



LAPORTE COUNTY PLAN COMMISSION

Government Complex, 5th Level
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Michael Polan
Building Commissioner

LA PORTE COUNTY PLAN COMMISSION MINUTES April 23rd, 2024

MEMBERS PRESENT: Anthony Hendricks Joe Haney
 Rita Beaty Eric Pointon
 Harold Parker John Watson
 Deb Vance John Carr
 Earl Cunningham

OTHERS PRESENT: Doug Biege, Attorney; Michael Polan, Recording Secretary; Ashley
Kazmucha, Administrative Coordinator; Mitch Bishop, County Planner

PLEDGE OF ALLEGIANCE

**Rita Beaty's participation during the meeting can be heard through the Zoom recording.*

Joe Haney asked for approval of the agenda for the April 23rd meeting.

Harold Parker stated he would like to make an amendment to the agenda to add the request for a solar moratorium.

Eric Pointon seconded.

Joe Haney asked for any other requests or additions or the addition of any public comment period. There being none and a member on the Zoom, please do a roll call vote.

Ashley Kazmucha read the roll.

Joe Haney stated aye.

John Carr stated nay.

Harold Parker stated aye.

Earl Cunningham stated nay.

John Watson stated nay.

Anthony Hendricks stated nay.

Deb Vance stated nay.

Rita Beaty stated nay.

Eric Pointon stated aye.

Denied. Motion failed 3-6.

Ashley Kazmucha stated the vote fails.

Joe Haney asked for a motion to approve the agenda as was originally presented.

Earl Cunningham made a motion to approve the agenda as presented.

Deb Vance seconded.

Ashley Kazmucha read the roll

Joe Haney stated aye.

John Carr stated aye.

Harold Parker stated nay.

Earl Cunningham stated aye.

John Watson stated aye.

Anthony Hendricks stated aye.

Deb Vance stated aye.

Eric Pointon stated nay.

Rita Beaty stated aye.

Ashley Kazmucha stated to signal with a thumbs up or a thumbs down. It is enough votes for a yes.

Approved. Motion carries 7-2.

Joe Haney stated it is enough for approval so the agenda is approved as originally presented.

Joe Haney asked for approval of the meeting minutes for the March 26th meeting.

John Carr made a motion to approve the minutes as presented.

Eric Pointon seconded.

Ashley Kazmucha read the roll.

Joe Haney stated aye.

John Carr stated aye.

Harold Parker stated aye.

Earl Cunningham stated aye.

John Watson stated aye.

Anthony Hendricks stated aye.

Deb Vance stated aye.

Eric Pointon stated aye.

Rita Beaty stated aye.

All Approved. Motion carries 9-0.

Petitions:

- 1. Petitioner Jason Atwood and Kristen A. Atwood represented by counsel Anthony Novak of Newby, Lewis, Kaminski & Jones, LLP** respectfully petition the Plan Commission to rezone from B2 to R1B a property located across from 1902 N. Whisper Crossing, LaPorte, IN. Kankakee Twp. Parcel 46-07-29-200-046.000-052. Exhibits attached hereto.

Attorney Biege stated notice is adequate.

Anthony Novak stated he is an attorney with Newby, Lewis, Kaminski & Jones located at 916 Lincolnway, LaPorte, IN. He is here tonight on behalf of Petitioners Jason and Kristen Atwood. He knows that Jason is here tonight. Tonight, they are asking for property on North Whisper Crossing to be rezoned from B2 to R1B. It is a type of down zoning and a less intensive use. He will be real brief; they filed this simultaneously with a Petition for Development Standards. That was heard in front of the BZA last week and ultimately approved seeking to build a single-family residence on a seventeen (17) acre piece of property with less than the adequate road frontage under the JZO. In short, they will see that the property attached as Exhibit A of what they are talking about here. It is approximately seventeen (17) acres. It is accessed through the Whisper Crossing or Whisper Isle Subdivision. Historically, his understanding is that this is going to be Phase 2 of the subdivision. Phase 1 was developed with numerous homes and all zoned R1B. Phase 2 never came to pass and his client purchased the property in June of last year. There were some deed restrictions on the property basically indicating that although zoned B2 the use of the property should be R1B. Mr.

