



## LAPORTE COUNTY PLAN COMMISSION

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**ANNEMARIE POLAN**  
Building Commissioner

### LA PORTE COUNTY PLAN COMMISSION MINUTES June 23<sup>rd</sup>, 2020

#### MEMBERS PRESENT:

Anthony Hendricks	Rita Beaty Kelly
Rich Mrozinski	Earl Cunningham
Harold Parker	Glen Minich
Sean Quinn	

OTHERS PRESENT: Annemarie Polan, Building Commissioner, Doug Biege, Attorney, Ashley Kazmucha, Secretary.

#### PLEDGE OF ALLEGIANCE

Anthony Hendricks asked for approval of the meeting minutes May 26<sup>th</sup>, 2020.

Rita Beaty Kelly made a motion to approve as presented.

Rich Mrozinski seconded.

All approved. Motion carries 7-0.

Anthony Hendricks asked for approval of the agenda for the June 23<sup>rd</sup> meeting.

Sean Quinn made a motion to approve the agenda as presented.

Rita Beaty Kelly seconded.

All approved. Motion carries 7-0.

#### Petitions:

**1. Petitioner Donald H. and Catherine S. Boody represented by Andrew D. Voeltz of Howes & Howes, LLP ("Petitioner")** respectfully petitions the Plan Commission to vacate the undeveloped but plotted roadways and/or alleyways adjacent to and between the property commonly known as 115 Maple Drive, LaPorte, IN., Center Twp., zoned R1B. Exhibits attached hereto.

Attorney Biege stated notice is adequate.

Andrew Voeltz stated he is an attorney with Howes and Howes representing Donald H. and Catherine S. Boody with regards to the petition to vacate the plotted, but undeveloped roadway and/or alleyway located adjacent to and between their property. This can be a truncated presentation because the Plan Commission previously heard this petition January 28<sup>th</sup>, 2020. It was sent to the Commissioners where no action was taken. We are going through the motions again. The reasoning was due to a lack of a unanimous vote based upon a lack of attendance of some Plan Commission members.

Attorney Biege state there should be enough members tonight. Last meeting there was only a quorum and this time there is more than a quorum. The rule is if there is only a quorum the vote needs to be unanimous with the reduced number of members.

Andrew Voeltz stated that the current petition is reverting back to the original petition from January that was amended on the record to remove from the petition the thirty-foot by three-hundred-foot (30' x 300') strip stretching from Maple Drive to the lake and was limited to the seventy-foot by thirty-foot (70' x 30') sliver adjacent to his house and the property that appears to be located in the lake. As you will note on the map that has been provided, they are re-amending the petition to include the entirety of what will be referred to as the "upside down seven" which is the remainder of what was formerly known as Beach Drive in the provided plat. The adjacent landowners to the south of the current petitioners, the Slaters, had previously successfully filed and vacated the portion of Beach Drive that ran adjacent to and between their property. The record is clear that there is a precedent for this to take place. The last meeting had a large number of remonstrators present, but the remonstrators and the petitioners have come to an agreement for a different location of the pier that will lie on property that will be deeded to them. It will allow them the lake access they desire in a manner that is legal and above board. It will not have any questions with DNR. The current dock placement is inappropriate and it could be removed by DNR should his clients were to chose to go in that direction. An agreement has been reached with the remonstrators who are being represented by Mr. Otis. The agreement maintains their lake access with fee simple ownership as opposed to an easement. It is a work around with regards to DNR regulations because an easement requires a certain amount of frontage, but deeded fee simple ownership does not require that amount of frontage to put a dock or pier into a body of water. We are requesting that the entirety of the remainder of a Beach Drive, the 'upside down seven', running from Maple Drive to the shoreline and then adjacent to and in between Mr. and Mrs. Boody's property be vacated and allow them to take fee simple ownership of that.

Anthony Hendricks stated for the record that the last time this petition came before them, he was concerned about the beach property of the Boody's. Typically, some deeds are nefarious at best, but they did research and discover a clear warranty title to that beach. It was not a quit-claim; it is a clear warranty deed from the original owner who developed Tree Haven. It was a concern he has no longer.

Andrew Voeltz stated Anthony Hendricks voted against the petition previously so he appreciated the clarification.

Earl Cunningham asked if Tony had voted in favor it would it have passed in January.

Anthony Hendricks stated yes, it would have been a five vote for just the piece not the "L".

Andrew Voeltz stated that he is aware of the Board's concern as well as the remonstrators present, was that they were going to be cut off from lake access that they may or may not have believed that they were entitled to based upon the purchase of their inland properties. He is currently doing similar vacations in Fish lake where these channels exist on the island in several places are specifically detailed on the plat as public use, whereas the inland owners then have access. This is a different situation because they are talking about a plotted but undeveloped roadway in the name of Beach Drive. The precedent has already been set based upon the Slater's petition that was heard late last year for Beach Drive to be vacated.

