

TO: Mayor Angelo and Members of the Board of Trustees  
FROM: Philip Strom, Interim Town Planner  
DATE: May 17, 2021  
ITEM: DISCUSSION / DIRECTION – 431 4<sup>TH</sup> AVENUE LAND USE & ZONING

---

ORDINANCE  
 MOTION/RESOLUTION  
 INFORMATION

---

I. **REQUEST OR ISSUE:**

**Planning Issue**

The current industrial use of property is not permitted within the Commercial Zone District, The property has been used by an excavation business which stockpiles materials, such as gravel and dirt, and uses industrial equipment, such as front loaders, dump trucks, and flatbed trailers, to move the materials to and from the site shown in **Attachment 2**. This use is a hazard to the adjacent residential neighborhood and library. The proposed Safe Routes To School path will run along the property frontage with 4th Avenue and increases the risk of the industrial use at this location.

**Potential Lyons Municipal Code Violations**

While staff considers the non-permitted use the main issue, it is worth noting the property appears to be in violation of several Lyons Municipal Code requirements including:

- 7-2-140 Property Maintenance
- 7-2-30 Air Pollution
- 7-2-20 General nuisance
- 16-8-20 General Provisions, b. Surface

As well as several International Property Maintenance Code requirements including:

- 502.4 Employees' facilities
- 502.4.1 Drinking facilities
- 503.3 Location of employee toilet facilities

II. **RECOMMENDED ACTION / NEXT STEPS:**

Direction from the Board of Trustees to proceed with one of the recommended actions below:

1. Rezone property to General Industrial Zone District to accommodate current use
  - This may conflict with the goals and objectives of the Comprehensive Plan
  - There may be a risk of spot zoning as the use of the parcel differs from the surrounding properties
  - The property owner would need to address safety concerns
2. Enforce Lyons Municipal Zoning Code and halt the non-permitted industrial use

**III. FISCAL IMPACTS:** None.

**IV. BACKGROUND INFORMATION:**

**Property Information**

**Owner:** Steve McCain

**Parcel Number:** 120318416011

**Property Address:** 431 4<sup>th</sup> Avenue, Lyons, CO 80540

**Legal Description:** Lots 1-3, Block 32 (less southerly 26.5 feet more or less for right of way)

**Zoning:** Commercial Zone District

**Historic Use**

While the property has never been zoned industrial, it has historically been used as industrial. Prior to Mr. McCain, the property was used for a bulk oil storage tank and was lawful as a Nonconforming Use. A Nonconforming Use is the lawful use of land that existed prior to the effective date the zoning and may be continued even though such use does not conform to the requirements of the zoning. Per the Lyons Municipal Code the Nonconforming Use can continue until either:

1. The Nonconforming Use has been discontinued for a period of 6 months
2. The Nonconforming Use is expanded or changed

The Nonconforming Use, the bulk oil storage tank use, eventually ended and the tanks were removed. At this point, the change in use terminated the Nonconforming Use, reverting the property to the zoning in place, which was Medium Density Residential Zone District (R-2). This was noted in a January 13, 2004 letter to Mr. McCain from Administrator Cinnamon, see **Attachment 1**.

The property was purchased by Mr. McCain in 2003 and he began the operation of his excavation business on the property.

**Rezoning History**

In September 2006 Ordinance 811 was adopted rezoning the property from Medium Density Residential Zone District (R-2) to Commercial Zone District (C) at the request of the McCain family and who intended to use the property for a storage building and an auto shop. The rezoning was approved with the understanding the industrial use would no longer operate on the property, this was confirmed by Mr. McCain to Trustee Combs at the July 2006 Board of Trustees meeting, "Trustee Combs asked if Mr. McCain intended to

keep the excavating business there. Mr. McCain stated he would be moving the excavating business to Longmont. Trustee Combs stated the excavating business would not be in compliance with the commercial code.”

At the time of rezoning, Town staff noted that the application was inconsistent with the goals and policies of the Comprehensive Plan and stated concerns that the Commercial District uses by-right could conflict with the character of the downtown and surrounding neighborhood. Strengthening the argument against rezoning the property, the PCDC voted to deny the change in zoning requested by the McCain family at their August 2006 meeting. Today staff remains in agreement with the prior staff’s determination.

The rezoning was ultimately passed and adopted with the Board of Trustees noting that historically the property had never been used for residential.

