

LAPORTE COUNTY PLAN COMMISSION

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ANNEMARIE POLAN
Building Commissioner

LA PORTE COUNTY PLAN COMMISSION MINUTES

~~January 22, 2013~~ January 27, 2013

MEMBERS PRESENT: WILLIE MILSAP RON HAMILTON, SR.
 MATT BERNACCHI GENE MATZAT
 GLEN MINICH JAY WRIGHT
 TONY HENDRICKS RITA BEATY KELLY

OTHERS PRESENT: Annemarie Polan, Recording Secretary, Doug Biege, attorney, Darlene Pavey, Secretary.

Annemarie Polan, Building Commissioner, said that before we take the roll call she would like to welcome three new members tonight; Commissioner Willie Milsap, Jay Wright and our alternate member, Ron Hamilton, Sr.

Annemarie Polan, Building Commissioner, asked Dar Pavey for roll call.

PLEDGE OF ALLEGIANCE

Elections:

Annemarie Polan, Building Commissioner, said that we will start with the election of officers and open it up to nominations for President of the Plan Commission.

Willie Milsap said that he would like to nominate Tony Hendricks for President.

Annemarie Polan, Building Commissioner, asked if there are any other nominations for President.

Annemarie Polan, Building Commissioner, said that nominations are closed.

Willie Milsap asked Annemarie if we are going to vote on President.

Annemarie Polan, Building Commissioner, said all in favor of Tony Hendricks as President, please say aye:

Voting Aye: Willie Milsap, Matt Bernacchi, Tony Hendricks, Rita Beaty Kelly, Glen Minich, Jay Wright, Ron Hamilton, Sr. and Gene Matzat.

Voting Nay: None

All approved. Motion carried 8-0.

Annemarie Polan, Building Commissioner, congratulated Tony Hendricks as President.

Annemarie Polan, Building Commissioner, asked for nominations for Vice President.

Willie Milsap nominated Jay Wright for Vice President.

Annemarie Polan, Building Commissioner, asked if there are any other nominations for Vice President.

Rita Beaty Kelly nominated Matt Bernacchi for Vice President.

Annemarie Polan, Building Commissioner, asked if there are any other nominations for Vice President.

Annemarie Polan, Building Commissioner, said that we will start with Jay Wright.

Voting Aye: Willie Milsap, Jay Wright and Ron Hamilton, Sr.

Voting Nay: Matt Bernacchi, Tony Hendricks, Rita Beaty Kelly, Glen Minich and Gene Matzat.

Annemarie Polan, Building Commissioner, said all in favor of Matt Bernacchi for Vice President.

Voting Aye: Matt Bernacchi, Tony Hendricks, Rita Beaty Kelly, Glen Minich and Gene Matzat.

Voting Nay: Willie Milsap, Jay Wright and Ron Hamilton, Sr.

Motion carried. 5-3.

Annemarie Polan, Building Commissioner, congratulated Matt Bernacchi as Vice President.

Annemarie Polan, Building Commissioner, said that she is turning this over to the new President, Tony Hendricks.

Tony Hendricks, President, said that we will keep the nominations moving.

Tony Hendricks, President, said that he will accept nominations from the board for the board attorney.

Willie Milsap said that because of the issues facing this board and the assistance we need from legal counsel, he would prefer just like the solid waste district did a year ago; we can do an assigning thing and request for proposals to go out to any interested attorneys. Specifically, he

would like to see us go back to a retainer basis like Mr. Szilagyi did years ago. Mr. Milsap said that he received two calls from local La Porte County Attorneys requesting information about applying for legal counsel. Mr. Milsap said no disrespect for the one we have now, it's just that he thinks we should have an open and honest process.

Willie Milsap made a Motion that we hold this off until the next meeting and put out request for proposals.

Tony Hendricks asked if this board would hold the present attorney as acting attorney until those proposals come in.

Willie Milsap said that is fine.

Tony Hendricks asked if we could have a second to that motion.

Jay Wright seconded.

Tony Hendricks asked if the motion would include retaining the attorney until the request for proposals.

Jay Wright said he would second that motion.

Tony Hendricks asked if there is any discussion on that motion.

Glen Minich asked if Mr. Biege is retained to the Board of Zoning as counsel also.

