



# LAPORTE COUNTY PLAN COMMISSION

Government Complex 5th Level  
809 State Street, Suite 503 A  
LaPorte, Indiana 46350-3391  
(219) 326-6808 Ext. 2591, 2563, & 2221  
Fax: (219) 362-5561

**ANNEMARIE POLAN**  
Building Commissioner

## LA PORTE COUNTY PLAN COMMISSION MINUTES August 23, 2016

**MEMBERS PRESENT:** Anthony Hendricks    Jim Pressel  
Glen Minich                                    Rita Beaty Kelly  
Mike Bohacek                                  Matthew Bernacchi

**OTHERS PRESENT:** Annemarie Polan, Recording Secretary, Douglas Biege, Attorney, Cynthia Kreske, Secretary.

### **PLEDGE OF ALLEGIANCE**

### **ROLL CALL**

Anthony Hendricks asked Cindy Kreske for roll call.

### **APPROVAL OF AGENDA**

Anthony Hendricks asked for a motion to approve the agenda as presented. Mike Bohacek made a motion to approve as presented. Matt Bernacchi seconded. All approved. Motion carried 6-0.

### **APPROVAL OF MINUTES**

Anthony Hendricks asked for a motion to approve the meeting minutes as presented. Mike Bohacek made a motion to approve as presented. Jim Pressel seconded. Motion carried 6-0.

Mike Bohacek said that we had a petitioner for re-zone that came in earlier and he asked that we withdraw his petition.

Mike Bohacek made a motion to approve as amended. Rita Beaty Kelly seconded.

All approved. Motion carried 6-0.

Petition No. 1 Willow Creek Crossing, LLC, by counsel and Omar Chaudhry (the "Applicants") is dismissed.

Anthony Hendricks asked for approval of the minutes.

Rita Beaty Kelly made a motion to approve the minutes. Mike Bohacek seconded.

Anthony Hendricks asked if there are any changes, additions, or deletions.

All approved. Motion carried 6-0.

Anthony Hendricks said that the only thing we have tonight on the agenda is changes on the JZO.

Attorney Biege said that he brought this to the County Commissioners and they wanted to send it back to the Plan Commission to examine issues surrounding the ponds. Attorney Biege said that is the only issue they mentioned to his knowledge. Attorney Biege said that they wanted the Commission to look at the depth of the pond and when the pond may be constructed.

Anthony Hendricks asked if that is the only three suggestions that they have.

Attorney Biege said on the depth they recommended eighteen (18") feet and they wanted basically the pond to be treated as an accessory structure and would need a variance when a pond is constructed prior to the construction of a home in residential. Also, there was a recommendation --- he's just going to read this part to you.

The real estate is owned by a person or legal entity that conducts business as a construction contractor, excavating contractor, material seller, or otherwise conduct business that would obtain economic benefit from the excavation and sale of material or minerals from the real estate.

Attorney Biege said that he wouldn't recommend passing that because a lot of contractors have spec homes. Attorney Biege said that a lot of contractors build spec homes and he thinks that provision would preclude the construction of a spec home and it would have a detrimental impact on economic development.

Anthony Hendricks asked if all three attest to that.

Attorney Biege said concerning ponds, yes.

Matthew Bernacchi asked if that is even for residential if they want to sell the spoils. Matthew said a lot of people buy land and they have to use some decent spoils they will resell it to somebody, but it's like putting shackles around their materials and it doesn't make much sense.

Attorney Biege said that he thinks that would include that.

Jim Pressel said that in the case of a subdivision, you're creating a subdivision and taking off all the top soil for the roads; re-maneuvering the dirt to make it make sense with contours of the ground. What do you do with the access? You have to sell it, or haul it away.

Attorney Biege said enforcement with that is going to be almost impossible. How are you going to track where every contractor in the county hauls dirt on every project?

Jim Pressel said or did they sell it, or give it away?

Rita Beaty Kelly said then you have the retention ponds in those developments, so they're developing the pond prior to construction.

Attorney Biege said that one he's not sure is going to apply. If they're going to come in and get a subdivision plat approved, he doesn't think that restriction would apply, but it could be interrupted that way and that would be a problem, not only for subdivisions, but commercial development.

Anthony Hendricks asked if the eighteen (18') foot maximum would still be granting for the pond permit.

Attorney Biege said for the depth.

Mike Bohacek said the problem with that is if the contour of land is such that eighteen (18') feet might be part of that land, it's not going to be eighteen (18') feet because you have to dig five (5') feet to ten (10') feet into a hill and you want to have an eighteen (18') foot deep pond in the center, you can't have that because ---

Glen Minich said that you would have to be more specific about a depth limitation because are we talking high water time, low water time; where are you going to measure.

Board members speaking amongst themselves.

Attorney Biege said that your points are all well taken, that's why he doesn't think these regulations do not exist in other counties, or in other areas to his knowledge.

Mike Bohacek asked what they have in other counties. Mike asked what our neighboring counties have.

Attorney Biege said that he's not aware of any provisions for ponds. Attorney Biege said that there is a step provision which we added before for safety purposes.

Mitch Bishop, County Planner was talking about four (4') foot.

Mike Bohacek said that way you're able to get out of the pond.

Mike Bohacek asked Mitch Bishop in his experience if has seen any other counties that have pond ordinances.

Mitch Bishop said to be honest this doesn't come up to often, and as far as his knowledge, Porter county and surrounding counties do not have anything. Mitch said Allen County has extensive regulations regarding the regulations on the pond.

Mike Bohacek said Allen county is primarily Fort Wayne property, isn't it?

Mike Bohacek asked Mitch if they have a lot of sixty to seventy acre residential zoned parcels.

Mitch Bishop said that La Porte county is over two thirds zoned agricultural and the last time he looked it was probably two or three percent residential and in that residential there is only less than one percent that's zoned residential is vacated.

