BZA? **Melissa;** we always get the rezone before we get the other. **Albert;** we have these quite often and have to come to BZA after APC. **Melissa;** all of our Cellular Towers do that. **Tom;** it could put me out of business, I would rather down size and not sell propane and keep the mulch operation and keep doing that under A-1, correct? **Bill;** to me with hauling all the stone and everything else it has evolved past ag. **Melissa;** well, that's all extra, when it was approved it was just small piles of mulch that people came in and got. **Albert;** even without propane, it would be past the A-1 zoning. **Melissa;** the original scale was what you would see at similar landscaping places where they would have their little cubbies of mulch. **Tom;** and most of them have all type of landscaping stone too. **Jay;** the petition reads that we are to rezone from A-1 to I-1 zoning, I do believe that this is the best and appropriate zoning for you as we have it here in our county available. That's why I wanted to go through all this so when everyone completely understood. I think it's just overbearing with the size and the nature that it has gotten and then now here it comes. If it's going to be addressed and you can make it not be an eye sore for Decatur County, I think that's what this board was wanting to hear, that you were going to tone it down and clean it up. It wouldn't be something that we would all be embarrassed about having an I zoning and then everyone point their finger back at us and say "that's what you wanted". That's not what

our board is saying to you tonight, we are not wanting that to look like if looks today. **Tom**; and like I told you, I hate the way it looks, we are in the process of trying to getting it straightened out. **Jay**; I understand growth takes many different forms and small business is tough, I understand, it's not our goal to harm your business, our goal is to get you in the right zoning and to do our job the best that we are set here to do. I just wanted to be as thorough as we could with everyone, our board, the public and you as to what has to happen. **Tom**; now if we would go ahead and vote tonight and it passes and I go to BZA and they won't let me run a mulch business then can we go back and rezone A-1? **Jay**; I don't think it will ever get back to A-1, just my personal opinion, it's truly a business location now and not ag. The propane sales is what is really pushing this to an I-1 zoning, plus our comprehensive plan. It could be a B-3 possibly but the propane sales clearly puts it in this I-1 setting. **Melissa**; if I might add, it's not the mulch that pushed it, the growth of the mulch, it's the propane as you said plus then the multi functions of drainage components, it has evolved into not just one line of business but a multi line business. **Jay**; I wasn't here when it got passed originally so I don't know what it started out as but it was much smaller. **Melissa**; it was strictly mulch at that time. **Ryan**; my question is, he had a unique way of building a parking lot I think with scrap concrete but we all know that if you are going to develop mulch, you can't just do it off of grass and dirt. So, I'm trying to understand what you guys would be looking for if he was just doing mulch, I think everybody is aggravated that it's an eye sore and people are getting phone calls off of the concrete, but you would have to build some type of stable base with crushed stone at least....**Jay**; no you didn't, Green Cycle and Greendell doesn't. All the big manufacturers don't have it, you drive through mud holes every day. I don't know if they are grandfathered in or what they are allowed. Tom is saying that he was required to contain his water as far as EPA, I think that is a plus. **Tom**; that ground lays so flat, we were getting stuck, you couldn't move the grinder around, it's heavy. We had to put something down to work off of. We can't tear the equipment up trying to work in the mud holes. **Tom H.**; I wasn't here when any of this started, my concern is with the new comprehensive plan we can't allow, and this has nothing to do with Tom in this instance, but we can't allow an area to be zoned, change it one their own and then come back to us and keep expecting us to change it to meet their needs because it's their business. If we keep doing that we might as not have a comprehensive plan. So, I think we have to be very careful, and again this isn't directed toward you Tom and your business, but we need to be very careful about the precedent that we set here. Anyone can come in and start a business and say I have invested a million dollars in this and you guys are going to cost me my money but you never got the permission to start the business to begin with. So when I read this, that is a concern that I had. I know this may be a completely different factor because he did come before the comprehensive plan and at least get everything initiated but I would caution us to be very careful in setting any precedent's in the future allowing something and then because they may lose money on it to come back to the board and say you need to let me do this because this is my business. **Jay**; I agree completely with you, my concern is with the BZA allowing that special exception to get started in the A-1, they need to be cautious how that was looked at in the future because this is what caused the whole thing. **Tom H.**; the problem is they gave the exception for the mulch and then we started having all the other stuff added on and I don't know that you ever had permission to add that other stuff on, at least I haven't seen that. That's where I had the concern and again Tom, I don't know you, don't see the business like everyone else, this isn't personal against you but I think our duty is to make sure that the rules are followed and if we're going to start with a new comprehensive plan but to be very careful with precedent's that we set in the future. **Paul**; one of your concerns is being backed into an irreversible situation Tom and setting on the BZA, one of the things that I would bring to your attention is that one of the things is that if it goes to an industrial zoning, if you

drive around any industrial facility, you either have a fence, a line of trees or some kind of a dirt berm. That is one of the things that would be brought up, some kind of a barrier, and I think that's kind of what most of our concerns are, as well as the citizens, it just looks poor. So if this does go to an I-1, it would fall under the same scrutiny as other, probably require some evergreen trees, a dirt berm, something that will break that eye line up. I think that probably what you will find, in my opinion only, as long as it met some of those conditions I think you would be ok but there would be some conditions if it is I-1, it needs to be treated the same as every other I-1.

