



LAPORTE COUNTY PLAN COMMISSION

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ANNEMARIE POLAN
Building Commissioner

LA PORTE COUNTY PLAN COMMISSION MINUTES November 27, 2012

MEMBERS PRESENT: RITA BEATY KELLY HAROLD PARKER
JIM PRESSEL MATT BERNACCHI
GLEN MINICH BARBARA HUSTON
GENE JONAS TONY HENDRICKS

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

PLEDGE OF ALLEGIANCE

Barbara Huston asked for approval of the agenda and asked if there were any additions or deletions.

Jim Pressel made a motion to accept the agenda as presented. Harold Parker seconded. All approved. Motion carried 8-0.

Barbara Huston asked for approval of the minutes of October 23, 2012.

Jim Pressel made a motion to accept the minutes as presented. Glen Minich seconded. All approved. Motion carried 8-0.

Barbara Huston said first on the agenda this evening:

- a) Kankakee Valley Rural Electric Membership Corp., and Todd Anson, by counsel request a re-zone on three separate parcels of land in Clinton Twp., La Porte County from R1B to M1 to allow for commercial and light industrial use which is representative of the current use of the property. This property is located at 11201 S. 1025 W., Wanatah, Clinton Twp., zoned R1B.

Legal work complete. Remonstrators present.

Attorney Brad Adamsky said that he's here on behalf of petitioners Kankakee Valley Rural Electric Membership Corporation and Todd Anson. Attorney Adamsky said that he's an attorney at Newby, Lewis, Kaminski & Jones, office 916 Lincolnway here in La Porte.

Attorney Adamsky said that they're here on a petition for a rezone of certain parcels for property in La Porte County, Indiana. Attorney Adamsky said that they were actually originally

scheduled before this board last month, but due to the scheduling and miscommunication on their end, they asked this board to table it. Attorney Adamsky said that after that meeting they were able to meet with a lot of the neighboring property owners and some of the remonstrators that are here tonight. Attorney Adamsky said that they heard their concerns and they attempted to address their concerns and that will be part of the presentation here tonight.

Attorney Adamsky said that they were hopeful that they would be able to resolve that prior to coming to the board. Attorney Adamsky said that they set up a meeting with the neighbors two weeks ago and for whatever reason there was no attendance at that meeting, but again I'm sure they're here tonight to speak their opinions.

Attorney Adamsky asked the board if they would prefer that he reads his petition.

Barbara Huston told attorney Adamsky to go ahead.

The undersigned, Kankakee Valley Rural Electric Membership Corp, and Todd Anson, by counsel. (the "Petitioners") hereby respectfully submit to the Plan Commission of La Porte County, Indiana, a request to re-zone certain parcels of property in La Porte County, Indiana. The Petitioners would show the Commission as follows:

1. They are the owners of the real estate in Clinton Township, La Porte County, more specifically described as follows: Attorney Adamsky said that he will leave out the legal.
2. The property is currently zoned R1B under the La Porte County Joint Zoning Ordinance.
3. The petitioners seek to have the property re-zoned to M1 to allow for commercial and light industrial use which is representative of the current use of the property.
4. The requested change in zoning will be consistent with the county land development plan, local community plans and any other applicable, adopted planning studies or reports.
5. The requested change in zoning will be compatible with the conditions and character of current structures and uses in the district or the character of the area under consideration has changed either through technological advances or developmental changes.
6. The requested change in zoning will provide for the most reasonable use for which the land is adapted and the proposed land use will not have an adverse effect on surrounding land.
7. The requested change in zoning will not be injurious or detrimental to the surrounding property values and will further the conservation of property values throughout the planning jurisdiction.
8. The requested change in zoning will promote for orderly and responsible community growth and development and will not adversely affect the community.

9. The topography, soil condition, and other physical features of the land involved are suitable for the proposed use and zoning change.

10. This petition is not "spot zoning" which will confer a special benefit on a relatively small tract without commensurate benefit to the community.

11. The proposed change will not disrupt or destroy any neighborhood plan.

12. The owners of the land that abuts the property proposed to be re-zoned are as follows:

Attorney Adamsky said that listed the adjoining property owners.

WHEREFORE, the proposed plan of re-zoning is submitted to the Plan Commission with the request that the same be approved and placed of record under the La Porte County Ordinances.

Attorney Adamsky said that it is important that he points out in part of his introduction, that they're able to hear some of the concerns of the neighbors and that's understandably so. Attorney Adamsky said that any time a petition for such as this, there are details that aren't heard before the reaction. Attorney Adamsky said that is one benefit that they had last week by being able to meet with the adjoining property owners and hear what their concerns were going to be.

Attorney Adamsky is up at the board going over the site plan.

Attorney Adamsky said that it is important to point out that the original petition is that it is a five acre parcel of property owned by Todd Anson. Attorney Adamsky said that the real concern is far as what the warehouse is for. Attorney Adamsky said that it has been warehouse storage for the last fifty (50) years, previously with Kankakee Valley REMC and they transferred it to Todd in 2006. Attorney Adamsky said that it is a non-conforming use and it's going to continue to be what it is.