Willie Milsap said that it depends how the request comes out. Mr. Milsap said that we have to see who is interested and see if they're interested in ---

Tony Hendricks asked if this board appoints the Board of Zoning attorney, or does the Board of Zoning appoint their own attorney.

Attorney Biege said that historically the Plan Commission has chosen an attorney and the Board of Zoning the following historically appointed the same attorney. Attorney Biege said that the statute allows the Commission and the Board of Zoning to appoint separately, however he believes the budget falls in the Plan Commission.

Rita Beaty Kelly asked if we're going to have a deadline for the proposals to come in so that we have time to look them over before. Rita said that she thinks we should go ahead and suggest a deadline when those should be turned in.

Tony Hendricks said that we have a motion and a second; is there any other discussion.

Tony Hendricks asked if they would like to change the motion and add a deadline for request for proposals on a time frame before the next meeting, or by the start of the next meeting.

Willie Milsap said maybe a week prior to our next meeting. Mr. Milsap said that our next meeting is February 26th, so therefore they should be in by February 15th.

Tony Hendricks said that the motion to clarify is to send a request out for proposals due back to the Building Commissioner by Friday, February 15, 2013 and to retain our attorney as acting attorney until that time. Tony Hendricks asked if that was seconded.

Jay Wright seconded.

Tony Hendricks said that he will call for a vote.

Voting Aye: Willie Milsap, Glen Minich, Gene Matzat, Rita Beaty Kelly, Ron Hamilton, Sr., Ray Wright and Tony Hendricks.

Voting Nay: Matt Bernacchi.

Motion carried 7-1.

Tony Hendricks said lets open the floor up for nominations for Building Commissioner.

Willie Milsap nominates Annemarie Polan as Building Commissioner.

Jay Wright and Ron Hamilton seconded.

Tony Hendricks asked if there were any other nominations.

Tony Hendricks said that he will call for a vote.

All approved. Motion carried 8-0.

Tony Hendricks congratulated Annemarie Polan as Building Commissioner and thanked her for doing a good job for them.

Tony Hendricks said that at this time we will request Annemarie Polan to send out a request for proposals with the date for submittals to this board prior to next meeting.

Tony Hendricks asked if there is anything on the agenda. Mr. Hendricks said that we received an email to delay the item.

Attorney Biege said that the amendment to the JZO Section 14.09 should be on the agenda for tonight.

Tony Hendricks stated yes.

Attorney Biege said that he would like to make some introductory comments.

Attorney Biege said that if the Plan Commission remembers we were in last month or the month before on Section 14.09; it was written during public hearing, there was a suggestion that we change provision concerning Residential District, from Residential District to Residential Use. Attorney Biege said that the Plan Commission voted to do that and everyone thought it was a good idea. Attorney Biege said that someone ran the distances around B-2 for the five hundred (500') feet.

Matt Bernacchi said that we kind of skipped over some stuff. Matt Bernacchi said that we need to do approval of the Agenda and approval of Minutes first.

Tony Hendricks made a motion to approve the agenda as presented. Rita Beaty Kelly seconded. All approved. Motion carried 8-0.

Tony Hendricks asked for approval of the minutes that were presented.

Matt Bernacchi made a motion to approve as presented. Rita Beaty Kelly seconded. All approved. Motion carried 8-0.

Attorney Biege said that after the Plan Commission voted and effectively if we use the language "Use", it pretty much closes out all areas of B-1, which he believes ultimately it would be read as unconstitutional. Attorney Biege said that when it went through the Commissioners they changed that language back and it's now coming back to the Plan Commission.

Attorney Biege said that in addition, the JZO originally had definitions with regard to Adult Regulated Businesses. Attorney Biege said that he thought it prudent to just simply eliminate all the previous definitions and make sure they match exactly to the Conduct Ordinance which was just passed. Attorney Biege said that those would be the two changes in front of the Plan Commission last time. Attorney Biege said with these two changes we expect it will go to the Commissioners next time and he thinks that should be end of the amendment.

Attorney Biege said that just so the Plan Commission is aware, there has been some discussion as to where these businesses would be appropriate and where these businesses would be placed. Attorney Biege said that if the Plan Commission later on would decide they would put this in an industrial area or something of that nature, what we're doing tonight has no affect on that; attorney Biege said that would be a later map change. Attorney Biege said that right now the way we sit with the original JZO, in his opinion it's unconstitutional and really needs to get this changed.

