



LAPORTE COUNTY PLAN COMMISSION

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ANNEMARIE POLAN
Building Commissioner

LA PORTE COUNTY PLAN COMMISSION MINUTES May 28, 2013

MEMBERS PRESENT: WILLIE MILSAP JIM PRESSEL
GLEN MINICH JAY WRIGHT
RON HAMILTON, SR. RITA BEATY KELLY
HAROLD PARKER

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

PLEDGE OF ALLEGIANCE

Harold Parker nominated Rita Beaty Kelley to run the meeting tonight. Ron Hamilton, Sr. seconded. All approved. Motion carried 7-0.

Pledge of Allegiance.

Rita Beaty Kelley said that she would like approval of the agenda.

Jim Pressel made a motion to approve the agenda as presented. Ron Hamilton, Sr. seconded. All approved. Motion carried 7-0.

Rita Beaty Kelley asked for approval of the minutes.

Harold Parker made a motion to approve the meeting minutes of March 19, 2013. Jim Pressel seconded. All approved. Motion carried 7-0.

Attorney Biege said that he spoke with Tony Hendricks today and he advised him that he may have a pecuniary interest in the outcome of today's petition and that he would be disqualified from hearing and voting on the petition. Attorney Biege said that we have to make that part of our minutes and once that's made as part of the minutes and the record, Mr. Hamilton would sit in as a substitute. Attorney Biege said he's simply wishing to make a record before we proceed.

Rita Beaty Kelley thanked attorney Biege.

a) That the Petitioner's Mark D. Parkman and Nancy S. Parkman and Lisa Bonin, by their attorney, William Hedge would like to rezone property located South of 200

south and 1500 feet West of Highway 421, in Section Seventeen (17) New Durham Township, La Porte County, Indiana. That the petitioners, Mark D. Parkman and Nancy S. Parkman, as owners of parcel 1, parcel 2 and parcel 3, and Lisa Bonin, as owner of parcel 4, and Douglas Bonin, as contract purchaser of parcel 1, parcel 2, parcel 3, and parcel 4 desire to rezone the above described real estate parcels from R1A residential to A Agricultural. That the change of zoning will be consistent with the county land development plan, local community plans and any other applicable adopted planning studies or reports. This property is in Westville, New Durham Twp.

Attorney Hedge said attached you will find a copy of site plans designed by Mr. Hendricks.

Willie Milsap said that you mentioned that Tony Hendricks was involved in these plans and that's why he couldn't be here.

Attorney Biege said that under the statute he would be disqualified as having any conflict of interest. Attorney Biege said that the statute calls for us to make a record in that event and the alternate would then vote in his place.

Willie Milsap asked if our county surveyor does the plans for these projects.

Attorney Biege said that he believes he's doing the drawings and whatever engineering work involved.

Willie Milsap asked if that is on his own company, or would that be as a county engineer.

Attorney Biege said that is in his own company, not as county surveyor. Attorney Biege said if he might clarify that would be for his company, and because of that he could gain pecuniary interest, that is, make money from the work he's doing in the connection with the engineering and surveying.

Willie Milsap asked if we know if he's doing this during his working hours, or after hours.

Attorney Biege said he doesn't have any idea. Attorney Biege said that he just advised me that he has a financial interest in the outcome and that would disqualify him; that's as far as he went.

Attorney Biege told attorney Hedge that publication and notice has been checked and it is adequate.

Attorney Hedge said that if you look at the Ariel map you will see that there are two ponds, or mud piles, or whatever you want to call them. Attorney Hedge said that the history of this property to his understanding is prior to 2007 in rezoning, this property was agricultural. Attorney Hedge said at that time water and sewer would be brought out to Westville and there would be a subdivision with fifty to sixty houses on this property. As you all know the economy was less than cooperative and it made it very unfeasible to put a subdivision in there at this point it's not going to happen.

Attorney Hedge said putting infrastructure and take that gamble at this point would be quite prohibitive. Attorney Hedge said half of it is being used as farmland. The idea would be intensive development consistent with the county building plan. Attorney Hedge said that the property adjacent to and around it is also agricultural.

Harold Parker asked if the BZA wanted a two hundred foot easement back there.

Attorney Biege said that there was some discussion with the BZA and they held that over to next month's meeting. Attorney Biege said that there was a concern that one of the parcels was one hundred (100') feet wide, but that parcel preexisted and the existing code so that would be grandfathered in. Attorney Biege said that the petition was for the adjoining parcel in the back. Attorney Biege said that there was some discussion as to whether that would be grandfathered in or included. Attorney Biege said either way, the BZA held that over to next month and there was some discussion about asking the petitioner to increase the road frontage with their request to modify their request.

