

Minutes of the Porter Plan Commission  
July 26, 1999

A. The meeting was called to order at 7:05 p.m.

B. Pledge of allegiance

Present were Mr. Eriksson, Mr. Grasher, Mr. Whisler, and Mr. Donley. Absent were Mr. Chemma, Mr. Bell, and Mr. Bernth. Quorum was established. Also present were Mr. Kennedy and Mr. Mandon.

A nomination was requested from the board to appoint a temporary chairman for the meeting, as the president and vice president were both absent. Mr. Eriksson nominated Mr. Donley. Second by Mr. Grasher. A vote was called. Mr. Whisler – Yes, Mr. Grasher – Yes, Mr. Eriksson – Yes, Mr. Donley – Yes. Motion carried 4-0.

C. Consideration of minutes from previous meeting.

Motion to approve minutes from the previous meeting was made by Mr. Eriksson. Second by Mr. Grasher. A vote was called. Mr. Whisler – Yes, Mr. Grasher – Yes, Mr. Eriksson – Yes, Mr. Donley – Yes. Motion carried 4-0.

D. Audience Participation

Jennifer Klug, 302 Lincoln Street, questioned the status of the Comprehensive Plan, and when a Public Hearing will be conducted to begin finalizing the document. Mr. Mandon addressed Ms. Klug's question by notifying her there was a delay in getting the aerial land maps. He informed the Ms. Klug that the target for the public hearing would be late August, but that wasn't definite.

Robert Stevens, 1100 Hoakensen Drive, expressed concerns regarding the Indiana Department of Transportation's unwillingness to write a letter concerning a piece of property he is in litigation with at this time. Mr. Whisler stated Mr. Stevens' concerns were not an issue the Plan Commission has any jurisdiction over. Mr. Donley suggested Mr. Stevens meet with Mr. Mandon to discuss the issue, and to find the proper board to assist him. Mr. Mandon stated the state highway authority does not impose setbacks on property, that setbacks are imposed locally. Mr. Mandon agreed to assist Mr. Stevens.

E. Old Business

**Public Hearing:** Jody Bennett, petition to re-zone property located at the N.E. corner of Route 20 and Highway 49 from C-1 to C-3. Present were Jody and William Bennett. Attorney Terry Hiestand present to speak on behalf of the petitioner. The petitioner intends to construct a Hotel/Motel facility. The petitioner believes rezoning the parcel to C-3 as C-3 makes allowances for major thoroughfares, and in their opinion Route 20 qualifies as a major thoroughfare. The petitioner placed its request for a use variance, at the advice of the Plan Commission, before the Porter BZA in June, which was denied. Because the BZA denied the petition for a use variance, the petitioner re-filed his request with the Plan Commission to request re-zoning of the parcel. The petitioner feels the re-zoning would be more reasonable for this particular parcel, as it's location on Route 20 is appropriate for the petitioners intended use.

Mr. William Bennett presented photographs to the board of hotel/motels in the area that were constructed abutting residential areas. The photographs were of facilities located in Portage and Valparaiso. Mr. Bennett also provided photographs of the parcel they are requesting re-zoning about, and the surrounding roadways. Mr. Bennett stated they had no intention of constructing a franchise hotel chain that the intent was to construct an establishment similar to Indian Oak Resort in Chesterton. Mr. Bennett noted to the board that his wife had recently spoken with some visitors to the Dunes National Lakeshore who expressed the closest place they could find to stay in the area was in Valparaiso.

Mr. Donley opened the public hearing at 7:30 pm. There were no proponents to the request for re-zoning. There were opponents to the request. Speaking on behalf of several residents, as remonstrators, from Dunes View and Dunes Manor Retreat Subdivisions, Mr. Bob Welsh, attorney from Chesterton, represented the remonstrators. Mr. Welsh pointed out the remonstrators had already appeared before the BZA in objection to the request for a use variance to construct the hotel/motel complex, and that the BZA unanimously denied the Bennett's request.

Mr. Welsh showed the board the location of the residences in proximity to the parcel in question. Mr. Welsh stated the original subdivision was built approximately 50 years ago, and was later annexed to the town of Porter. Mr. Welsh clarified the intent of C-1 zoning within the town of Porter to be utilized as local convenience purposes, not as hotels or businesses of transient nature.