Tony Hendricks asked if there were any comments from the board.

Glen Minich said that there is a distance factor between a residence and any sexually orientated business. Is that correct?

Attorney Biege said that the way it was written and submitted was Residential District. Attorney Biege said that during the public meeting and it was a point well taken, a lady who lives in an AG area uses her home as a residence, said wait a minute, there is no space limitation for her.

Attorney Biege said that she was right. Attorney Biege said however, we're still limited to the B-2 zoning right now. Attorney Biege said that later on and he would suggest that we do so, we could change this back to Residential Use, but at the moment, we're restricted because we're given what we're given and this was passed long ago. Attorney Biege said that this will tie us over so to speak. Attorney Biege said absolutely there is a risk that there is a "Residential Use" in Ag or some other type of district where the five hundred (500') foot limitations would not apply.

Attorney Biege said that if we don't change this right now, we essentially have an unconstitutional provision and as you are well aware, we have some litigation pending and some other folks were going to come in. Attorney Biege said that we'd be better off getting this passed and then looking at perhaps a map change at a later date.

Tony Hendricks asked if there were any more questions.

Tony Hendricks said that we're still working on and in quite the process of amending the JZO maps and the rule to make uniformity with Michigan City and La Porte. Is that correct?

Attorney Biege said that he's working with the attorney of Michigan City and La Porte for the Plan Commission on the joint zoning ordinance language and making corrections. Attorney Biege said that theirs has a difference in versions that was originally passed, but there are also a lot of errors in this ordinance. Attorney Biege said that they're fixing errors. Attorney Biege said that the attorneys are not working on and there has been talk about working on them, but no one's actually worked on maps yet. Attorney Biege said that he would suggest that a committee be appointed to look at that. Attorney Biege said that he thinks that this would be more of a committee more than an attorney one, but right now there's no action on maps; it's only on amendments to the language and he thinks that they're up to Article 21 or so.

Tony Hendricks asked if that is something this board, either through committee or through action without attorney to work in conjunction with the updates if we open the maps and there is probably a lot of notice procedure on how we open up the maps.

Attorney Biege said that they discussed it briefly a few months ago. Attorney Biege said that it will be much more efficient to handle both at the same time.

Willie Milsap asked attorney Biege when you make the statement work on maps, Willie asked what he's referring to; which maps?

Attorney Biege said that when we passed the joint zoning ordinance, there were changes to the previous zoning maps; some of which the Plan Commissioners made and some of which the County Commissioners made. Attorney Biege said that some people believe that there should be some tweaking so to speak. Attorney Biege said that they don't agree with how some areas were zoned and they want some things changed. Attorney Biege said whether they should be changed or not, he doesn't know. Attorney Biege said that is a Commission function. Attorney Biege said since they've noticed several errors and corrections in the zoning code that was passed

initially, then the suggestion is let's take a look at the maps to see if any need to be tweaked or changed.

Willie Milsap asked attorney Biege who is responsible to tweak or change.

Attorney Biege said that it would be the Commission and subject to their discretion. Attorney Biege said that the County Commissioners also have the power and authority to initiate a change in the zoning map; it will either be the Commission or the County Commissioners and that's why he's suggesting a committee to see what changes what. Attorney Biege told Mr. Milsap that they've discussed Industrial Areas for example and there are a couple other items – he thinks Hanna or Wanatah, there are a few B-2's that are remaining that some people don't believe apply anymore. Attorney Biege said that he would clarify it as clean-up.

Willie Milsap asked if it is the Planning Commission's responsibility to clean up those areas.

Attorney Biege said yes. Attorney Biege said that he thinks as part of this revision process and the language, if the Plan Commission initiates a committee and decides there should be changes he can run all the notices at the same time. Attorney Biege said that because of the notice requirements under Indiana Code it's fairly expensive to run all of the notices. Attorney Biege said that we can do both at the same time; have the same public hearings he thinks it would be more efficient.

Willie Milsap said correct him if he's wrong. Mr. Milsap asked if we have a map committee.