Attorney Biege said that he doesn't think this request affects the BZA request. Attorney Biege said that they're not dependent upon each other.

Glen Minich said that he doesn't think it does either because it doesn't matter whether it's residential or agricultural. Either way, we are supposed to have a two hundred (200') foot frontage on those lots.

Attorney Biege said arguably, because one of those lots is preexisting at one hundred (100') feet. Attorney Biege said that one of those lots are grandfathered in, but again that doesn't have bearing on the zoning.

Glen Minich asked attorney Biege if he's talking about the one hundred (100') foot on the railroad easement.

Attorney Biege said yes.

Glen Minich said that is not a one hundred (100') foot building lot, that's a one hundred (100') foot railroad easement.

Attorney Biege said that it was represented to them and still subject to verification that that is owned, and if that's owned and not an easement, that is a preexisting parcel that preexisted the passage of our zoning code, so it would it be grandfathered in and would it be buildable – just the one hundred (100') foot lot. Attorney Biege said again, we don't have verification as to whether that is an easement or a lot and that is something we're going to ask the petitioner to verify, but that is a BZA issue rather than zoning.

Jim Pressel asked attorney Hedge why you would want to take that parcel from residential and turn it into agricultural.

Attorney Hedge said agricultural is more conducive to the development of this property. If you want to have a twenty acre farm and put horses on you could do that under agricultural and not under R1A. Attorney Hedge said another question that he wants to address is the petition before the Board of Zoning Appeals is a separate matter. Attorney Hedge said that he was discussing this with attorney Biege before the meeting. Attorney Hedge said that their request doesn't depend on the Board of Zoning Appeals – that is a separate issue. Attorney Biege said that Annemarie could probably tell you that when I came in to the office Dar asked me what I was doing and I had to get together with Annemarie and Tony to figure things out.

Jim Pressel asked what are we asking to be done here.

Attorney Hedge said that they're asking to move this from R1A zoning to Agricultural zoning, which is more conducive with what will be used in the future.

Jim Pressel asked if all the parcels would remain as parcels and it wouldn't be one larger parcel.

Attorney Hedge said that is correct.

Glen Minich asked if the two lots that are on the road frontage of 200 south that are not included in this plan right now ---

Gene Matzat said that there is only one lot.

Glen Minich asked if that lot sold by current owner?

Douglas Bonin said that it is being retained by the current owner.

Rita Beaty Kelley asked for name and address for the record.

Douglas Bonin said that he has a vested interest in the property that he is buying on contract from Mark & Nancy Parkman. Mr. Bonin said that the property in question is an existing – has a structure on it. Mr. Parkman said that it's not going to be sold as a part of this. Mr. Bonin said that the larger square is the older homestead property going back to many many years and it was never part of this property.

Rita Beaty Kelley asked if there are any other questions.

Ron Hamilton, Sr. asked why it is so critical to turn that into residential from agricultural besides the horses.

Mr. Bonin said that the functional use of the property is used for agricultural; it's not going to be a development at this point. Mr. Bonin said that he was the original petitioner that came to the board and asked for the R1 zoning in 2007 or 2008 when things looked hopeful to develop, but obviously there was a big turn in the economy. Mr. Bonin said that there would be a big expense bringing the sewer and water down from 421 to the property. Mr. Bonin said that they're not going to come back some day and ask for R1A in seven more years.

Rita Beaty Kelley asked if the board would like to entertain a motion.

Gene Matzat made a motion that the petitioners Mark D. Parkman and Nancy S. Parkman and Lisa Bonin be granted to change residential zoning R1 to Agricultural.

Rita Beaty Kelley apologized and asked Mr. Matzat to hold that thought.

Rita Beaty Kelley asked if there were any remonstrators for or against the petition.

Remonstrators:

1. Raymond Kresel said that he owns the property next to him and years ago he started bulldozing over there and we asked him what he was doing and he wouldn't give us the time of day. Mr. Kresel said that they went to his neighbors and asked and they apparently didn't know either. Mr. Kresel said with all that bulldozing it backed up all that water on their property and we really don't want to change this to agricultural the way it is for a number of reasons. Mr. Kresel said that we don't know if he's going to dig ditches and the water is really backed up on his property.