Attorney Adamsky said that Todd owns two large warehouse buildings and he stores large vehicles in there for his business. Attorney Adamsky said that Todd is here to answer any specific questions if the board desires.

Attorney Adamsky said that their original petition also included this strip of land here as well as this large block here, largely because the driveway that goes through and Todd was under contract with Kankakee Valley to purchase those two parcels of property. Attorney Adamsky said that one of the concerns naturally from the neighbor and property owners is the ball parks from the community at large. They wanted to know what was going to happen to the ball parks. Attorney Adamsky said that last month they told them affirmatively that the lease was there and in place and Todd is going to honor that lease. Attorney Adamsky said that we can go further with that now and said that if the board desires that doesn't even need to be part of the re-zoning request. Attorney Adamsky said that in fact Kankakee is looking at potentially selling that to Clinton Township – government entity down there to make sure that those ball parks stay in effect.

Attorney Adamsky said that they're asking the board to focus their petition on the five acre parcel which is again Todd Anson's property and a nonconforming use; it is already being used as warehouse and storage and this is what he would like to continue to use as. Attorney Adamsky said that he doesn't know if the board has had an opportunity to visit the property, but it's fully enclosed by fence and there is a tree buffer around it; it's not intrusive or invasive in the neighborhood, and again it's been that use the last six years.

Attorney Adamsky said as part of the new zoning code under section 30.08, it says that the applicant in any re-zoning application may make written conditions and/or (inaudible) regarding the characteristics of the proposed future use of where the resolution of outstanding issues and existence on the subject property and then it cites Indiana Code. Attorney Adamsky said that written commitments may also be initiated by the Plan Commission or the legislative body.

Attorney Adamsky said that they understand the concerns of the neighbors. Attorney Adamsky said that if you just simply re-zone this as M1 Light Industry, what's to happen after Todd sells the property in twenty years. Attorney Adamsky asked if it is going to become one of the other uses that are available under the ordinance. Attorney Adamsky said that is where these written commitments can come into play. Attorney Adamsky said that right now the property is being used light industry, the warehouse storage, and some very minor fabrication or custom fabrication in one on the buildings. Attorney Adamsky said that is the only use that they're asking this to be re-zoned for. Attorney Adamsky said that those commitments can be written in; they can be recorded, and by statute, this would be enforceable against Todd and any future owner of the property. Attorney Adamsky said that he thinks that will address a lot of the concerns that we're going to hear from the neighbors tonight and they're agreeable to it.

Attorney Adamsky said that you may be asking why is Todd requesting a rezone instead of just moving along with his nonconforming use as is; it is because he doesn't want to have to go to the board every time he wants to expand a building, or maybe he wants to build a new storage building out there and that is self contained in five acres. Attorney Adamsky said as is, he would lose his nonconforming use and he would have to go before the Board of Zoning Appeals to get a variance or request a variance to do so. Attorney Adamsky said that uncertainty is not comfortable with Todd; he bought this as a commercial property and again, it has always been a commercial property.

Attorney Adamsky said that he knows that there are going to be concerns with the residential neighborhood surrounding; whether that's in non-conformance with the development of the property, again this property has existed there before many of those homes were even built. Attorney Adamsky said as far as the nature of spot zoning to bring to the board's attorney's attention and the board's attention, Houser vs. Board of Commissioners of De Kalb, a Indiana Supreme Court case that addresses spot zoning addressing concerns such as this. Attorney Adamsky said that in a relatively small acre, or ten acre parcel, it says that consistency is not absolutely required if the tract differs in character so as to deserve different treatment. Attorney Adamsky said that their position is that this property differs in character.

Attorney Adamsky said what they're asking the board to do is examine what probably should have already been zoned – at least that five (5) acres as commercial. Attorney Adamsky said that he understands their petition was a lot more expansive than that to begin with and they're willing to cut it down as of concessions as commitments to the neighbors that surrounding them and also enter into written commitments if that's all this is ever going to be.

Barbara Huston asked if there are neighbors here that wish to remonstrate against this.

Kathy Eriks would like to submit a signed petition.

Tony Hendricks said he has a question for our attorney. Tony told attorney Biege that his firm that he works for is doing, or had did the boundaries for this five (5) acre piece in 96 and they're presently working on a survey for the north piece of this property and he doesn't have any interest in anyway, but if you would like it would be fine with him if he recuse himself from any discussion or voting on this.

Attorney Biege asked Tony if that parcel they worked on has been withdrawn from the petition.

Tony Hendricks said that the parcel they're presently working on has been withdrawn from the petition. Tony said the parcel that he has in this petition – the five (5) acres he believes they did the original survey for him in 96.

Attorney Biege asked if that is adjacent or abutting --- attorney Biege said that the personal issue tonight is that adjacent or abutting to the parcel that you're working on.

Tony Hendricks stated yes.

Attorney Biege asked Tony if it could have effect on your project, or what you're doing.