Glen Minich asked if the Boody's are giving access to a specific group of remonstrators.

Andrew Voeltz stated that question could be further clarified by Mr. Otis in his representation of the inland owners. These are the only individuals that used this or had access to what currently exists as the status quo. Nobody else did. They have done it for years, but there is no legal precedent for them to establish a prescriptive easement or adverse possession claim. This is property that is still considered to be owned by the government. Those claims fail as a matter of law. If this petition doesn't go through, it will not wind up well for those inland land owners because they will lose their lake access.

Glen Minich asked will the new piece of lane be given to the inland land owners.

Andrew Voeltz stated it will be. It will be deeded to them individually or an LLC. It would allow unfettered access based on that ten-foot (10') strip to be given to the inland residents that they could use it in perpetuity.

Harold Parker asked who would be paying taxes on this.

Andrew Voeltz stated if the vacation is successful, the Boody's would be paying taxes on the three-hundred foot by thirty-foot (300' x 30') strip and the thirty-foot by seventy-foot (30' x 70') strip. The ten-foot (10') strip which will be deeded will be paid by whomever or whatever entity is deeded to.

Harold Parker asked who is paying taxes and who has rights to the land. Are these people actually buying the land in the LLC?

Glen Minich stated the inland land owners on the islands have been told previously by their realtors by history that they have certain easements to the lake. Those easements are not being taxed to anybody. This ten-foot (10') strip would not be either, but it is consistent with the rest of them.

Andrew Voeltz stated that the remonstrators kept referring to it as an easement, but it is not and never was an easement. It is a plotted, but undeveloped roadway. The problem was that when they were researching the law regarding this with DNR, DNR requires certain square footage

with easements to provide for lake access. If you have individual ownership the amount of property that you have is much less which is why it was reduced to ten feet (10'). They never had an easement and if they were told as such, they were told wrong.

Attorney Biege stated the public doesn't have unfettered access and the only people that have the right to object would be the adjacent property owners. No matter what the inland owners were told by a realtor, they don't have standing to object.

Glen Minich stated he is referring to other right-of-way's to the lake and will the new one be consistent with them.

Andrew Voeltz stated he wanted to clarify that they are not easements. They are designated on the plat as public use. That is not what Beach Drive was. If it is designated as public use that is an entirely different monster than what this is here. It is not an easement, but a plotted, undeveloped roadway.

Attorney Biege stated this new configuration will not be the same as the other arrangements.

Mr. Otis stated he is covering for Mr. Novak as his wife is expecting any day and he does not want to be around a large group of people. He represents the remonstrators who would be Josef and Megan Jongkind, Brian and Eric O'Malley, Jeremiah and Norma Ashe, and Todd Reid. They are the four inland land owners adjacent to this right-of-way. They did previously object to vacating this right-of-way, but they have come to an agreement. The area that would be vacated would become Mr. Boody's property and it would be taxable. His clients would be given, in fee simple, approximately ten feet (10') on the north edge of Mr. Boody's property. The benefit to him is that the dock will move further away from his house. Andrew and he need to work out the language of the deeds and have a survey performed, but that is the plan. They would withdraw their objections with the understanding that if this is vacated, they will get the ten-foot (10') strip along with the right to install their dock so they can have their four boats there. They would own ten feet (10') on the north end that would be taxed as well.

Harold Parker asked how long that is.

Mr. Otis stated it will be ten feet by two-hundred – two-hundred and fifty feet (10' x 200' – 250'). That land is currently being taxed right now.

Anthony Hendricks asked if that negates item A of the agenda.

Mr. Otis ask that it be table tonight, but likely if a positive result the point would be moot.

Attorney Biege stated that Mr. Jongkind filed the petition and it was placed on the agenda for matters of convenience and so there would not be confusion. His petition is not technically proper before the Plan Commission because the Plan Commission does not have the jurisdiction to grant his request. However, he didn't want one petition in front of the Commissioners and one petition here so they were both placed on the agenda so both matters could pass simultaneously from the Plan Commission to the Commissioners.

Anthony Hendricks asked if this board agrees to the vacation, can the motion include that the agreement with the ten feet (10') be mandatory.

Sean Quinn stated if the vacation is approved, they could not reach an agreement and the inland owners are left out.

Andrew Voeltz stated there is an agreement that is contingent on the Commissioners passing the ordinance. It has nothing to do with the respected parties. If the Commissioners fail to approve the Plan Commissions recommendation, it would then fall apart.