Harold Parker asked Mr. Kresel if he bulldozed the ditch in, or make the ground higher.

Mr. Kresel said that he doesn't know what he did. Mr. Kresel said that they went to talk to him to find out what he's doing and he wouldn't talk to us.

Mr. Bonin said that he doesn't remember that.

Jim Pressel asked Mr. Kresel in relationship to the parcels that we're talking about, where is your parcel.

Mr. Kresel said to the east and northeast.

Jim Pressel asked if it is next to the railroad.

Mr. Kresel said that the whole property drains back into this.

Jay Wright asked Mr. Kresel if his property is on the map.

Mr. Kresel up at the bench going over the site plan.

Willie Milsap told Mr. Kresel that he said he would not like to this happen for a number of reasons? Mr. Milsap said that so far you gave up one which is the water issue. Mr. Milsap asked if there is anything else.

Mr. Kresel said that the drainage is the main problem.

Willie Milsap asked Mr. Kresel how many other families like your self are in the area.

Mr. Kresel said that they are about the only ones. Mr. Kresel said that it's just all wet.

Harold Parker asked if there is more legal stuff in agricultural than residential under water and drainage issues.

Attorney Biege said that the zoning doesn't make a distinction on what you can or cannot do with water except for development standards which are included in the joint zoning ordinance. Attorney Biege said other than that, it's going to default to regular common law in Indiana Code.

Attorney Hedge said that he would agree, but he also wants to indicate that if you put forty or fifty houses, you would be creating more problems. Attorney Hedge said that he's not an engineer, but common sense would indicate the more building on the property the more likely you would have water runoff and more problems.

Rita Beaty Kelley asked if there were anymore remonstrators.

2. Patricia Kresel, 2988 S. US Highway 421. Ms. Kresel said that she believes that he did fill in a ditch by the old railroad. Ms. Kresel said that railroad property --- they did this in 07 and she's owned this property since 1999 and she never heard anything about this before -- never got any letters or nothing. Ms. Kresel said that she didn't even know that they owned the railroad property -- she never got a letter for her to get any of the railroad property; they just cut all the trees down and stopped her from going anywhere near that place. Ms Kresel said that big water thing there -- Eddie went down there, he's my brother-in-law, and he farms the ground. Ms. Kresel said that they had a bunch of ditching and stuff and it filled it all the way up to the bushes.

Ms. Kresel said that all of a sudden all of that water -- because there is a little ditch that comes around her and filled it all in and you can't even walk back there because they said they owned it. Ms. Kresel said that she was offered her railroad property and the lady next door had to talk to her to get her side on the ninety (90) acres. Ms. Kresel said that they own one hundred sixty nine (169) acres -- they own all of it. Ms. Kresel said that there are no neighbors -- Mark's on the other side and he's on the higher side. Ms. Kresel said that owning agricultural you can do what you want. They're not going to have any rules -- he's going to do what he wants. Ms. Kresel said that he built a big pond in the middle of the place. Ms. Kresel said they're farmers and they don't have any rules.

Attorney Hedge said that he doesn't have a copy of the deed, but his client tells me he bought that right-of-way from the railroad.

Jim Pressel asked attorney Hedge if there is a parcel number for that.

Douglas Bonin said yes -- one hundred feet in question.

Jim Pressel asked attorney Biege if were not sure that it is an easement, or it's a right-of-way.

Attorney Biege said that it's a parcel and that was represented to us at in the BZA. Attorney Biege said that he hasn't had an opportunity to confirm that. Attorney Biege said that they're working under the understanding it is an identified parcel with a number.

Attorney Hedge said that is his understanding, but he hasn't verified that.

Rita Beaty Kelley asked if this is something we should make a decision on by rezoning if we're not sure if it truly is an ownership parcel.

Attorney Biege said that we don't have any evidence that it is not an owner owned parcel. Attorney Biege said that Mr. Hendricks spoke to him today about this and it has been represented to him that there is a parcel number on the one hundred (100') foot strip. Attorney Biege said that abandoned railroads could be owned, they can also be owned where each side gets half; it depends if it was originally an easement, or originally owned by the railroad. Attorney Biege said that they're handled different depending on the origin. Attorney Biege said that it's not beyond the possibility that he owned and we have no information that says he does own it.

Attorney Hedge said that it is an area in the law that is very confusing and very unclear.

Attorney Biege said to say the least.