Tony Hendricks said that in their contract they have no affect; they get aid no matter what happens tonight.

Attorney Biege told Tony that there could be arguably that there could be a connection; it's a project that you're currently working on and the zoning on this parcel could affect the parcel that you're working on. Attorney Biege told Tony that it would be appropriate to recues.

Barbara Houston asked if anyone else had any questions before we go to the remonstrators.

REMONSTRATORS:

Evenell Hornsby said that she is a neighbor.

Barbara Huston asked Ms. Hornsby to state her name and address for the record.

Evenell Hornsby, 11122 S. 1025 West, Wanatah. Ms. Hornsby said that one of the concerns that the neighbors has is whether this stays. Ms. Hornsby said that this has been there for over fifty

years because she has lived there for fifty six years and it was there when they built their home. Ms. Hornsby said that she thinks that there were twelve of them that got notices about this meeting, so he didn't consider all the people that live in this neighborhood important enough. Ms. Hornsby said that if you take from 1100 to Highway 30 when you get to the town limits – that's 1025 west, that is the road that it sits on and there are twenty five homes there. Ms. Hornsby said that on Highway 421 which butts his property in the back, there are five homes. Ms. Hornsby said that within three quarters of a mile you are at the city limits of Wanatah. Ms. Hornsby said that there are two subdivisions down there and one of them has sixty three homes and the other one has eighty eight homes; there is Scranner Drive, which has eighteen homes.

Ms. Hornsby said that we're talking about one-hundred ninety seven residences that would be affected if anything undesirable came in there zoned light industrial. Ms. Hornsby said that light industrial is a lot of things. Ms. Hornsby said that what they were told one hundred and twenty some things are considered light industrial. Ms. Hornsby said that they're concerned about what is going to happen. Ms. Hornsby said fine, he's going to keep it this way – none of us know what tomorrow is going to bring. Ms. Hornsby said he could sell it, he could lose the business, he could die, we all could. Ms. Hornsby said that the next guy that comes in could put anything he wants to once it's zoned. Ms. Hornsby said that this sits in the middle of all these one-hundred ninety seven homes.

Ms. Hornsby said that if he wants to put up a building in there give Mr. Anson a variance. Ms. Hornsby said that this doesn't need to be rezoned.

Kathy Eriks said that she is a neighbor too and she concurs with her in that because it is in the middle of a residential neighborhood said that special permission by way of a variance needs to be done to keep it conforming to the neighborhood. Ms. Eriks said that she finds it hard to believe that the eight litmus test that are set forth in the comprehensive plan can be met; the two that jump out are spot zoning, which is preferential treatment for one individual and the other is the soil conditions. Mr. Eriks said that if you don't know the area, you have to have a mounds system down there. Ms. Eriks said that you can't even have a conventional septic system; how do you take that piece of land and put it to industrial uses and that's the case.

Bob Horst said that he has lived there for fifty some years. Mr. Horst said that when he originally bought the land it was a twenty acre field and they had two different incidences where this board was approached for re-zoning or a variance, both of which were denied. Mr. Horst was talking about the ball parks remaining. Mr. Horst said that he was on the town board and they didn't have any money. Mr. Horst also asked the board to consider the drainage problem and that he is not in favor of this petition.

Ed Kresel said that he is a representative of the Clinton Twp. Advisory Board and he is here to speak as to the ball fields that are out there. Mr. Kresel said that back in approximately February of this year Todd Anson approached him and asked him if we were interested in keeping those ball fields as they are for the kids. Mr. Kresel said that he told Mr. Anson that they would be interested in that and he took that back to the board and Dan, who is the trustee, mentioned to him that they want to sell these ball fields and asked Dan if they could do it. Mr. Kresel said that they looked at their books and what they could do and told Todd that they would like to purchase

that. Mr. Kresel said that Todd told him if they want it they could have it. Mr. Kresel said that they continued on the track of looking into purchasing this land. Mr. Kresel said that as of this morning they spoke to Mr. McCain, the Township attorney and we're looking into how we can structure and how we can do the purchase of this property.

Mr. Kresel said that in talking with REMC they said that they would be willing to sell it to them and Todd had indicated to us that he didn't have any use for the ball fields; he needed to have the property that he owns rezoned. Mr. Kresel said at this point they're looking into purchasing those ball diamonds; everything except for the five acres that are in that fenced in area. Mr. Kresel said so to dispel a lot of this concern about him turning that into manufacturing, or whatever has been talked out there, they've been trying for nearly a year to work something out.

Mr. Kresel said that the gentleman talking prior to him saying that the township has no money; since the riverboat has been put in place, there has been money coming from the riverboat that has funded a lot of this. Mr. Kresel said that they're working with REMC, Todd and everybody involved, including the attorney and the legal process as to how we can purchase that.