Tony Hendricks said that we don't. Mr. Hendricks said that the Plan Commission is recommending to the Commissioners, so whatever we recommend the Commissioners have the choice to accept, reject or send back to the Plan Commission. Tony said that we only recommend to the Commissioners what we deem appropriate. Tony said that the one thing that he saw in the zoning maps which we need clarification, he believes the wording there is like a hospital occupational zoning that is different and he doesn't know if it is still different on the maps as it is in the books. Mr. Hendricks said that there is an O and an OC and that's some clean up issues.

Willie Milsap asked Tony if we had a cleanup committee to even recommend to the Commission. Is that correct?

Tony Hendricks stated no.

Attorney Biege said not for maps yet. Attorney Biege said one has not yet been formed.

Willie Milsap asked how long we have been with this process.

Attorney Biege said that he's been working with the other attorneys for six (6) or seven (7) months he believes.

Willie Milsap asked attorney Biege if we're at a point to where we need a cleanup committee and we did not need a cleanup committee prior.

Attorney Biege said that he doesn't think so. Attorney Biege said that he thinks it's a matter of time in working with the book and working with the maps, people would notice things and this is a process. Attorney Biege said that we haven't been in a hurry on these changes; for one reason is we have matters come up as we're working with the code and we don't want to throw too many amendments through. Attorney Biege said that what they thought we'd do is let the code sit in place for a year or so and then as we go we'll say okay, I didn't realize this and I didn't realize that. Attorney Biege said that he thinks that now is the time to form such a committee and get to work and in a few months work with the amendments. Attorney Biege said by far the Commission has been dilatory; attorney Biege said he thinks doing it earlier might have been premature and he thinks now it is about the right time to get something going.

Willie Milsap said so as of today there was no urgency so we're good.

Attorney Biege said that he thinks it's just about this month or in the next few months he thinks it would be a good idea to get something going.

Willie Milsap asked attorney Biege if we're going to have a cleanup committee.

Tony Hendricks said that he believes that we are allowed by statute if you would like to make a motion to make a committee to review the maps and bring recommendations to the Plan Commission. Tony said that he's not even sure if the code tells who that would be; Tony said that some of the people that we would like it to be would be one Commissioner and the County Planner. Tony said that we don't want to get too big, but we want to keep it with the people---- this is an intense committee.

Mitch Bishop, County Planner said that this is a caveat to what Doug was stating. Mitch said that he's meeting with the two attorneys in both Michigan City and La Porte. Mitch said that he commenced two weeks ago a meeting with the planners and they're looking at more of the (inaudible) in the zoning ordinance that needs to be changed. Mitch said that we saw some things in the past year and there is a list of like twenty-five items. Mitch said that they're about half way through it and they should be done in about two months.

Willie Milsap asked the direction of our legal counsel in reference to the committee.

Attorney Biege said that the President has the right to appoint a committee. Attorney Biege said that he would suggest that the President take a look to see what entities would be useful. Attorney Biege said that he agrees that the County Commissioners is essential; a county council Representative, City of La Porte, Michigan City; the surveyor would be useful. Attorney Biege said that he would suggest a committee of seven (7) or nine (9) and the President gives a recommendation to the Plan Commission next month.

Tony Hendricks said how about he opens up for public notice that we're going to put together a map committee and see who may get involved here with the public.

Glen Minich asked if public input would be allowed. Glen said that there are a lot of broad sweeping changes in order to get this joint zoning ordinance out and that is why so many

business districts were removed because the Commissioners just took a very broad sweep to get this out so we had a new ordinance. Glen said that he thinks that we should have some input from the public because a lot of private owners have seen changes in their zoning and they may request some changes back.

Attorney Biege said that a public hearing is a requirement of the statute. Attorney Biege told Glen that he made a good point because this is how some of this happened. Attorney Biege said that the committee can go through and review the maps and make a recommendation to the Plan Commission and the Plan Commission can then make changes and ultimately make a recommendation to the County Commissioners. Attorney Biege said that the County Commissioners can then change the maps and send it back to the Plan Commission for approval. Attorney Biege said that even if the Plan Commission denies the changes made by the County Commissioners, it then goes back and they can still vote it through. Attorney Biege said either way the statute does require that public hearings be conducted. Attorney Biege said that he would suggest some public workshops for discussion prior to the recommendation to the Plan Commission. Attorney Biege said that would make it more efficient from an organization standpoint, rather than trying to get all public input in one meeting to the Commission.