Atwood and his wife want to build one (1) single-family home on the entire seventeen (17) acres with no plans to subdivide it or anything like that. The use of the property would be more consistent with its zoning. In talking with Mitch Bishop and Mike Polan, the suggestion was that they both ask for a rezone and a variance. They were successful on the variance and they ultimately ask that they would get a favorable recommendation from them that the classification should be rezoned from B2 to R1B very similar to all the classifications that they would see on Exhibit A. That is their request plain and simple.

Joe Haney stated thank you. It looks like what was emailed over today that nearly all the adjacent landowners signed off stating they have no objections. He didn't count all the adjoining properties, but it looks like that is what he has, is that correct?

Anthony Novak stated he got about five (5) or six (6). He showed highlighted all of the people they notified with arrows pointing to who has actually approved and he has copies of that with him.

Anthony Hendricks stated this piece of property and Charles Hendricks and Associates Engineering and Surveying, this was done by John Spear and his father many, many years ago and Mr. Novak is right that this is Phase 2. It was approved a long time ago through the Plan Commission. He believes it was errant B2 rezoning and it should have always been R1B. It was a Plan Commission approved subdivision with a single road and a cul-de-sac and multiple lots. Even though he agrees that they should go and continue through with the motion and make it official, in his opinion, this should have never been B2; it should have been R1B. It is a Plan Commission approved subdivision. It is grandfathered in. If they had built the road they could have developed the lots, but it sounds like they are not going to so just for the Commission's knowledge that this was Phase 2 of an approved subdivision before the County and is still grandfathered in to this day, in his opinion.

Joe Haney stated thank you so much.

Attorney Biege stated he has a conflict of interest. He sent his client over to Anthony Novak to handle this so he can't comment on it.

No remonstrators present.

Harold Parker asked Tony what he was saying.

Anthony Hendricks stated he would make a motion to approve this even though he thinks it is a scrivener's error of the rezoning and classification they did in 2011 that this should be R1B and the Plan Commission should approve this going forward.

Anthony Hendricks made a motion to approve Petitioner Jason Atwood and Kristen A. Atwood represented by counsel Anthony Novak of Newby, Lewis, Kaminski & Jones, LLP to rezone from B2 to R1B a property located across from 1902 N. Whisper Crossing, LaPorte, IN. Kankakee Twp.

John Carr seconded.

Ashley Kazmucha read the roll.

Joe Haney stated aye.

John Carr stated aye.

Harold Parker stated aye.

Earl Cunningham stated aye.

John Watson stated aye.

Anthony Hendricks stated aye.

Deb Vance stated aye.

Eric Pointon stated aye.

Rita Beaty stated aye.

All Approved. Motion carries 9-0.

Old Business:

Joe Haney stated he does have one (1) item under old business. There was an attempted mediation with D&M here this past week regarding the ongoing legal conflicts that they are having. He sat in on that for about eight (8) hours and ultimately it was not fruitful so they were not able to come to anything so it will revert back to the courts. He doesn't know if Doug has anything to add to that or if there are any questions from the Plan Commission here.

Attorney Biege stated their involvement is the appeal of the Plan Commissions decision; it is a separate case, but he thinks that LaPorte County will ask that this case, the Plan Commission case, be combined with the other case. It is likely the court will grant it. It isn't good or bad for the Plan Commission appeal. Right now, they have a motion to dismiss and a motion to strike on file on their end.

Joe Haney asked anybody has any questions on that or any other old business. Hearing none they will move onto the Solar Ordinance Amendment and open that up to the Board for any comments, questions, suggestions, or motions.

1. Solar Ordinance Amendment

Attorney Biege stated it is his goal to have a draft, a re-write basically, on their Solar Ordinance for next month. That is what he is going to shoot for.

Earl Cunningham stated last meeting they put together a committee of four (4). Has that committee met?

Joe Haney stated yes. They have met a couple of times.

Earl Cunningham stated excellent. Thank you.