Dennis Wyse said that he is the CEO of Kankakee Valley REMC. Mr. Wyse said for those of you who don't know who we are; we provide electric service to them in rural areas and seven counties. Mr. Wyse said that this area that we're talking about that Todd has purchased from them was where they had all their materials stored and trucks stored. Mr. Wyse said that at all times in the day and night and on holidays when storms came running in, they have trucks rolling in and out of there. The gentleman that spoke here said that we put in some kind of another entrance because we were required to is simply not the case. Mr. Wyse said they put it in because the road that they were going out was going by all these residential homes. Mr. Wyse said by putting this lane out to the north they were able to get their trucks out and on Highway 421 with the least disturbance possible.

Mr. Wyse said that there is some talk about the ball fields and it was never Kankakee Valley's intent to let those ball fields go. Mr. Wyse said that they were either going to maintain ownership of them, or Todd was going to buy some ground and donate that land to the township. Mr. Wyse said since they had some issues --- wish we could have talked to some of these people on Tuesday night when we had a meeting scheduled; nobody showed up and we could have maybe cleared up some of this. Mr. Wyse said truly they just want to help the community out; we are cooperative and committed to the community as one of our principals, we're not for profit and we're not trying to sell land to make a bunch of money on it. Mr. Wyse said that they're just trying to get this piece of ground -- the five acres to be zoned light industrial, not to affect any of the other properties in the area.

Harold Parker asked Mr. Wyse if it doesn't get rezoned to the ball field ----

Mr. Wyse said that as long as he is CEO and he has the board he has, the ball fields will always be ball fields.

Barbara Houston asked Mr. Parker if he has anything else.

Barbara Houston asked if anyone from the board has questions from this board.

Eva Grace Grzelak said her property is directly on 1025 West across from this property in question. Ms. Grzelak said that she has lived there fifty years. Ms. Grzelak said that this is part of the Yellow Stone Historic Trail; it's a bike trail that comes from Valparaiso and it goes past her house. Ms. Grzelak said that 1025 West is used by all the people in Jaymar Acres and it is also used for jogging and hiking. Ms. Grzelak said that they see a lot of bikes that come from Valparaiso. Ms. Grzelak said that she would not like to see ---- there is an entrance to this property from 1025 West and she is glad that it hasn't been used. If this should be used, it would cause a lot of trouble for all the people that use this for recreational purposes.

Ms. Grzelak said that it is her road; it's her home, and if it were to be rezoned they would lose. Ms. Grzelak said that if it were to be rezoned you can't guarantee that if he zones it for what he wants and then he sells it; we can't do anything about it if it is rezoned.

Todd Anson said that he never thought it would come to this. Mr. Anson said that it all started because he wanted to have a building on the property. Mr. Anson said that he was under the impression it was zoned light industrial when he bought it. Mr. Anson said that is the main reason he bought it and all he wanted to do was add a building. Mr. Anson said that REMC had a mound system put in that will accommodate seventy five people. Mr. Anson said that he has five guys that work in there part time. Mr. Anson said that they are Nationwide and they work all over the country. Mr. Anson said that this is mainly a storage facility for them.

Mr. Anson said that they make extra money by storing machinery for other places; they stored machinery for New York Blower. Mr. Anson said that is what this building is going to be used for. Mr. Anson said that when this whole thing started he met with Ray Hamilton and he's the one who told me that it is zoned residential. Mr. Anson said that Mr. Hamilton told him that he hasn't had one complaint on that property since they were there for six years. Mr. Anson said the front gate on 1025 has a lock on it and it hasn't been used since he's been there. Mr. Anson said that the only person that comes through it is the Nipsco meter reader. Mr. Anson said that he thinks the neighbors can say that he's never used that road.

Bob Horst said that he just wants to respond to some things that were said. He said that he believes he said it was a rumor that the second road was required to be put in by REMC and he did say he didn't know that to be factual. Mr. Horst said that it was rumored throughout the community. Mr. Horst stated if he's wrong he will stand corrected. Mr. Horst said that as far as raising the money, when he was on the Advisory Board for all those years, Mr. McCain was their attorney and they tried to even raise a couple thousand dollars beyond what their budget allowed for to subsidize their agreement with the fire departments and it was impossible. Mr. Horst said that you don't have the money to do it unless it's a government grant.

Mr. Horst said that he doesn't question Dan; he doesn't see him here and he thought he'd be here as a township trustee, but he didn't get a chance to talk to him to see how he stands on this; he clearly questions where this money is coming from unless they have some way of getting money that he's not aware of. Mr. Horst said that in his twelve to sixteen years on the board they barely could get enough money to pay the fire departments.

Barbara Houston told Mr. Horst that maybe he can meet with Mr. Kresel in the back after the meeting and maybe he can address your concerns.

Mr. Horst said that he really doesn't care to.

Barbara Houston asked if there is anyone else.

Barbara Houston said that public comment is closed.

Attorney Adamsky said that he believes that there is a petition concerning the ball parks and he thinks that has been amply addressed and ball parks really aren't even a part of this project anymore. Attorney Adamsky said that the commitments and the concerns we've heard are boards change – rules change, what's true today is not true a week from now. Attorney Adamsky said that is something that can actually be improved upon with the change in zoning with the commitments tying the property to its current use. Attorney Adamsky said warehouse storage, light/custom fabrication. The concern is what may change; attorney Adamsky said that he doesn't hear any concerns with what currently exists and that's what we're asking to set in stone what currently exists.

