

A special called meeting of the Kirklin Town Council was held on Monday, July 26, 2021, at 6:00 p.m. at Kirklin Town Hall. The purpose of the meeting was to consider changes to the zoning ordinance to permit the storage of abandoned, wrecked and unlicensed motor vehicles in certain zoning districts and the amendment of the zoning ordinance as to the definition of an automobile graveyard to allow an auto impound lot and to determine what conditions/standards apply and in what zoning districts the defined use could be located.

Town Council Members present were Jennifer Bowman, Jerry Faucett, Melinda Jobe, Walt Minnick, and Brent Stetler.

Also, present were Billy Walker, Karen & Jim Kennedy, Virginia & Billy Scott, Michael & Trisha Bray, Randy Weaver, Brendon Bright, Adam Boudreau, Billy Scott Jr., John Faucett, Luann Schoen, Michael Wallace, Kat Bell, Liz Stitzel, Rick Martin, Jacque Sisk, John & Kerre McIntire, Jay Moore, and Mary King.

The meeting was called to order by Walt Minnick. He turned the meeting over to Liz Stitzel from the Area Plan Commission.

GEARHEADZ AUTO REZONE, 105 W. MONROE STREET - Liz Stitzel, Area Plan Commission (APC) provided the Town Council with a zoning map of the town, a description of this particular situation, as well as some printed options for the Council to consider. She reviewed what is and is not a problem with the property. She explained that through a prior rezone request, the site was approved as B-4, and only for commercial Auto Repair. She said that there is nothing wrong with Billy Scott running an auto repair shop, which includes towing vehicles which he is physically repairing, and he can tow vehicles to other sites. What he cannot do is have the dismantled vehicles stored there, vehicles that are not operable, or impounded vehicles. Liz provided what the standards for a commercial garage would be. She cited UDO 505.04 which states "except for vehicles in the process of being serviced, vehicles of employees, service and tow trucks owned by the establishment, and rental vehicles, no vehicles shall be parked on the premises. Vehicles awaiting repair shall not be stored outside for more than seven days. No vehicles may be parked or stored on any public right-of-way." She said that it makes an impound lot very hard to fit within that. She pointed out that when the Town of Kirklin rezoned the property, they put a set of even tighter commitments on it. Liz said that she went back and listened to a recording of the Plan Commission Hearing before it came to the Council. It was made quite clear to the applicant at the time, and he made it clear that the only towing he was doing was for vehicles that he was repairing, so anything else that might have occurred was after that approval. She said that the town tied the rezone to a commercial garage only which is a super tight condition. They also put in the condition that there could be no unlicensed vehicles outside at all, in or out of the fence except for three vehicles for sale at any time. That actually got changed at the town level, the town and UDO limited it to two vehicles. She concedes that he can have three vehicles because it was an official approval. She said you have the use issue of being an impound lot, but the rest of the business is fine. The business has some issues with an unscreened dumpster that sits in the road right-of-way. You can't have parts of automobiles or disabled vehicles that sit on the site, and there are a number of those. There are impervious surface restrictions that are an issue. There is a certain amount that has to stay grass. Areas in front have been turned to gravel that were supposed to remain grass, so there is a challenge there that would have to be dealt with. Liz also included several photos of the site that she took after the recent issues were supposed to have been resolved. She did not find them to be resolved and noted the rezoning commitments and parts of the Zoning Ordinance that it does not comply with. She then moved on to potential solutions. She explained that the Council could choose to change the general ordinance, but that they should keep in mind that they would change the ordinance for everything in that category and not just this particular property. They (APC) will enforce the rules regardless of who the person is. Making a change or not making a change applies to everyone. The legislative body can change the zoning ordinance and she included a few options. She noted that no matter the change, it will take some time to get the changes made, she is just providing a pathway. She said that even if the Council changes the zoning of the property, the property