Mr. Otis stated there is some history between the clients and they plan to finish the agreement and have them signed and closed on after the Commissioners approve the vacation.

Attorney Biege stated the code allows for the Plan Commission to make reasonable conditions upon approval. You can include that contingency if you so wish.

Earl Cunningham asked Mr. Otis if the ten-foot (10') property his clients will be paying taxes on are already being paid by Mr. Boody.

Mr. Otis stated that is correct.

Earl Cunningham stated the only increase in property taxes from the county standpoint would be what is vacated. We're not losing any tax money; we're increasing the tax money.

Andrew Voeltz stated he agrees because there is no way that they could own that property subject to a homestead exemption, they are going to pay the full tax rate.

Earl Cunningham stated that the pier moving also gives them more unfettered access.

Sean Quinn asked who the homeowners to the north of the Boody property.

Mr. Slater stated Sharon Stein.

Mr. Otis stated the dock would go south and not encroach upon her riparian rights.

Sean Quinn stated he isn't saying it would, but it is moving the dock much closer to their property.

Andrew Voeltz stated it is, but the discussion they've had is an alteration of the current configuration of the mooring location. There is a pier that juts out into the lake and arms that outreach for the boats. The docks will be angled coming off of the pier that will significantly reduce an impact that they would have on adjacent owners' riparian rights.

Sean Quinn asked if the Stein's, who are not directly adjacent to the property that is being petitioned for vacation, would be a valid remonstrator.

Attorney Biege stated he doesn't think so because they are not the adjacent property owner to the vacation itself.

Earl Cunningham stated Mr. Boody can go out and put the pier exactly where Mr. Otis' clients want to put it right now. He has the right to do that.

Andrew Voeltz stated that the Stein's did receive notice of the hearing.

Ashley Kazmucha stated she spoke with Mrs. Stein the previous week and she did not express any concern.

No remonstrators present.

Rich Mrozinski made a motion for a favorable recommendation for Petitioner Donald H. and Catherine S. Boody represented by Andrew D. Voeltz of Howes & Howes, LLP ("Petitioner") respectfully petitions the Plan Commission to vacate the undeveloped but plotted roadways and/or alleyways adjacent to and between the property commonly known as 115 Maple Drive, LaPorte, IN., Center Twp., zoned R1B.

Earl Cunningham seconded.

All approved. Motion carries 7-0.

## **2. Solar Ordinance**

Attorney Biege stated that he does not intend to introduce the solar ordinance for passage tonight. It was sent out so there could be a discussion about additions or deletions. Mitch Bishop had some good suggestions which will be incorporated. He wanted the Commission to take a look since it is novel and new in hopes that there are any questions or suggestions. There is plenty of time and at the next Plan Commission meeting it can be introduced for passage and recommendation to the Commissioners.

Anthony Hendricks stated that professionally they have seen a lot of them lately. From his understanding, net metering after July of this year the utility companies no longer have to accept power from people's solar panels. They will stymie a lot of the solar panels. There has been an abundance in the last six (6) months. They are trying to beat the dead line for the net metering and being grandfathered in. If there is no net metering, if you create more power on your solar panels than you use in your home the power company does not have to pay you anymore for your excess. You must store it on-site in a battery or you give it to them for free. The grandfather clause will be going away next month. It is something that needs addressed, but he believes it will severely lessen when net metering is gone.

Attorney Biege stated there were also plans for a possible solar farm in KIP. It takes two to three (2-3) years to do.

Mitch Bishop stated there were a couple different inquiries about large solar farms in the southern part of the county. On the federal end, it takes roughly two to three (2-3) years to obtain their blessing and certifications that allow them to build. They asked what we had in our ordinances about solar panels, but it was an oversight in such a large book. It is something that should be included. There should be developmental standards for large and small users. As for the large solar farm it will be a few years off. It is not a huge rush, but should be included. Michigan City and LaPorte City is on board with the solar ordinance apart of the Joint Zoning Ordinance. Michigan City Planner will not bring it to their Plan Commission until the end of July. We are ahead of the game. We will coordinate more and when we are happy with it, we will share it with the other cities and hopefully come up with one complete document. That is what the planners envision.

Attorney Biege stated they did a similar thing with the Joint Zoning Ordinance. He met with the Michigan City and LaPorte City lawyers to work on and revise the Joint Zoning Ordinance. Westville will probably join as well.

Mitch Bishop stated that would be nice.

Attorney Biege stated he is their zoning attorney, so they should.