Barbara Huston asked if the board has any questions.

Jim Pressel asked if there is a current variance on this property.

Attorney Adamsky stated no. Attorney Adamsky said that as far as they can tell looking back through the records, they couldn't find any variance. Attorney Adamsky said that they know the property has been used for storage for over fifty years previously by Kankakee Valley. Attorney Adamsky said that they built some of those warehouses in the 80's; they did see some building permits that were addressed there when the buildings were constructed, but no variance. Attorney Adamsky said that it is a nonconforming use.

Rita Beaty Kelly asked attorney Adamsky if he knew what the zoning was prior to R1.

Attorney Adamsky said that it was residential.

Rita Beaty Kelly asked if the current access that they're using right now is off 1100 South.

Attorney Adamsky stated yes.

Rita Beaty Kelly asked if there are any intentions of utilizing the 1025.

Attorney Adamsky stated no. Attorney Adamsky said that there is actually a gate there.

Harold Parker asked if that was an easement.

Attorney Adamsky said that this would be an easement.

Harold Parker asked if it was a stated easement.

Attorney Adamsky said that it is a recorded easement.

Glen Minich asked if that would impede anybody that's visiting the ball diamonds. Glen asked if that easement is used for their access.

Attorney Adamsky said that easement is actually used for their parking.

Rita Beaty Kelly said that the variance concerns ...she understands there are concerns, but basically if he only wants to construct another building there.

Attorney Adamsky said that is what he wants to do right now. Attorney Adamsky said that this is his property and it's the idea that it's warehouse and storage.

Rita Beaty Kelly said that basically right now he could come and get a variance to build an additional building, and if he wants to do another one two years down the road he would still just have to come and get a variance.

Attorney Adamsky said that is correct, but then there is the concern of what happens if the variance passes, does it pass to his family, wife or children. Attorney Adamsky said that they're looking to having something a little more stable than a variance.

Barbara Huston asked if there were any more questions.

Barbara Huston said that she has a question. Barbara asked if all this property is owned by REMC.

Attorney Adamsky stated yes.

Barbara Huston asked if Mr. Anson rents this property from REMC, or is he going to buy it.

Attorney Adamsky said that it is on a contract to purchase.

Barbara Huston asked if it was under contract by Mr. Anson to purchase.

Attorney Adamsky stated yes.

Barbara Huston asked where it is they want to build the building.

Attorney Adamsky said that it would be on the five (5) acres.

Barbara Huston asked Mr. Anson who told him that this property was zoned light industrial when he bought it.

Mr. Anson said Meridian Title Company. Mr. Anson said that he has been getting commercial tax bills and he didn't have any reason to doubt their word. Mr. Anson said that he even called the county office before he bought this property and they told him that it was zoned industrial reserve.

Barbara Huston asked who told him that.

Mr. Anson said whoever answered the phone. Mr. Anson said that he didn't personally go to the office and check on it, he just called to make sure what it was before he put an offer on the property.

Barbara Huston asked how long ago.

Mr. Anson said six years ago.

Attorney Adamsky said that Mr. Anson said that the tax cards have always been commercial. Attorney Adamsky said that he has a tax card from 2007 showing the property clearly addresses commercial; attorney Adamsky said that doesn't matter for zoning purposes.

Rita Beaty Kelly said just to be clear on that where it says commercial, that's actually probably not the zoning label.

Attorney Adamsky said that he didn't want to imply that meant the zoning.

Barbara Huston asked the board's pleasure.

Harold Parker said that we have a problem here. Mr. Parker said that if we rezone it and leave the door open, other things can move in. Mr. Parker said that if it is a variance he would have to get a variance for every building.

Glen Minich said that he doesn't see any clear answer here either because we don't want to take away the use that he bought it with. Glen said that we could give him a permit variance. Glen said that he also has concerns if we do that and that easement goes through and they're given public access to all those people going to the ball diamonds, that's worse than going in and out on the road.

Mr. Anson said that it has been that way for six years. He's been going in and out of there for six years.

Attorney Adamsky said that easement is going to be there regardless.

Jim Pressel said that he has a concern that this could be a spot zoning situation. Jim asked attorney Biege 30.08 conditions and written commitments, how binding is that.

Attorney Biege said that you can impose a condition on a zoning change and that can be recorded and run with the land. Attorney Biege said that commitment is not necessarily to the individual themselves.

Attorney Adamsky said that if he could read some language from the statute that actually incorporates that. Attorney Adamsky said that it says the owner of a parcel or property may be required or allowed to make a commitment to the Plan Commission as applicable concerning user development of that parcel. Attorney Adamsky said that the commitment must be in writing; a commitment shall be recorded in the office of the county recorder, after a commitment is recorded, it is binding on the subsequent owner or any other person who acquired an interest in the parcel.