Rita Beaty Kelly said that she thinks if we go along anyway, we're going to find more things that need to be changed in here and that's how we fell upon this. Rita said that this was a massive undertaking to get this done anyway and there are going to be changes as things progress. Rita said that this never is going to be perfect.

Tony Hendricks said that his thought is that we bring this up at the next meeting to appoint a committee.

Willie Milsap asked if we have a motion on the floor.

Tony Hendricks said that he doesn't think so. Tony said that we will appoint the committee next month and let the public know we're looking for a committee for the maps in the county.

Willie Milsap for purpose of better understanding for the new members, can legal counsel give us a time frame or some type of window so they will have an idea on what needs to be done, example, the mapping.

Attorney Biege said that his estimate and this is depending upon how quickly he moves along with the attorneys for La Porte and Michigan City, he would estimate about spring the revisions will be done for the joint zoning ordinance. Attorney Biege said that they're only able to meet once a month and we get so much done in an afternoon and it goes over. Attorney Biege said again, they weren't purposely not in a hurry. Attorney Biege asked Mitch Bishop if the Planners will be done by then.

Mitch Bishop said yes. Mitch said that they have compiled a list of twenty five to thirty items and they have probably been through half of those in three meetings.

Tony Hendricks said with that case scenario we're looking at three months from now for your agreements and then we're probably looking at six months before we would actually possibly get our recommendation to the Commissioners.

Attorney Biege said if you make your appointments next month that puts us into February and probably get to work in March and give ninety days from then. Attorney Biege said it will probably be June or midsummer.

Willie Milsap said just so we have an idea.

Tony Hendricks said that if we even move fast, this is still a statutorily long process.

Attorney Biege said that we have to have notice of publication before hand and if we're going to have public workshops, we need to make sure that we have plenty of notice --- that was a complaint last time around. Attorney Biege said that some people didn't believe the work went out well enough as to these workshops in certain areas. Attorney Biege said that we certainly want to make sure we have all the press covered.

Tony Hendricks said that we still need to make a motion on the approval of the changes in Section 14.09.

Matt Bernacchi said so moved. Gene Matzat seconded.

Tony Hendricks asked if there were any questions on that motion.

Tony Hendricks said that this is just one change of the Residential Use.

Attorney Biege said that change in the Residential Use and the change in the Definitions Section. Attorney Biege said that overall this would be an amendment to Section 14.09; the supporting table is 07.02. Attorney Biege said the Definition Section is Article 31 and the Appendix. Attorney Biege said that is what the Commission voted last month.

Tony Hendricks asked if there were any questions from the board.

All approved. Motion carried 8-0.

Tony Hendricks asked if there is any old business under item number 6.

Tony Hendricks asked if there is any new business.

Tony Hendricks asked for a motion to adjourn.

Matt Bernacchi asked as far as KIP and everything going out there with contractors and stuff are you going see more activity in the Building Commission Office as far as inspections and what's coming in.

Annemarie Polan, Building Commissioner, stated yes. Annemarie said that we know there's going to be plenty of inspections out there once that starts.

Matt Bernacchi asked attorney Biege if he's heard anything from Enbridge.

Attorney Biege said that Enbridge has not volunteered to give a presentation. Attorney Biege said they submitted a legal memorandum to him regarding federal preemption of local enforcement. Attorney Biege said that he spoke with IDEM and DNR and they agreed to have their legal counsel review our Article in our local zoning code and this is the question that he doesn't have an answer to yet. Attorney Biege said that he believes that our local code covers the same stuff, the same material, and the same requirements as DNR, but he's not sure. Attorney Biege said that he asked for their attorney's opinion to confirm. Attorney Biege said that he's not an engineer and he doesn't know so he's waiting for their review to confirm that we're covering the same things.

Attorney Biege said that just today he received an e-mail from Enbridge asking as to status on his review on the preemption issue. Attorney Biege said that how he sees it however, an opinion from DNR on what's covered would be useful before we get back to Enbridge. Attorney Biege said that they advised him in this e-mail today they've delayed construction at least until May. Attorney Biege said that we should have time and he thinks that DNR has had this about thirty-five or forty five days, or so.

Willie Milsap said that in reference to Enbridge was that a voluntary request for presentation.