Jay; I thank all of you for your comments, this is good education. **Tom;** when does the other board meet to get their approval? **Jay;** it meets at 6:30. One month from today, first Wednesday of the month. **Melissa;** so the options that you have are to ask this board to vote on the petition that is before them, and if that is approved you could make an application to get on the BZA agenda next month, or if you want to digest all of this you can ask this board to table this and come back to this board next month and then take the process up again. Those are the two options that you have. **Andy;** I would get with Krista tomorrow if you want this board to vote on it tonight because if you want on next month's BZA agenda it needs to be done tomorrow. Krista has to have time to process your application and send notices, otherwise it would be another month. **Tom;** I would say we might as well go ahead and move forward with it. **Jay;** in this idea that it's all went backward, he built the business and then come forward, I understand that he didn't understand that. When does fines and penalties come into play with this kind of situation? The county is usually very lenient on this type of stuff. **Melissa;** I would have to look at when the original application was filed, I know this has been pending quite a while. The things you would have to look at, I haven't done any calculations on it, but when did the various things happen on the property, when did the application happen and then using the ordinance to see. **Jay;** I know we've held him off a few months just to get our ordinance through because we weren't I zoned in that district and we were recommending that to him. In the idea of ponds being built and then we kept having that epidemic and the minute we advertised a fine for such actions that stopped that. So it's just something to think about going forward. **Krista;** when we rewrite our rules and procedure we can identify that. **Jay;** that would be an excellent thing. We will talk about that, it can be put into a black and white form so that we have something to back us. **Krista;** it's in there we just don't enforce it very much unless there is a real issue.

Paul Stone made a motion to vote on APC Petition 2017-4; Andy Scholle seconded the motion with 6 members voting yes and 1 member abstaining. Motion passed.

Jay; So Tom, it passes, you will need to get with Krista to proceed to the BZA meeting. If your business ever changes again, get in contact with her and see if this is where we need to go. We are hoping for better things out there, as far as the landscape and the sight line of Decatur County, you are on our opening door to the East and hopefully you will take that into consideration when things look good out there. **Tom;** like I said it's definitely going to change within the next year. All the concrete will be covered up and the mulch will be ground up as it comes in. **Jay;** thank you for your patience in working with us on this. **Melissa;** he needs to get with Krista about the trailer. **Jay;** Tom you will need to talk her about the trailer sign out there. There may be couple of topics there for the BZA to handle. **Tom;** thank you.

Other Business: Krista attended a Workshop titled The Nitty Gritty of Planning. They passed these out and it is just some general information, things to think about. Your duties, the duties of all the legislative bodies. Something to remind you of what your job is and also a list, I am going to incorporate something like this in our packets from now on. It's called the Findings

Necessary for Map Amendment. This is spelled out in our ordinance, it's nothing new, it's just something we want to keep on file if our decisions are ever challenged, these will give us information to uphold our decisions. **Jay**; like she says, these will help up figure out what we are doing or why we are voting one way or what makes those decisions. These are 5 good topics to try and reinforce what we are actually setting here to do and sort of gives our job true definition. Can we see this to be correct? **Krista**; if your decision is ever challenged we can say yes, it met our comprehensive plan or no it does not. It gives you the basics.

Jay stated that now that the comprehensive plan is done, where the failure is now is we have quite a few ordinances that are out of date, not current, don't protect air, sea and land. They don't do a lot of things that we think our ordinances should do for the public so we put together, with the help of the Commissioners, a Steering Committee and we are going to meet as soon as possible to try to get a group of people together and outline some of our ordinances. There are going to be some that coincide with the City of Greensburg, and they are in the process of doing the exact same thing. So where our ordinances are in line, we want them to be much easier to contractors and people doing work, our school systems, all the things that are involved in our community to all read with the same definitions and same language. The committee will get some help and language started and get thoughts together and come back to this board. After our petitions we will be reviewing some of those here at this board, because this board will ultimately pass it on to the Commissioners. If you are not on the committee, doesn't mean you are not involved. Just a group that the Commissioners put together and Krista and I, we tried to broaden the scope of people that are on this list. If you have a thought or idea about an ordinance be sure to let us know what you think might be wrong with a particular one and how would be the best way to fix. Our real job, besides handling these rezones is getting our ordinances up to speed. There are handfuls of ordinances that don't work and the biggest battles that we have are the ordinances that don't work.

Kevin Fleetwood stated that the City of Greensburg Planning Commission meets the 3rd Tuesday of each month. We will be discussing this topic this month and create our own steering committee. I will get that list to you as soon as we have our committee set.

Krista stated that all of the ordinances will be brought before this board, more than one time. Jay stated that it will take a bit of time to do but shouldn't take as long as the Comprehensive Plan.

With no other business to come before the board the meeting was adjourned at 7:50 p.m.

Respectfully submitted by Debbie Martin, Administrative Assistant.

ATTEST

Secretary, Andy Scholle

Decatur County Area Plan Commission

President, Jay Hatton

Decatur County Area Plan Commission