Attorney Adamsky said that any written commitments this board would put on the property; attorney Adamsky said also the same statute – except for a commitment that expires or automatically terminates; so unless the board terminates or puts an expiration date, a commitment may be modified or terminated only by a decision of the Plan Commission to which the commitment was made. Attorney Adamsky said that a decision must be made at a public hearing after notice of the hearing has been provided under the rules of the Plan Commission as this case may be.

Attorney Adamsky said that if you institute written commitments against the property, it's not just binding on Todd, it's binding on any successor/owner's property to get those commitments terminated or changed, you'd have to be back before the Plan Commission and the neighbors would be notified of that as well.

Jim Pressel said that if it was written up not to change anything that it currently is, then that is basically recorded with the deed and any purchaser passed down to another individual, they could not do anything different from the current use that it is being used at.

Attorney Adamsky said that is correct and that would follow with the recording; anybody doing title search, anybody purchasing the property would find that recording similar to commitments you'd have in other subdivisions, covenants and restrictions that would tie that property and bind that property.

Jim Pressel asked attorney Biege if that would be considered spot zoning if we're to do something like that.

Attorney Biege said that there are different definitions and interpretations of spot zoning. Attorney Biege said yes, we're changing zoning in one area when the other area is surrounded by other zoning. Attorney Biege said that if you're going to consider any limitations or conditions, he would remind the commission to be specific as to what they are; attorney Biege said that we're talking about the current use, which would essentially be warehousing and some sheet metal work, light industrial encompasses a lot more than that. Attorney Biege said that if we're going to change to light industrial and we're going to limit, then whatever language we would have in the motion we would need to make sure we're clear as what those limitations are.

Jim Pressel said that his thought was to keep it as the residential, but to let him do a written commitment or condition that we could attach to the permit.

Rita Beaty Kelly said that is variance.

Attorney Biege said that is a zoning variance and he can go and ask for zoning variance and build his building and he can have conditions and commitments on variances also. Attorney Biege said that we're talking about a zoning change with a commitment on a change, and you're going to limit that zoning change to only two specific things. Attorney Biege said that whatever the commission does tonight, if you're going to impose a condition or commitment, it looks dangerously like a zoning variance by the time you're done.

Attorney Adamsky said that his response is again, the variance will be very specific to that one item that he was doing – whatever the expanded use was, whereas the change in zoning with written commitments is restricted to say warehouse/storage custom fabrication in the building that already exists; attorney Adamsky said that would allow him to continue those uses and if you wish to add another warehouse/storage within the five acre parcel we could do so; if he wishes to expand one of the buildings to increase his storage space he could do so without coming back to the Board of Zoning Appeals.

Attorney Biege said that he's grandfathered in where he's at; so, if the building is destroyed or wrecked for any reason, or if he wants to add on or change the building itself, he's subject to the grandfather clause restrictions and provisions. Wherefore, if there is a zoning change and he continues under this zoning, he can rebuild and he's not going to have those restrictions. Attorney Biege said that he thinks that is the key difference between the two. Attorney Biege said that doesn't mean he can't rebuild, but he would have to go back to the BZA to rebuild what exists, where if we change the zoning he can do so as a matter of right.

Matt Bernacchi said that it is confusing because it's just out of place and he can't believe it wasn't rezoned years ago – at least to the 80's when they went to get the variance for, whatever it took to get the buildings built in the first place. Matt said that he's surprised that they didn't have any remonstrators back then. Matt said that leaving it the way it is now zoned, he can kind of relate, because if you look down Fox Street there is a very large greenhouse in the middle of residential, but that was over one-hundred years ago, but that is also zoned properly. Matt said that he doesn't know if there are going to be remonstrators if additional buildings are built, but it is kind of an odd ball situation which everyone is kind of repeating here. Matt said that he hates to open the door --- and he's not saying that you would put things there that don't belong there, but it is kind of opening the door to a situation that could upset a lot of people. Matt said that he doesn't know how it even got here.

Gene Jonas said that you have several different things going on and again, the spot zoning nonconforming use issues. Gene said that the current conditions around the area are all residential homes primarily surrounding the property and there is a little bit of agricultural activity north. Gene said that is also could be a negative effect on the property values by changing. Gene said that as it's used today Mr. Anson might be doing a fine job and everything might be well received, but by changing to an M1, the manufacturing end of it creates a lot more

issues that it could be sold and all kinds of different things could be going on in there; chemical storage and so forth is allowed under M1 with a special exception. Gene said that even though the use he is intending it for maybe just fine, but he thinks it just opens the door for too many problems later down the road and his feelings are this should stay R1B.

Attorney Adamsky said respectfully they understand that, but that is where the written commitments support can tie that into (inaudible).

Rita Beaty Kelly said that she kind of goes back on what pretty much everybody else is saying; that it is very difficult because it has been there for so many years and she's sorry that he wasn't well informed on the zoning when he did purchase the property, but he's obviously conformed to the neighborhood the last six years and made everybody happy and been a good neighbor and she personally feels with him coming to get a variance to build a separate building would make the neighborhood a little bit happier; keep everyone on the same page and she thinks if you're going to try to be a good neighbor you try to keep things happy.