Patricia Kresel said that she owns that ninety (90) acres just to the east of the property and she also bought railroad through the railroad company, but in order to get to that parcel she had go over and ask the lady next to her if she could sign off the deed to get the parcel. Ms. Kresel said that she has the paperwork from the railroad and it had the US Railroad Vest in La Porte selling all of this railroad. Ms. Kresel said that she had to get her permission and it's deeded and she pays property taxes on it and that is just south of where they are at.

Glen Minich said that he thinks he can give some insight to that. Mr. Minich said as a farmer, it had been clear back at that time that company was coming around to landowners and offering to sell them parcels of the railroad that they had no title to the railroad properties; they owned the quit claim deeds to the owners. Mr. Minich said that it was no different from than any other legal consultant that could have done the same thing.

Attorney Biege said that this is an area for example CSX has a lot of (inaudible) railroad property and there is a court judgment from Indianapolis about that thick where they had to go through and identify which parts of that had been railroad owned and which were right-of-way. Attorney Biege said that he knows that there are three major cases where the courts had to go through and decipher if those were ownership or right-of-way and they're treated differently. Attorney Biege said that this is not in his opinion a forum – the Plan Commission doesn't have the authority nor do we have appropriate information to determine or question ownership. Attorney Biege said that if it's represented to the Plan Commission that he owns it, there is a parcel ID number that he owns it; if the neighbors don't think he does, or they want to challenge

his ownership, they are able to do that in the courts under a civil proceeding, but other than that we're guessing as to the nature of the ownership.

Glen Minich said that he's guessing at this point the only question is that the board has to determine whether some drainage issues are trying to be avoided if that is an issue with the change in the agricultural or residential zoning –

Attorney Biege said that he doesn't think that there is a distinction when we talk about drainage between residential and zoning. Attorney Biege said that if we build a subdivision with fifty (50) houses; that is going to kick in developmental standard requirements in a joint zoning ordinance and that is where the engineers look for storm water runoff and do their calculations and all that. Attorney Biege said that if we look at a smaller size lot for example where we have square footage coverage it's hypothetically an acre – you're going to put a big house on it you still have drainage requirements; Attorney Biege said you have to do the calculations for square footage coverage and that is where any drainage regulations would kick in and that's not really going to apply here.

Attorney Biege said any restrictions as to where you can put water or not put water, it doesn't matter if it's residential or agricultural; drainage comes into play in residential when we're talking about density of houses in connection with the size of the parcel. Attorney Biege said if they're going to apply for a subdivision and put fifty houses in there the code handles that by having all the engineering departments included.

Glen Minich asked if the owner did actually fill in a waterway that has caused a drainage problem for the adjoining landowners, where would that be addressed.

Attorney Biege said if it has anything to do with ditches it could be the drainage board. Attorney Biege said that there is a lot of law handling what you can do with water – where you can divert water. Attorney Biege said that the drainage board and ditch system kicks in from the agricultural standpoint. Attorney Biege said that in a way there is a little bit more monitoring when we're talking about farm ground.

Willie Milsap said in addition to that, are we dealing with an ownership issue also.

Attorney Biege said that he doesn't think so. Attorney Biege said that the commission can certainly instruct me to verify the ownership, but we have no evidence tonight that they do not own this parcel.

Willie Milsap said that he wants to make sure that we're not making an error in making a decision if it's the other way

Attorney Biege said after discussion he can verify if this is a separate parcel id.

Willie Milsap said that he thinks we should know before we make a decision.

Attorney Biege said that he's certainly after discussion tonight whether the commission asks him to or not, he's going to verify if this is a separate parcel id. Attorney Biege said that if he sees a problem with it he would not issue the findings of fact and bring it to the commission's attention next month. Attorney Biege said that you could make a decision subject to his verifying that.

Willie Milsap said that he likes to operate with all the cards on the table before we make a decision. Willie said why move forward and then you might have to go back.

Attorney Biege said that if you choose to table this he will have an answer for the commission next month.

Ron Hamilton, Sr. made a motion to table this to the next meeting so we can verify any concerns that were here as far as ownership. Willie seconded.

Voting Aye: Willie Milsap, Ron Hamilton, Sr., Glen Minich, Rita Beaty Kelley, Jay Wright and Harold Parker.

Voting Nye: Jim Pressel.

Motion carried 6-1.

Rita Beaty Kelley said that this matter will be table until next month on June 25, 2013 at 6:00 p.m.

Willie Milsap asked attorney Biege if he's going to do his research and get back to us before our meeting.

Attorney Biege said that he will.