Anthony Hendricks stated he has thoughts on the height above buildings that people are putting them on their roof, people could potentially put signs on the panel to avoid the billboard ordinance, and people placing them in the front yard. It cannot be prevented now, but it should be. People shouldn't have solar panels in the front yard in a residential subdivision. The removal/decommission section is great. There are many discussions about windmill and wind turbine blades and what do you do with them. They are being piled out west.

Mitch Bishop stated that is covered in the ordinance now for wind towers and their decommission.

Harold Parker asked if there should be an insurance policy to make sure they are removed when finished. Is the owner the owner of the solar field or the property owner.

Attorney Biege stated the property owner.

Anthony Hendrick stated most companies end out their solar panel contracts that they will come and remove them, but that doesn't guarantee that the company is in place anymore or that they do it.

Attorney Biege stated it is written, "if the owner or operator." They are both included in the ordinance. Realistically if he has to go after them, he will name both of them.

Harold Parker stated it is a hazardous waste when you have to tear a solar farm apart. It is not cheap. There have been some places in the state that make them put up money for abandonment. After twenty (20) years everything is shot and it is expensive.

Earl Cunningham asked what the height for an accessory building is. Isn't it eighteen feet (18'). The ordinance lists the height restriction at twenty-two feet (22'). Perhaps the height should be lowered and people could obtain a variance if need be. Or if they are in such an isolated area, it could be approved by the Building Commissioner.

Annemarie Polan stated she consulted her electrical inspector and he has to inspect them. He said there are different components that could occur and if it's in a flood plain it would have the height. Twenty-two feet (22') was what was in the original ordinance from St. Joe County.

Earl Cunningham stated he understands the floodplain issue, but that seems like a variance issue. People could come in and say they need twenty-four or twenty-six feet (24 – 26') because they are in a floodplain.

Annemarie Polan stated that the original ordinance they were given listed twenty-two feet (22') and the inspector thought that was fine.

Earl Cunningham asked if there would be twenty-two feet (22') panels in a subdivision. It's as high as an accessory building.

Mitch Bishop stated that refers to large ground mounted systems. There are small- and large-scale panels. That height is referring to large ones and those couldn't be in a subdivision. The sample ordinance was provided by the manufacturer and they passed it to St. Joe county who revised it some and adopted it. There are some things that were removed such as allowing panels on building facades. Some revisions still need to be made, but it should work.

Harold Parker stated he isn't worried, but if a four-hundred (400) acre field that is abandoned with hazardous waste, there will be a cost of one-hundred thousand dollars (\$100,000) plus to demolish and remove it. They have larger solar farms in the south, but he wants to see if there is any information on history of them if they have put up bonds for them.

Attorney Biege stated he is unsure if insurance companies offer a bond. We could require a bond if one exists, but he is concerned about management of that. The County manages the bonds.

Anthony Hendricks stated he knows from personal experience because we bond roads. There is a drawer that is at least twenty (20) years old with bond with roads that have been finished. Diane has been going through them.

Attorney Biege stated it is possible and the Commission could put forth a bond requirement, but sometime the administration of bonds in the County are less then streamlined.

Anthony Hendricks stated Diane has been going through them for two years.

Harold Parker asked if there is another legal way to do it.

Attorney Biege stated a bond would be the only way to do it.



Anthony Hendricks asked if this would give the County the right to put a lien on their property. The Plan Commission could go after the operator and the property owner and it will serve as a lien on the property. He would rather go through the condemnation statues because if get a judgment on the condemnation, it can be placed on the tax bills as a special assessment. It allows the County another way to collect. If it does on bond, he has to pursue the bond and they lose a couple avenues for seeking recourse.

Harold Parker stated he has been negotiations regarding a few bonds.

Anthony Hendricks stated Harold Parker will volunteer to get more information.

Harold Parker stated he will.

Earl Cunningham stated he would like to thank the two attorneys and Anthony Hendricks for researching the Boody petition that allowed for clarification of Beach Drive. He appreciated that he did it and that the County had the records that were necessary.

Anthony Hendricks praised Barb Dean who scanned all the records in the vault allowing him to view the documents digitally. The County can now do that. Thank you to Barb Dean for the amazing job of digitizing the documents that are now available to the professional in LaPorte County.

Anthony Hendricks asked if there is any old business.

Anthony Hendricks asked for any new business.

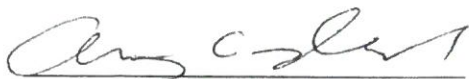
Anthony Hendricks asked for a motion to adjourn.


Glen Minich made a motion to adjourn.

Rita Beaty Kelly seconded.

All approved. Motion carries 7-0.

There being no further business before the Plan Commission, meeting adjourned at 6:35 p.m.

  
Anthony Hendricks, President

  
Annemarie Polan, Recording Sec.