Attorney Adamsky said that Mr. Anson has made every attempt to keep the neighbors happy to the point with opening his doors and the frustration there of having that two weeks ago and literally doing it across the street and having no one show up. Attorney Adamsky said that you can understand our frustration with that.

Mitch Bishop said that in his opinion it's actually a spot zone. Mitch said that spot zoning is basically illegal and you can't legally do it Indiana, however you are suppose to convey a public benefit for the benefit of the petition. Mitch said that he has the old zoning maps from 1964 and it's true that is has been R2 zoning since 1964, except for Mr. Anson's use. Mitch said that the concern down the road if you do tie some commitments they do have to be really specific and it really limits Mr. Anson. Mitch said that if Mr. Anson was to sell it, he's going to have to sell it to one particular user that would use it for warehousing. Mitch said that in his opinion if he wants to expand to the business he should actually look for another site other than a residential area which would allow him to expand his business.

Mitch Bishop said that there is an eight different criteria and they are suppose to meet that decision criteria per the zoning ordinance. The current conditions and surrounding area; the use reasonable; Mitch said that there for some reason it was never zoned correctly. Mitch said that if a public utility owned it looking back at the old ordinance in the 60's, public utilities were allowed in residential districts.

Annemarie Polan, Building Commissioner said that in the past the BZA has had some of our uses like this and if he did go before the Board of Zoning it's possible – no guarantees, that he could get commitments where he could put more than one building and maybe he could get everything addressed there if he knows exactly how many he wants and where they are going to go. Annemarie said that they've had uses like this in the past.

Barbara Huston said that if there are no more questions, the board will entertain a motion.

Gene Jonas made a motion that the request to rezone property from R1B to M1 not be allowed to go through with the change.

Barbara Huston said that we've a motion on the floor to deny the request that has come before the board. Barbara Huston asked if she had a second.

Rita Beaty seconded.

Barbara Huston said that we have a second. Barbara asked for a roll call.

Darlene Pavey:

Harold Parker agree

Glen Minich said that he also agrees. Glen said that he thinks that he can do it with a nonconforming use and allow him to come before the BZA for a variance.

Jim Pressel agree

Matt Bernacchi aye

Barbara Huston aye

Rita Beaty Kelly aye

Gene Jonas aye

All approved. Motion carried 8-0.

Barbara Huston said under b.

- (b) To amend Section 14.09 (a) Adult Entertainment Business, amendment to Table 07.02 "Schedule of Permitted Uses of Section 07.02". and the Appendix: Uses by Zoning District of the Joint Zoning Ordinance of La Porte County.

Attorney Biege said to make sure the public is aware of what we're doing tonight. Attorney Biege said that two weeks ago or so we had a joint public session hearing where we had both the Plan Commission and the County Commissioners hear evidence, presentation and remonstrances concerning two things the county are doing. Attorney Biege said that the one thing has to do with licensing in Sexually Orientated Businesses. Attorney Biege said that licensing ordinance went before the County Commissioners last week, which we believed passed, but if not, it will be passed the rest of the way next week.

Attorney Biege said that what we're going to talk about tonight is only article 14.09 that has to do with zoning is distance and definitions of these businesses. Attorney Biege said that the reason we're doing this is because it's been argued that our previous article was unconstitutional

and would not have held up in the courts later on, so we're making adjustments in an effort to make this constitutional. Attorney Biege said that this issue tonight is zoning. Attorney Biege said that he knows that there has been a lot of public interest; we heard a lot of public comment before and it's up to the discretion to the commission as to whether they have to hear anymore public comment, but that was the purpose of the last meeting.

What we've done on this ordinance tonight and the Plan Commission members have received it, we've tightened up many of the definitions of these businesses; we've include exclusions in some types of these businesses and made some adjustments to the tables to make sure that everything is consistent. Attorney Biege said that he will advise the commission that they did make one change as a result our public comments and it was a good point in our public hearing. Attorney Biege said that in Section 5 we changed the language under a. We were only including the language residential; attorney Biege said that we've added residential district or resident use, which includes a residential use included in another area such as agricultural.

Attorney Biege said that if the Plan Commission approves this suggested amendment, then we would execute a resolution and then this would go to the County Commissioners where the County Commissioners could approve, deny or make further changes.

Barbara Huston said that she will open this up for comments from the board.

Tony Hendricks said that he agrees with the residential use or residential zoning. Tony said that reading through some of these court cases. Tony said that one case did make a concern about opening up the residential use with a thousand foot limit he believes we have in this ordinance. Tony said that he believes a court case said something about that would stop any possible place for a person to buy a piece of ground in that area. Tony wanted to know if that would be places that we wouldn't get in trouble for.