Joe Haney stated he would think here this evening just to give some clarification that they could consider one (1) or two (2) things as far as perhaps a motion to change the verbiage for the bond to be every five (5) years in perpetuity of the project because right now it goes five (5), ten (10), fifteen (15) years. He knows there was some talk about how that plays in with the State verbiage, but whichever that would play out would have ultimate authority. He doesn't see why they couldn't do that here this evening if anybody on the Board was amenable to that.

Attorney Biege stated if he may, any amendment to any ordinance, there is a procedure they have to follow and there is notice they have to give. They can't vote yet because they have to give notice to the community and they have to have a Public Hearing on the ordinance, not what is going on with the solar farm. So, they typically will get all of their amendments ready. They can instruct him to draft that, but they can't adopt an amendment tonight. Typically, when they are done, then they do the adoption of the ordinance because he has notice and publication procedures that they have to follow.

Joe Haney stated he apologizes for his clumsiness in the language, but perhaps it would be better to set a motion of support for a change for a couple of the items they discussed earlier be it screening or bond and things along those lines.

Anthony Hendricks stated he is looking for Doug's advice here, but he thinks they can vote to instruct Doug to move into some amendments to the ordinance in which he can do public notification, follow the IC code, so if they are contested in any way, this Plan Commission has something that Doug can support.

Attorney Biege stated the Commission can certainly give him direction on what it wants him to draft, but that is about as far as they can go tonight.

Joe Haney stated very good. He would ask to tighten up the bond for decommissioning and pretty much everything that Mr. Bishop sent over to them is pretty solid so please incorporate those things in there like a performance bond for maintaining screening, some screening issues, as well as some of the noise abatement issues, distances that are listed there. He doesn't want to speak solely for Mr. Bishop or those members of the Solar Committee, please feel free to speak up, but he thinks that encompasses quite a bit of what they talked about on the Solar Committee and he is open to any additional suggestions or direction here, but they are some pretty solid guidelines that can be incorporated to get some extra guardrails around this and make it more amenable to how the Board of Commissioners move forward that folks can get screening so they are looking out at nice landscaping as opposed to fields of panels.

Anthony Hendricks made a motion to instruct the Plan Commission Attorney to review the amendments as laid out in the email from the County Planner Mitch Bishop for recommendations

based on the email received from the PC Solar Committee and refer back to the Plan Commission for their review.

Earl Cunningham seconded.

Harold Parker stated where are they at when they do all this. Tony?

Anthony Hendricks stated they recommend to have their Plan Commission Attorney to review the rules and bring it back to them to potential have a public hearing, move this into the Commissioners for their public hearing, and adopt the change in the Joint Zoning Ordinance by IC Statute 36- . . . They have to adhere to that whole statute or if they are brought into court, they would probably lose.

Harold Parker stated losing is always a probable cause.

Anthony Hendricks stated he doesn't want to see the taxpayers pay money to lose. If they do it by the rules, he thinks . . .

Harold Parker stated there are plenty of taxpayers that are going to pay anyway. Don't hide behind that.

Anthony Hendricks stated if they do it by the rules, he thinks they can . . .

Harold Parker stated they are offering a lot that they don't know about yet. Does this pass the State law this being a state law? Does ours or is it in addition to ours?

Anthony Hendricks stated that is what Doug will bring back to them next month.

Harold Parker asked if they have that set now or is this still open? If they bring in a petition to the BZA before this thing they will go by our old rules?

Attorney Biege stated the old rules and the State law both because they are both in effect.

Harold Parker stated the State law is in effect now.

Attorney Biege stated right and if they have rules that are stricter than the State law, then the State law will apply, but it doesn't change the standards of review for the BZA. All the requirements on setbacks, et cetera, et cetera will all have to comply and he will have that all checked before it goes in front of the Board. When it goes in front of BZA, they are just looking under the statutory factors of the Special Exception.

Harold Parker asked if they can do that in one (1) review in one? Is that one (1) shot or does that have to have public comments and everything too?

Attorney Biege stated everybody will have an opportunity to remonstrate at the BZA hearing. He is guessing it will be a long night.

Harold Parker stated well, there are people out here asking for answers.