Tony Hendricks said that he believes that we had some concerned citizens come to this board and there were a lot of questions asked of this board; what the concerns on our ordinance whether they were state, preempted or our ordinance for the county and that new pipe line. Tony said that we asked Enbridge to come to this board to discuss those concerns and the statutory right we had to even bring up.

Willie Milsap asked if the Plan Commission verbally requested it, or was it in writing.

Tony Hendricks said that he believes we did.

Attorney Biege said if he may. Attorney Biege said that he suggested a work shop so that the persons who had concerns about environmental issues could speak to the Enbridge people directly.

Willie Milsap asked if they declined.

Attorney Biege said that they didn't answer.

Tony Hendricks said that there was an Enbridge workshop at the La Porte City Library about four weeks ago when DNR was here. Tony said that he was at the tail end of that workshop and he understands Enbridge showed up, but they didn't present or talk. Tony said DNR was the only one that discussed those issues.

Annemarie Polan, Building Commissioner, said that they talked about water purification only.

Tony Hendricks said that they're in the county and they have had some connection, but they haven't come to this board or offered a work shop.

Willie Milsap asked if he could make a recommendation, request, or a motion that our legal counsel, Mr. Biege, confirm with our county attorney and see if we can come to some kind of an agreement referenced to putting a request in writing to Enbridge.

Attorney Biege stated sure. Attorney Biege asked Mr. Milsap if that is a request for a workshop.

Willie Milsap stated yes and in the county complex annex.

Willie Misap asked Annemarie the information she wanted from Enbridge. Willie told Annemarie that she already said that they discussed water purification.

Annemarie Polan, Building Commissioner, said that the people that were here before at the last meeting thought Enbridge was ready to start digging, like the next day. Annemarie said that they were greatly concerned about what was going to happen. Annemarie told Willie that she thinks this is mostly to do with the wetlands and if they're going to come before the Board of Zoning and ask for a variance to be seventy-five feet away from the wetlands. They wanted to know what Enbridge was going to do and did they need to come to us or the BZA and that was some of the questions they had.

Willie Milsap said that our attorney and the county attorney can come up with some kind of guideline in reference to addressing the public.

Attorney Biege said that is one reason that he made the inquiry to DNR. Attorney Biege said that DNR has a lot of requirements that already exist. Attorney Biege said that this county code section has requirements. Attorney Biege said that if his perception is correct, he thinks that DNR requirements are stricter, as well as Army Corp of Engineers. Attorney Biege said that he checked with St. Joe County, Porter County and Lake County and they don't have chapters like La Porte County does on natural resources.

Attorney Biege said he suspects that our chapter duplicates DNR effort and if so, there is already a monitor on these things and by persons who are better qualified than our county staff. Attorney Biege said with all due respect to Annemarie, she's not a water quality expert. Attorney Biege said that is why he wanted to get an answer on that before he was going to approach Enbridge anymore or the Commission so we understand who's monitoring what parts.

Willie Milsap asked if we make that in form of a motion.

Tony Hendricks said we can if you like.

Willie Milsap made a motion that our legal counsel, Mr. Biege set up a meeting with our county attorney, Mr. Friedman and between both of them come up with a written request to Enbridge to come to our community and do a public workshop.

Tony Hendricks asked for a second to the Motion.

Glen Minich seconded.

Tony Hendricks asked if there were any questions.

All approved. Motion carried 8-0.

Tony Hendricks said just an edge on to that as a technical advisory, Commissioner Milsap is on the drainage board and before he was there Enbridge gave us a lot of paper work in which they were required to by the Department of Natural Resources, Army Corp and Indiana Department of Environmental Management and we have been asked for copies of that and we have subsequently posted all that resource on the surveyor's website.

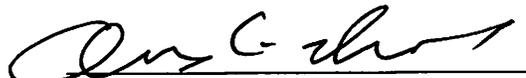
Tony Hendricks asked if there was any other business.

Matt Bernacchi made a motion to adjourn.

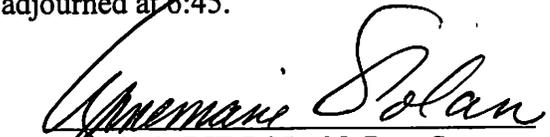
Jay Wright seconded.

All approved. Motion carried 8-0.

There being no further business, meeting adjourned at 6:45.



TONY HENDRICKS, President
ANTHONY



ANNEMARIE POLAN, Rec. Secretary