Attorney Biege said that is a good point. Attorney Biege said that they had some discussion and many people asked about expanding this five hundred feet area to one-thousand feet or fifteen hundred feet from a residential area or use. Attorney Biege said that we've already restricted these types of businesses to B2, with a special exception, so when you start to draw circles as to where the businesses can be, we're limiting the areas where these businesses can be almost to the point that you can't have them and then we end up to be unconstitutional again because you cannot exclude these businesses. Attorney Biege said that there is discussion about one-thousand or fifteen hundred, but that is why he thinks we came back to five hundred feet because the thousand foot limitation left too few options to these types of businesses where we can effectively say we're not trying to exclude you from La Porte County.

Mitch Bishop said that if we use residential use at a thousand feet it gets rid of everything because there is a lot of residential uses that are in business districts, agricultural districts, because of that he guesses it's a lot cleaner if you actually use a district. Mitch said that if you use uses and we expand those a thousand feet, we're not going to have any available sites. Mitch Bishop said that if you get rid of residential uses – let's say one thousand feet or twelve twelve hundred feet of residential district from the particular SOB, then there are multiple sites if you use the word districts.

Attorney Biege said that it's got a sliding scale – distance or definition. Attorney Biege said in adding use residential use we greatly expand the areas that are protected by saying residential use in agricultural zoning. Attorney Biege said while in doing that they decided to decrease the distance – from the one thousand to five hundred feet and stay with the five hundred feet because they limited many many more areas by expanding language to use.

Tony Hendricks said that if you did one thousand feet potentially you could still have a use next to a residential use. Tony Hendricks said the five hundred feet gives them a buffer no matter what.

Attorney Biege said that if we say residential use and one thousand feet effectively almost eliminates where the business is going to go.

Tony Hendricks said that if it says one thousand feet from a residential zone it could potentially open up an establishment next to a residential use.

Attorney Biege said that if we're going to defeat the purpose if we limited so much to where these businesses don't have a place to go, then we're going to end up right back where we started and we have an unconstitutional statute.

Barbara Huston asked if there were any other questions of the board.

Barbara Huston said that she would entertain a motion.

Jim Pressel asked attorney Biege if we make a motion tonight is there still time for the Commissioners if there needs to be any changes.

Attorney Biege said absolutely. Attorney Biege said that this is a recommendation of the Plan Commission. Attorney Biege said that the Commissioners would have the authority to make changes, deny, or approve what the Plan Commission does tonight.

Jim Pressel made a motion to accept Section 14.09 as presented.

Matt Bernacchi seconded.

All approved. Motion carried 8-0.

Attorney Biege said that because of the change in 14.09, we need to accept the changes to 07.02 as well as the appendix as presented to the Plan Commission.

Harold Parker said that he will make a motion to do what attorney Biege said.

Board members speaking amongst themselves.

Barbara Huston asked attorney Biege if there is anything else he wants to add on this.

Attorney Biege stated not on the SOB.

Barbara Huston asked if there is any old business.

Barbara Huston asked if there was any new business.

Barbara Huston told remonstrators in the audience that they had public hearing on the SOB club last week.

Attorney Biege said that there has been a public hearing and the commission has the choice to hear more, but we've already had the public hearing on that issue. Attorney Biege said keep in mind this is going to go in front of the County Commissioners again. Attorney Biege said that the Plan Commission's recommendation is still going to be heard by the County Commissioners one more time before anything is passed.

Barbara Huston told the remonstrators that they always allow public comment at the Commissioner's meeting and if it is on the agenda they can come in.

Attorney Biege said that we've changed three words, but if you have questions on that he'll stay after the meeting and fill you in the best he can.

Barbara Huston asked for new business.

Attorney Biege said that just to tie in with what Annemarie said. Attorney Biege said that he's been in communication with Enbridge Pipe Line and he knows that we've had some folks here before. Attorney Biege said that Enbridge has supplied him with a legal memorandum concerning federal preemption with La Porte County rules and he's in the midst of reviewing the memorandum. Attorney Biege said that they may have a threshold legal issue as to what authority La Porte County may or may not have. Attorney Biege said that he also has been in contact with their attorney and he's been ensured that there will be no construction through the end of 2012 and most likely February 2013 for those who are concerned about Enbridge beginning construction without any notice to La Porte County. Attorney Biege said that based upon what's been represented to him, it doesn't look like will have any action through the end of the year and he will have an opinion to the Plan Commission prior to that time as to what action, if any, the Plan Commission has authority or jurisdiction to take.

Tony Hendricks said as county surveyor and the technological advisor of the drainage board, Enbridge came before the Drainage Board, the Drainage Board did grant them permission to cross in the easements they need to cross or jurisdictional easement if the Drainage Board, but they did not relieve them of any permitting whether it's County, State, or Federal permitting. Tony said that they have done a lot of professional consulting work which protects the wetlands, streams, creeks and trains crossing. Tony said that those are available in the county surveyor's office.

There being no further business this evening, meeting adjourned at 7:35 p.m.

BARBARA HUSTON, President

ANNEMARIE POLAN, Rec. Secretary