Attorney Biege stated yes, in other words, when they file the petition, he will go through it and make sure whatever the technical stuff is that it complies either with their Ordinance or the State law. If the State law is more lenient then that will apply because that is what the State law says. That is on the technical requirements. Everything will be presented at the BZA, but the BZA does not review that part of it. He is making sure that it is complying with the law before it gets to them. So, when they are hearing it, they are going to look at the statutory factors for a Special Exception. For those interested, that is online in our zoning code; they are all listed out. That is what the BZA is going to base their decision on.

Harold Parker stated they had a lot of people talk about economic problems with things devaluing their properties tonight. That would be in front of the BZA then?

Attorney Biege stated the BZA can grant and create exceptions. If they are curious on how that works, they can look at the BESS facility that was passed. That BESS facility; they had never seen one (1) before. Now the law has changed and it handles it, but at the time there was no law on it at all. So, the way they handled it was they had a Special Exception and then they had a whole list with like a dozen requirements that the BZA created to make sure the BESS facility would comply and all those requirements were public's concerns. They don't have to do that anymore, but the BZA can do that if they wanted an example of what they did before. Does that make sense?

Harold Parker stated about that much. (*Indicated a tiny portion between fingers.*) He was good until he got into all the lawyer stuff and all the numbers.

Attorney Biege stated okay, they had never seen a battery facility. There was a concern about firefighting so we made them pay to train their volunteer fire departments where the facility is going to be located. There was a concern about engineering and review because Mike is not a battery engineer so the BZA made them hire an engineer to inspect that we picked. He can't remember all the others, but there was like a dozen requirements. So, the BZA required all those things in its approval and it has the power to do that.

Harold Parker stated as bad as the solar is, that stuff over in South Bend was a bad example of putting one (1) together so they don't want to have these people have anything like that.

Attorney Biege stated yes. It may take more than one (1) meeting. It took them four (4) months to get the battery approval to where he thinks about everybody was pretty much comfortable, not everybody agreed with it of course, but the concerns that the BZA heard, he worked with opposing counsel to address them so when they went back, they addressed the concerns that they could. He foresees the same thing going on here. Usually, a zoning petition is a one (1) time shot, but there is a lot to discuss here and a lot to tackle.

Harold Parker stated they did have a thing on the computer, didn't they? An email or something they can go to a web page or something on this. Is that still on there?

Attorney Biege stated yes.

Harold Parker stated for on-going developments.

Attorney Biege stated he wants to emphasize to the public to go on and look at what they did for the battery facility. They had a lot of concerns and he thinks they alleviated them and he intends to do the same thing here because the law is changing very quickly as they can see. So, he wants to make sure that they have concerns covered. He is not advocating either side. He is trying to do it the right way.

Harold Parker asked when the BZA normally meet? Is that a week during the day?

Attorney Biege stated the second Tuesday every month. There is no petition filed yet.

Ashley Kazmucha stated the third Tuesday.

Attorney Biege stated the third; he doesn't know where he is. He doesn't know what day of the week it is.

Joe Haney stated the third Tuesday at 6 p.m. right here in this room.

Attorney Biege stated yes, but there is no petition filed yet so it will not be in May. He is guessing June.

Ashley Kazmucha stated they still have time to file for May.

Attorney Biege asked do they?

Ashley Kazmucha stated yes. The cut off is May 6th.

Attorney Biege stated okay then he'll shut up. That's her job.

Earl Cunningham asked if they would be amenable to adding an amendment to their motion that they notify the BZA. Hopefully, that would allow them to delay a month so they can catch up with them. Let's say somebody files tomorrow which they can do; if they at least notify them that they are going back and redoing it, maybe they could buy a month saying they are going to wait for the Plan Commission.

Attorney Biege stated with due respect, that is not going to work. It runs from the time the petition is filed. So, they have an ordinance in place now and the State law in place now. If anything, after he gets through the State law, their Ordinance may be a little lighter, but by the time they get . . .

Earl Cunningham stated he is satisfied that if the BZA passed it the third Tuesday of next month, they would still be alright.

Attorney Biege stated yes. He would be surprised if they pass it. He thinks they have to work on what exceptions and requirements they are going to have in addition to the basic grant.