**V. LEGAL ISSUES:** None.

**VI. SUMMARY AND ALTERNATIVES:**

The current industrial use of property is not permitted within the Commercial Zone District and the recommended actions include:

1. Rezone property to General Industrial Zone District to accommodate current use
  - This may conflict with the goals and objectives of the Comprehensive Plan
  - There may be a risk of spot zoning as the use of the parcel differs from the surrounding properties
  - The property owner would need to address safety concerns
2. Enforce Lyons Municipal Zoning Code and halt the non-permitted industrial use

Attachments:

1. January 13, 2004 letter to Mr. McCain from Administrator Cinnamon
2. Photos of property

ATTACHMENT 1

LETTER TO MR. MCCAIN FROM ADMINISTRATOR CINNAMON

January 13, 2004

RE: Former Bulk Oil Tank Site and Potential Development

Dear Steve:

I wanted to follow-up with you regarding the potential development of the property previously used for bulk oil tank storage adjacent to Town Hall between Railroad Avenue and Park Avenue. As you know, we have spoken on a few occasions about your potential use of this property for commercial development. I think it would be best that I highlight for you the issues and concerns regarding future development of this property. You should understand that this letter presents my thoughts only and that the Board of Trustees makes all final land use decisions regarding the future use of your property.

Most importantly, your property is presently zoned within the R-2 (Medium Density Residential) Zone District. This zone district only authorizes residential uses and a few other uses as described in the zone district regulations. I have attached a copy of the R-2 Zone District regulations to give you a better idea of the permitted use of the property.

I recognize that the property was previously devoted to a commercial or industrial type use (a bulk oil storage tank). This bulk oil tank use was lawful because the use was a "nonconforming use." A nonconforming use is a use that was lawfully created *prior to* a change in land use regulations and, because of a change in regulations, the use would now be unlawful. Even though made unlawful by the change in the regulations, a nonconforming use can continue to exist following the change in regulations until the nonconforming use is terminated. Once the nonconforming use is terminated, any future development of the property must comply with the regulations.

These rules governing nonconforming uses applies to the bulk oil tank site adjacent to Town Hall. The tanks existed *prior to* the Town's zoning of the property to the R-2 Zone District. The tanks were therefore permitted to continue operation as a nonconforming use. However, once the tanks were removed and the nonconforming use was terminated, the ability to continue the nonconforming use was also terminated. Now, the future use of the property must be a use that is authorized by the R-2 Zone

District regulations. As a result, the only permitted uses for the site are now largely medium density or single family residential uses.

There are additional limitations on the future use of your property caused by the physical conditions affecting the property. As you likely know (and as the former owner of the bulk oil site understood and acknowledged), the site has been physically encumbered for more than 40 years by public streets on the north, east, and south sides of the property. In addition to these streets, the deeded legal description of the property does not match the actual physical layout of the site. As you could learn from a survey comparing the legal description with the actual physical layout of the land, the legal description includes property underlying Park Avenue and the private property located across Park Avenue. These limitations may reduce the ability to maximize the residential development potential of the site.

It is possible to rezone property to another zone district, such as rezoning from R-2 to a commercial or industrial zone district. However, the law requires that any requested rezoning of property be supported by the municipality's comprehensive plan. Our Lyons Comprehensive Plan designates your property as suitable for residential use. As a result, it is highly unlikely that a rezoning to a commercial or industrial use would be possible under the current Lyons Comprehensive Plan.

A comprehensive plan can be amended. The amendment of a comprehensive plan is a wholly discretionary decision by the Board of Trustees. It is my belief that the Lyons Board of Trustees would not likely approve a request to amend the Lyons Comprehensive Plan to support a rezoning of your property for most commercial uses, such as a car or truck wash, a storage facility, or any other use that would be inconsistent with the general residential character of the neighborhood.

I have heard that you have discussed with developer Peter Dordick the potential for a mixed-use development of your property that would include a combination of residential use, office use, and some limited commercial retail use. The Board of Trustees has not formally evaluated and considered this possibility although some Board members have informally discussed generally whether a mixed-use office, residential, and commercial retail project would be acceptable for your site.

It is my belief that the Board of Trustees would likely entertain more formal discussions to consider such a mixed-use proposal if the existing Town Hall site could be incorporated into the scope of the project. In addition, I believe that a mixed-use project must necessarily be designed to buffer or mitigate the impacts with the surrounding residential uses on the east and south of the site. We have encouraged Mr. Dordick to consider expanding your use of the property to include the Town Hall site

and to integrate a new Town Hall into the scope of the mixed-use project. This type of private/public partnership in the development of land is not uncommon and I believe that both the Town and you would greatly benefit by this cooperative development approach. Importantly, however, we have not been presented with any particular mixed-use plan to evaluate at this date.

If you desire to pursue uses for your property other than R-2 medium density use, I would encourage you to consider a mixed-use project that would incorporate higher density residential (e.g., townhouse or apartment style uses), office, and a limited amount of commercial retail use. I would suspect that your ideas for a truck wash or storage units would be wholly unacceptable commercial uses for your property due to current policies expressed in the Lyons Comprehensive Plan and the residential character of the neighborhood.

If I can be of any assistance in your consideration of future use of your property, please feel free to contact me.

Sincerely,

Gary Cinnamon  
Town Administrator

cc: Mayor Board of Trustees  
Robert Widner, Town Attorney/Planner

**ATTACHMENT 2**

**APRIL 23, 2021 PHOTOS OF PROPERTY**