Mr. Welsh pointed out that when the residents were purchasing their homes, and making their investments, they researched the area and noted that parcel was zoned C-1, and were satisfied with that. He noted they believe C-1 zoning is appropriate for this parcel because of its location. Mr. Welsh stated his purpose at this meeting was to convey the remonstrators want to protect their way of life. He stated they were not against the idea of hotel/motel establishments in the town of Porter, but the location of this proposed hotel/motel was inappropriate. He pointed out the proposed hotel/motel could be constructed 10 feet away from the current residences in the area, and that was too close for the remonstrators comfort.

Mr. Welsh submitted a copy of the remonstrance petition filed originally with the BZA, outlining the concerns and objections of the residents affected by this request. Mr. Welsh also submitted a copy of the affidavit presented to the BZA from Professional Appraisal Services, President David Barassas, as the residents expressed concern about the affect a hotel/motel might have on their property values.

Attorney Hiestand objected to the submission of the affidavit on grounds of hearsay, as the author was not present for cross-examination. Mr. Donley requested the benefit of Mr. Kennedy's advice on how to handle the affidavit and it's objection. Mr. Kennedy stated this board does not swear-in witnesses to provide testimony on issues, and that the board is able to accept or deny the submission of said affidavit and give it as much credibility as the board deems necessary. Mr. Donley asked if it was his advice to accept the affidavit, Mr. Kennedy agreed and that the board should consider it as it sees fit.

Mr. Welsh asked Mr. Barassas to investigate the parcel owned by the Bennett's and the subdivisions affected by the request for re-zoning, and asked him if the Bennett's parcel could still be affectively utilized under it's current C-1 zoning.

Mr. Hiestand objected to Mr. Welsh's testimony regarding what Mr. Barassas had to say regarding the issue. Mr. Donley stated Mr. Welsh was entitled to plead his case and should continue. Mr. Hiestand wanted to make his objection to the testimony noted on record.

Mr. Welsh stated that according to Mr. Barassas the property is capable of being utilized for it's current zoned purposes, and that if re-zoned and a hotel was constructed, would damage the values of the properties in the abutting subdivisions. Mr. Welsh pointed out the residents do not object to the construction of a hotel/motel in the town of Porter, but that the Bennett's should not benefit financially at the expense of the homeowners abutting the property.

Mr. Welsh noted that when the Bennett's purchased the property they were aware the property was zoned C-1, and did not rely on it becoming a C-3 property. The homeowners abutting the property relied on the parcel being zoned C-1. Mr. Welsh also pointed out the property owned by the Bennett's has been altered and changed recently by bringing in fill, possibly to prepare for the construction of a hotel/motel complex.

Mr. Welsh referred to Table 15 in the recent draft of the Comprehensive Plan. He noted the percentages of underdeveloped commercial land appropriate for the construction of a motel/hotel complex in the town of Porter.

The Remonstrators, although represented by Mr. Welsh, spoke on their own behalf regarding this issue. The following is a summary of their objections to the request made by the Bennett's:

- Bruce Nepekoj, 565 N. 3<sup>rd</sup> Street: Mr. Nepekoj was also presenting on behalf of his sister and brother-in-law, the Crownover, who were out of town at this time. Provided a history of the construction and zoning of buildings and properties in the concerned area. Stated he would never have purchased property or home if a hotel/motel had been constructed first. Could live with anything constructed under C-1 zoning. The construction of a hotel/motel would change the resident's way of life, permanently. The transient nature is threatening to their way of life. Referred to the current draft of the Comprehensive Plan, which states the current zoning in the town does not protect the residential way of life in the town.
- Donna Peters, 528 1<sup>st</sup> Street North: Ms. Peters grew up next to Lee's Inn in Portage, was not a pleasant experience. Concerned about the transient nature of the proposed construction. Could live with anything constructed under current C-1 zoning.
- Laurie Kreig, 529 1<sup>st</sup> Street North: Investigated the property prior to moving. Was satisfied with the zoning as C-1.
- Speaking on behalf of Lois Polito, 6110 Hjelm: Concerned about the potential lights all night through the windows. Would be satisfied with anything other than hotel/motel.

Mr. Whisler interjected at this point and asked Mr. Donley if it was possible that those not currently represented in the remonstrance petitions, or spoken for by Mr. Welsh, be the ones able to express their opinions at this time. Mr. Donley pointed out that as citizens of the town of Porter, they had a right to speak about the issue, despite the representation by Mr. Welsh.