owner will have to go back through the rezoning process. She noted that as the property sits today, it is beyond an impound lot due to it having a lot of automobile parts and disabled vehicles on it. She said that the Town Council can make exclusions or additions to the base ordinance as they recently did with chickens and ducks to loosen rules within the town. Two parts of the zoning ordinance would need to be changed. The first part would be to change how the town deals with it, versus how the other four jurisdictions look at it. One would be to make a use 7.14 automotive graveyard and use 15.06 storage of disabled vehicles. She recommends if you choose to go this way regardless of the path, add a clause that says, including impound lots, so there is no question for those that are running an impound lot where they fit within Kirklin. Those could be permanent uses within the B-4 district and that would allow the approval of an impounded scrapyards at that site and the use would be subject to standards which are in the UDO 517. An automobile graveyard in the table lists a minimum of 10 acres, so they would have to make Kirklin exempt from that. All operations have to be conducted entirely within an enclosed building or an opaque fence of sufficient height to screen the outdoor storage which bears no advertising and does not violate UDO 503.13. Fence must be constructed on or inside the front side of your setback lines. He would need to apply for a variance to keep the fence where it is because it is in the town right-of-way. An impervious surface variance is needed. No outdoor storage or salvage operations are visible from adjacent properties or rights-of-way. Storage either temporary or permanent between the fence and the property line is prohibited (could exempt if Council chooses). No facility can be closer than 2,640 ft. from residential district lines (she recommends an exemption because there isn't a property in Kirklin that can meet this standard). All applicable Indiana & federal laws and regulations must be met. That is something that the state and feds will take care of. In the case of drainage, we already know from the County Surveyor that they would have to make some modifications in the back to help pollutants from getting into the county drain that runs near there. Liz said this was discussed at the original Public Hearing. There is a way to address that, but before he could come to the BZA he would need to get that worked out with the County Surveyor. Jennifer Bowman asked when the original meeting was. The date the LUPAK was signed by the Town Council was on February 13, 2012. Melinda Jobe asked for clarification about the fence. Liz said that although she thought the town intended for him to have an opaque fence, but the actual conditions do not read that way, only states that outdoor storage shall be fenced. Liz said that if he were only storing vehicles that he was working on, he would not need an opaque fence, but he can't have car parts or vehicles that are there for a longer period. She has not cited him for the nature of the fence. If the Council would approve a change in the ordinance that allows an impound lot and parts of cars, unless the Council exempted him from it he would have to have a not see-through fence under automobile graveyard. Liz said that one choice is to do just B-4 or to make it town-wide. She's had a number of people in town, some they get complaints on, and some they don't who are running automotive or have vehicles sitting in and around their houses or illegal businesses that they just haven't received complaints on. If they get a complaint, they are bound to follow what the ordinance says. She said that they will likely need to address allowing some junk and debris to be stacked if that's in the B-4 district or across all districts. The Council has to decide where they want to draw the line. Liz does not recommend making a special exception, because it would be a really hard finding since most of the property surrounding the property is residential. She would recommend changing to a permitted use but cautioned that once you change it to permitted or special exception and it is approved, even if you later change your mind, all those uses become permanently legal until they cease. They would be considered legal non-conforming even if you change the ordinance back. Liz noted that the owner (Billy Scott) also has a lot on Jefferson Street that the APC frequently gets complaints about, especially when the fence comes down. There are a lot of vehicles out there as well. She noted that this property is zoned residential, so if the Council wants to legalize everything that he is operating, you may want to look at all districts in Kirklin, or encourage him to bring through a B-4 so that the site doesn't come up again in the future. Melinda Jobe said that Kirklin has another business that's doing car repair and she thinks they are zoned R-3. Liz said that she knows there are a couple of illegal ones in town, but they haven't received complaints on them. She said it doesn't make them legal, it just means they haven't received a complaint. Their general policy of the APC is to act on complaints because they do not have the staff to drive small towns on a regular basis. They do act on