Earl Cunningham stated he is the attorney for the BZA as well.

Attorney Biege stated yes.

Earl Cunningham stated so he will be instructed by their commission and obviously he will know that when they go to BZA.

Attorney Biege stated yes and they have a member on both.

Earl Cunningham stated very good.

Ashley Kazmucha read the roll.

Joe Haney stated aye.

John Carr stated aye.

Harold Parker stated aye.

Earl Cunningham stated aye.

John Watson stated aye.

Anthony Hendricks stated aye.

Deb Vance stated aye.

Eric Pointon stated he never receive the email so he is going to recuse himself from the vote.

Rita Beaty stated aye.

All Approved. Motion carries 8-0.

Joe Haney stated he will make sure another email goes out and everybody gets a copy.

New Business:

- 1. RESOLUTION OF THE LAPORTE COUNTY PLAN COMMISSION APPROVING A RESOLUTION OF THE LAPORTE COUNTY REDEVELOPMENT COMMISSION APPROVING AMENDMENTS TO THE DECLARATORY RESOLUTION AND THE ECONOMIC DEVELOPMENT PLAN FOR THE I-94/U.S. ROUTE 421 ECONOMIC DEVELOPMENT AREA FOR THE PURPOSE OF**

**ESTABLISHING A NEW ALLOCATION AREA AND RELATED MATTERS
(Resolution 2024-002)**

Matt Reardon stated thank you Mr. Chairman and Plan Commission members. What they have before them is an order of the Plan Commission approving a previously approved amendment to a declaratory resolution of the economic development area. Just for reference, it is 421 and 94 allocation area so it is right there at the gateway of Michigan City. There is an investor that is coming in that will spend a targeted twenty-nine million dollars (\$29,000,000) on two (2) different projects that are zoned for the use. They are creating what is called a separate allocation area which is a financial mechanism to allow partnership between the government and the private entity. This developer would then purchase the bonds which are about three point five million dollars (\$3,500,000) to purchase the bonds and the proceeds are for water, sewer, and sanitary for the development. It's a good project. It is looked on very favorably by the Redevelopment Commission. This is stop number two (#2) on the pathway. This goes back to the Council once the financing mechanism starts. Germane to this body, this activity and growth is within the recommended planning and master plan so if there are questions about this project, please let him know.

Anthony Hendricks asked if there is any overlap with Michigan City TIF District in this.

Matt Reardon state no there is not; this is actually our TIF area. He remembers that.

Anthony Hendricks stated yes.

Matt Reardon stated this is in fact that parcel on 400 West. They are all squared away with that.

Anthony Hendricks stated thank you.

Matt Reardon stated the City declined to pay the five million dollars (\$5,000,000) of outstanding debt in order to be able to grab this into the City so they got that all squared away with them.

Harold Paker stated there's a lot of technical stuff.

John Carr made a motion to approve the RESOLUTION OF THE LAPORTE COUNTY PLAN COMMISSION APPROVING A RESOLUTION OF THE LAPORTE COUNTY REDEVELOPMENT COMMISSION APPROVING AMENDMENTS TO THE DECLARATORY RESOLUTION AND THE ECONOMIC DEVELOPMENT PLAN FOR THE I-94/U.S. ROUTE 421 ECONOMIC DEVELOPMENT AREA FOR THE PURPOSE OF ESTABLISHING A NEW ALLOCATION AREA AND RELATED MATTERS (Resolution 2024-002)

John Watson seconded.

Ashley Kazmucha read the roll.

Joe Haney stated aye.

John Carr stated aye.

Harold Parker stated aye.

Earl Cunningham stated aye.

John Watson stated aye.

Anthony Hendricks stated aye.

Deb Vance stated aye.

Eric Pointon stated aye.

Rita Beaty stated aye.


All Approved. Motion carries 9-0.

Joe Haney asked for any other new business.

John Carr made a motion to adjourn.

John Watson seconded.

There being no further business before the Plan Commission, meeting adjourned at 6:37 p.m.


Joe Haney, President

Michael Polan, Recording Sec.