Continuing the summary of opinions by those objecting to the petition:

- Rita Lindley, 521 1<sup>st</sup> Street: Owns the house directly abutting the Bennett's property, and was not notified about the intent. Noted none of the hotels in the area presented by the Bennett's were next to residences as this complex would be.
- Joseph Goycich, 527 1<sup>st</sup> Street North: Traffic concerns on route 20, concerned about the water supply.
- Steve Nepekoj, 595 N 3<sup>rd</sup> Street: Please protect the interests of the residents. Noted the National Lakeshore has been established for decades, and that there had been ample amounts of time to develop hotel/motel complexes in the area. Property values.
- Gwen Morgal-Prahl, 1745 N. Main Street: Carefully chose their property when moving to the area.

Mr. Hiestand presented his rebutting remarks. He stated he believed the homeowners present at the BZA meeting were originally misinformed about the Bennett's intent, and were not in attendance because they now agree with the idea. He also stated the Nepekoj's have stated objections to desirable residential properties abutting their subdivision in the past. Mr. Bruce Nepekoj immediately objected to the statement, without the benefit of explanation at that time. Objection was noted.

Mr. Hiestand pointed out to the board, and the public, that the reason the BZA denied the petition in June was because 5 criteria must be met to grant a use variance, and all five must be met unanimously, which was not the case.

Mr. Hiestand stated that proper screening would be established. He also pointed out that the affidavit might be biased because Mr. Welsh's partner's son is the partner of the person presenting the affidavit regarding the property values for the residents.

Mr. Hiestand stated the hotel/motel complex would be upscale, not for use by transient truckers as there will be no parking available for their vehicles. He stated the development would provide a great economic benefit to the community. He also pointed out the development would have no real interaction with the residential area as the accesses to each property are in different locations.

Public Hearing was closed at 8:15 p.m. Mr. Mandon provided his staff report about the petition. He stated the petition has little to do about the intended use on the Bennett's part, but that the decision lies in the actual zoning change to C-3. He stated that once a re-zoning would be granted, there is no way to force the petitioner to follow through with his/her original intent, but that at that point could construct anything under C-3 zoning. Mr. Mandon also discussed the affidavit, and agreed with the statements about the property values. Mr. Mandon presented his written recommendation regarding the re-zoning of the parcel, by recommending denial of the petitioners request, and suggested other parcels in the town are better suited for the construction of a hotel/motel complex. He also stated that had the property not already been zoned C-1, it should be zoned R-1.

The board members were able to respond to Mr. Mandon's recommendations. Mr. Whisler asked Mr. Mandon about the properties he felt were more favorable for a hotel/motel complex. Mr. Mandon stated there were parcels near Tremont Road already zoned C-3 and more appropriately suited for entertainment complexes, etc.

Mr. Eriksson noted he appreciates the Bennett's willingness to work with the town of Porter in their endeavors, but he does not agree with re-zoning the parcel to C-3 at this time.

Mr. Grasher and Mr. Donley declined comment on the issue.

Mr. Whisler commented about a discussion held prior to the meeting between Attorney Welsh and himself where Mr. Welsh requested Mr. Whisler abstain from voting upon the issue because Mr. Whisler had a prior partnership with Mr. William Bennett and could have a potential conflict of interest. Mr. Whisler stated that the relationship dissolved over 4 years ago, and that the relationship did not involve Jody Bennett, the petitioner for this request, in any way. Mr. Whisler went on to show his dissatisfaction with the affidavit presented by the remonstrators, as Mr. Barassass could have a bias toward the remonstrators because of the relationship between himself and Mr. Welsh. Mr. Whisler requested an apology from Mr. Welsh for his request. Mr. Welsh pointed out he had no prior relationship with Mr. Barassass before his recommendation/affidavit was presented. Mr. Welsh stated no apology was necessary because there was no bias in the affidavit, and that his approaching Mr. Whisler prior to the meeting was due to concern expressed by his clients. Mr. Whisler stated he believed the origination of the affidavit was misleading, whereby an argument ensued. Mr. Donley called order and asked Mr. Whisler to hold his comments or leave the meeting. Mr. Whisler refused to hold his comments and pursued to be heard. Mr. Donley again asked him to hold his comments. Mr. Whisler left the meeting.

At this point quorum was lost, therefore, no vote was cast. Mr. Kennedy stated that under the statute the recommendation to the town council would be "no recommendation" because they were unable to approve or disapprove the petition at this time, and would be certified as such. No further business could be conducted at this point because quorum was lost, and the meeting was adjourned at the advice of Mr. Kennedy.

Mr. Donley adjourned the meeting at 8:35p.m.

## E. New Business

There was no new business introduced at the meeting.

## F. Adjourn

Mr. Donley adjourned the meeting at 8:35 p.m.

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Eugene Chemma  
President

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Lisa Liebert  
Secretary