anonymous complaints and there is a clause where they can take a site to the Plan Commission and ask for permission to site it, but they save those for really gross situations where they have a neighborhood feud. Brent Stettler stated, "so if there hadn't been a complaint against Gearheadz, we wouldn't be having this meeting"? Liz said that was correct. She said that they have known that they (Gearheadz) were out of compliance for a while, but they operate on a complaint basis. She said that the Town Board didn't file a complaint, but a citizen called one into their office. Billy Scott asked the Council if they knew he wasn't allowed to run that (the business), because you supported a motion to approve the fence and the towing for the town in 2012. He said you (Melinda) supported the motion and Randy (Weaver) was the president at the time. Liz said that she has Minutes from a later meeting that was not legal by state law, or the APC would have cited the town as well, but it is her understanding that the town is not sending cars there at this point, so are not in violation of any of our ordinances. Billy Scott said that he was told by the town, which he thought was his governing body, that he could do it, he thought. Virginia Scott said that they have been towing since 2009 and when they did the rezoning, they were not doing auto repair, so she said, how it got zoned for auto repair when we were towing is beyond us. Liz stated that she has a male on recording representing you (Billy), specifically stating, when cautioned by our Board that it could not exceed conditions, that it was just auto repairs. Liz said that she couldn't speak for what he (Billy) was doing, but what was represented was auto repair. She can't speak for what happened with the town later, but the town has no authority, under state law, to make a land use decision independent of a Plan Commission. The Minutes she saw did not give them permission to operate, it simply said that you were going to be sending impounded cars there. She said that had they received a complaint then, they would have called the town as well to say that you are out of line here and it needs to be figured out. They (APC) were not called or aware of the issue until Rick (Martin) called her. She then checked with Mary (Clerk-Treasurer) to see if the town was currently using them (Gearheadz) because if they were, the town would have been brought into it to warn the town. Melinda Jobe said that she felt like the Council may not have had very good attorney representation at the time. Liz has researched the files and meetings on the rezone and only found where it addressed towing a vehicle for repair. She found a letter where someone was excited that if a person broke down on the road, they were excited that they could tow them, make the repair, and get them back on the road. Liz cannot find any evidence that her predecessor was present at any meetings after the rezoning was done. Had someone informed them, they would have stopped it. Jerry Faucett said that he attended a meeting and remembers Mark Mills saying this will be a good fit for you. Liz said that it is a commercial auto repair and called that in two staff reports, and that the B-4 district would be the best fit. Liz called Mark Mills personally to ask him about this case. He made her aware of a Negative Staff Report. She went back through the records and found it. Mark also said that he (Billy) was towing for repair and to take people to other places, but there was no discussion about a salvage or impound lot. She said the negative staff report would have been provided to both the Board and Petitioners and loaded through with all the other paperwork. It was clear that he wasn't for it in that location but thought B-4 would be the best choice. Although Mark's report was negative, the Plan Commission gave it a favorable recommendation, and that is how Mark had to present it to the Town Council. She said that it would have been unethical for him to give his opinion at that point. Randy Weaver was under the impression that what Billy wanted to do was an impound lot. He recalled that the Council talked about that they wanted a fence so that you couldn't see in the scrapyard area, and they were in favor of it. Randy agreed with Liz, that when he was on the Council, when they walked out that door they agreed even if they didn't agree in the meeting. It's unethical for a Council Member to go against his peers after a decision is made. Melinda Jobe said she just doesn't remember the actual verbiage used at the meetings. Liz said they (APC) were not notified of the second meeting where the Council agreed to use them (Gearheadz) once the fence was up. Billy Scott asked Liz who should have notified them. She said that the burden of proof and following conditions is always on the person getting the approval and signing their name. She never found any evidence that the Council attempted to go through any type of legal action that would have allowed an impound lot, it appears to have been more of a situation of we're just going to set cars over here type of thing and the APC wasn't aware of it. Since towing is permitted, the fact that a tow truck was there was ok. Billy had questions about the tires, and Liz said