Mitch Bishop said that there are constantly going to be meetings about amending our zoning ordinance. There is no end in sight.

Board members speaking amongst themselves.

Anthony Hendricks asked what the board's request would be.

Rita Beaty Kelly said that she would send it back to the Commissioners and tell them that we don't agree with it.

Glen Minich said he will make a motion that we take no action.

Attorney Biege asked if they're going to instruct him to bring it back to the Commissioners as is.

Mike Bohacek said as a Commissioner he has a little bit different view point. Mike said that he does know that during conversations with the other two commissioners at the public meeting, they do want it to have an assessory structure, so you would have to have a house in first, or they want ponds just prohibited in residential areas.

Mike Bohacek said don't shoot the messenger. I'm just simply telling you ----

Attorney Biege said typically he tries to refrain on these subjects, but like Mitch said, we're trying to legislate out in exception to the general rule. Attorney Biege said he has been doing zoning work in the county for ten years and it has never come up – not once. Nobody has ever had an issue. Attorney Biege told Mike that he appreciates his comments and it's not directed to you personally, but to eliminate the ability to dig a pond in a residential area completely.

Glen Minich said specifically to have to build a house first --- Jim knows very well. When you're building pond those spoils --- the ones that you don't want to have to ship out, they're going to be used in your building site. Glen said that all that is ground work is for the house being built; you can't do that after the fact.

Jim Pressel said not to mention depending upon the size of the lot, it may be all most impractical, or impossible to build a house first and then go behind the house to take out all of that dirt, what if that lots not large enough. We can't focus on a four acre, or five acre pond, what if it's a half acre pond and it's on a two acre site, how do you get that dirt from behind the house forward. Maybe during the build cycle there is an opportunity to use some of those soils and they never have to leave that site.

Glen Minich said not only that, but the whole house and everything around it is built around the water that is running through or around your lot. Many times he has been out looking at different sites for the Board of Zoning when they're building a house and they have the runoff of these huge homes and they haven't done anything with their structure or landscaping. Glen said you need to have the site in place before the home.

Jim Pressel said that it doesn't make sense to have to build a pond in every circumstance and each one is going to be different and it doesn't make any sense to construct that pond after the home is there. Jim said you're just doing it backwards.

Matthew Bernacchi said that he thinks that if we send it back to the Commissioners --- Mr. Decker and Dr. Kora doesn't have building knowledge; we explain to them this is why we're sending back. Matthew said usually you have to design the layout of the land before you build a house.

Mike Bohacek said whatever you do with it, to him it's irrelevant. Mike said that they're going to leave the site and go somewhere. If you're digging a bunch of foundations, a lot of times the stuff has to leave. It has to go somewhere.

Glen Minich said the first thing you read about was specifically that somebody who isn't in business shouldn't do it; that doesn't make sense. Glen said if he's a builder or anybody that wants to build a subdivision, he's going to go out and competitively bid to try to make a profit off of it knowing it's leaving his place too.

Board members speaking amongst themselves.

Mike Bohacek said that when they're clear cutting the lot and they're selling the timber out of it, it's no different; it's just a different source and part of the lot preparation.

Attorney Biege said as far as the construction process is concerned, INDOT actually has regulations on borrow pits because they have to move dirt one place to another during construction process. They do it on a regular basis. Attorney Biege said he would like to add also that he's an attorney for MS4, and Tony you're more than an expert on this than I am, but he's seen the plans include a future pond and the pond during construction to control surface water.

Anthony Hendricks said that this board passed in the Joint Zoning Ordinance a part of the whole chapter that we work in a flood zone you have to dig a hole to replace the area that it was taken out, and there's another pond.

Anthony Hendricks asked the pleasure of the board to return it back to the Commissioner with no changes for their review.

Glen Minich said yes, but he would like to add Matthew's suggestion that we did discuss it and we do feel the reasons we've discussed about needing to be able to build the structure previous to putting a home up; the depth issue. We just really don't want to get into the depth issue. A

single pond is totally different. If I'm digging into a water table, I'm only going to go so far. If I have a bank at one height and a bank at another height, that's going to totally change.

Glen Minich asked the third point.

The real estate is owned by a person or legal entity that conducts business as a construction contractor. Glen said he doesn't think we can single out a construction contractor or private citizen.

Mike Bohacek said this is not from their counsel, it's from the remonstrator's counsel.

Attorney Biege said actually your attorney sent that to him in and attached that.

Mike Bohacek said it's from the remonstrator's counsel.

Attorney Biege told Mike that he asked his attorney for a written recommendation from the Commissioners and he attached their lawyer's letter, so he incorporated that into the Commissioner's recommendations.

Jim Pressel said so he's understanding correctly, that's what he sent back to the Plan Commission and as far as their recommendations, they would like to see us review and approve and send it back to them as our recommendation.

Attorney Biege said with regards to the ponds.

Matthew Bernacchi said he would second Glen's motion.

Anthony Hendricks asked if there are any comments on the motion.

Jim Pressel asked if we could reread that motion.

Anthony Hendricks said to send it back the Commissioners.

Attorney Biege said he has the explanation written down.

All approved. Motion carried 6-0.

Anthony Hendricks asked if there are any further questions.

Anthony Hendricks asked if there is any old business.

Hearing none.

Anthony Hendricks asked if there is any new business.


Anthony Hendricks asked for a motion to adjourn.

Mike Bohacek made a motion to adjourn. Rita Beaty Kelly seconded.

All approved. Motion carried 6-0.

There being no further business before the Plan Commission this evening, meeting adjourned at 6:20 p.m.

  
ANTHONY HENDRICKS, President

  
ANNEMARIE POLAN, Rec. Secretary