Rita Beaty Kelley said next on the agenda would be new business for the flood plain ordinance.

Attorney Biege said that they received word that there needs to be a revision to our flood plain ordinance. Attorney Biege said that there is a little confusion for some on the flood plain ordinance. Attorney Biege said that the flood plain ordinance was a stand alone ordinance prior to the passage of the joint zoning ordinance. It has to be approved by DNR in order for it to qualify to ensure that the county residence have flood plain insurance and their eligible. When the joint zoning ordinance was passed it included Article 21 that deals with flood plains. Attorney Biege said that Article 21 did not comply with DNR standards, but it did not rescind that standing flood plain ordinance that already existed. Attorney Biege said frankly as they have been editing -- and it just came to his attention shortly after this was passed after he was appointed, he decided to just rescind Article 21 when we do all of our edits. Attorney Biege said now since DNR wants a new draft they have to have changes and we have to make sure that we comply with the dates and deadlines he'd rather not wait to avoid any confusion.

Attorney Biege said what he is going to recommend to the Plan Commission next month that we rescind just this Article in this ordinance and instead of recommend to the County Commission,

we just simply reference our flood plain ordinance because it's updated every few years by the DNR. Attorney Biege said that there is a lot more to amending a joint zoning ordinance as opposed to a flood plain ordinance. Attorney Biege said a flood plain ordinance we could simply present to the Commissioners and we don't have to jump through all the hoops. Attorney Biege said that is his thought unless anyone from the Plan Commission has an objection is that we bring it to the Plan Commission next month to rescind this specific Article, simply reference the flood plain ordinance, by then he should have approval by DNR and we send both things – the Plan Commissions recommendations in the change in this as well as the revised flood plain ordinance to the Commissioners at their following meeting.

Attorney Biege said that there is no requirement that the Plan Commission review flood plain ordinances and frankly he thinks it would create additional work that is not necessary.

Rita Beaty Kelley asked attorney Biege if we need a motion on that?

Attorney Biege said no. Attorney Biege said that he just wanted to let the Plan Commission know what he intended to do to make sure nobody had any objections.

Willie Milsap asked attorney Biege if the current flood plain ordinance that is in place is still there.

Attorney Biege said that it's fine, we just have an extra.

Attorney Biege said that for an additional update, they're on their last chapter on revisions between the City of La Porte and the City of Michigan City. Attorney Biege said that they're going to take a look at the recommendations from the planners from the county – Mitch Bishop gave him a culmination of the recommendations from himself, the City of Michigan City and La Porte to make sure those comply with changes that they made and then we should have a round of recommendations from there.

Attorney Biege said that they sent an inquiry and request for information from Enbridge and they received a response. Attorney Biege said that they're going to review that at the end of the week --- we have already reviewed and they're going to have a meeting at the end of the week to make sure the department heads have a consensus.

Willie Milsap said when you're saying 'we' who are you referring too?

Attorney Biege said himself, Annemarie, Tony Hendricks and Mr. Friedman.

Ron Hamilton, Sr. asked attorney Biege what they were going to talk about.

Attorney Biege said our natural resources article requires a review – it doesn't necessarily require an issuance of a building permit. Attorney Biege said that it requires a review by the Building Commission. Attorney Biege said that they thought it prudent that be reviewed not only with the Building Commissioner, but the County Surveyor because it also requires a review of natural resources endangered areas. Attorney Biege said that they're going to take a look at that

and make a decision as to whether we're going to make any request from Enbridge or additional information.

Ron Hamilton, Sr. asked if they have started.

Attorney Biege said to his knowledge no.

Willie Milsap asked if there is a window.

Attorney Biege said that he doesn't know anything specific. Attorney Biege said the last time he heard – a time line – they're talking about May or June. Attorney Biege said that was several months ago.

Willie Milsap said that if the review is not favorable for Enbridge, what is the next step?

Attorney Biege said that they will have to take a look at that. Attorney Biege said that he thinks that may be a discussion amongst counsel.

Rita Beaty Kelley asked if there is any other old business.

Rita Beaty Kelley asked if the map committee is working – do we know where that's at?

Attorney Biege said that they're handling the edits on the text, but he hasn't been asked to participate in that. Attorney Biege said he's not sure what is happening.

Rita Beaty Kelley asked if there was any other new business.

There being no further business, meeting adjourned at 6:40.

ANTHONY HENDRICKS, President



ANNEMARIE POLAN, Rec. Secretary