they have to be screened unless the Council chooses to exempt them. Liz answered questions about the fence as well. The slats in the fence do not count for screening. Billy said that they could put up barn metal on the fence, but it will take time. He has concerns about going to the expense and not having the rezone approved. He also asked about vehicles in the right-of-way. She said that you have two categories, vehicles awaiting repair and impounded vehicles or vehicle parts. Jennifer Bowman asked how long it takes to get rid of a vehicle. Virginia Scott said that it takes approx. six months to get rid of a vehicle after a tow, as a general rule. After discussing options Jennifer Bowman said to recap the discussion: to go with an I-2 (Heavy Industrial) zoning (since there are no other properties with that zoning in town), he cleans up the cars, the fence, the dumpster, makes it eye-pleasing to the neighbors. She would like for the Council to discuss the issue amongst the Council. Liz asked that the Council make sure that they make commitments easy to understand and enforce. The height of the fence needed if rezoned was discussed, possibly 10 ft. The storage containers currently on the lot need to be removed. Liz explained the process the rezone will need to go through, and that consideration is given to the opinion of those that live around the business. The size of right-of-ways in small towns was discussed. Liz said that all dumpsters have to be out of the right-of-way and screened. Jennifer Bowman said that she has a dumpster that's not screened. Liz said if they (APC) got a complaint, they would tell her that it had to be screened. Only temporary dumpsters are exempt from the screening requirement. The Town Board will make a recommendation to the APC, the APC reviews the recommendation and makes a recommendation back to the Town Board, then the Town Board would then adopt the ordinance making the change to the Zoning Ordinance. The first step is to request that the APC make an exception to the Kirklin Section of the Zoning Ordinance that allows for these uses to be permitted uses in the I-2 district with exemptions from those standards that are impossible to meet in Kirklin. Jay said that what we would do is say that in Kirklin, we want these standards to apply. John McIntyre complained that the Council was spending so much time discussing the zoning issue. Melinda Jobe said that the reason she wants to take their time in discussing this issue is because when it came up the first time, we didn't have a very good attorney advising us, so she is wanting to make sure we are covered. She doesn't care that the discussion has taken an hour and a half, she wants to make sure we're covered this time. She also said that Jay (Moore) has been informing the Council what things were not done properly. Jennifer Bowman said that the entire Council is going to do whatever they need to do to try and help them. Liz suggested that she and Jay draft an ordinance to present to the Council. They will draft an ordinance, send Mary (Clerk-Treasurer) for distribution to the Council for review as well as Rick Martin. The Council can then make changes to it. Melinda Jobe made a motion to add a section to Kirklin's section of the Zoning Ordinance that makes use of 7.14 the automotive graveyard and use 1506 storage of a disabled vehicle including impound lots permitted use in the I-2 Heavy Industrial District. The use is subject to standards and UDO 517 and we are exempting the 10-acre requirement, the half-mile set-back, adding that for those uses, they must have a 10 ft. fence and are exempt from these inflicting standards. The motion was supported by Brent Stetler and carried with a unanimous vote. Discussed adding commitments to the rezone of the property. Billy expressed concerns about the 7-day limit on vehicles. Liz said that if he is approved for this, he would be covered. Liz explained that the first step is the ordinance change and the Council will have the final say on that. The second is the zoning change which is an ordinance change as well. The third is the Board of Zoning Appeals, this is the one where you could have a room full of people coming in, and if they can actually show that a land use-based problem would exist, the BZA or the Town Council would not be able to get around it.

COMMUNITY CROSSINGS GRANT COMMITMENT LETTER – The commitment letter for the Community Crossings Grant was signed by the Town Council.

Seeing no other business to come before the Council, the meeting was adjourned at 7:55PM.

Walt Minnick _____