

**MINUTES OF THE REGULAR MEETING OF THE
MICHIGAN CITY PLAN COMMISSION
JANUARY 27, 2009**

The Michigan City Plan Commission met in a regular meeting in the Common Council Chambers, City Hall Building, 100 East Michigan Boulevard, Michigan City, Indiana, on Tuesday, January 27, 2009, at 7:00 p.m. local time; the date, hour and place duly established for the holding of said meeting.

CALL TO ORDER

Chairman Hook called the meeting to order at 7:00 p.m.

ROLL CALL

Plan Director John Pugh called the roll with the following noted present: Patricia Boy, John Carr, G. Wallace Hook, Tom Milcarek, George Mock, Nolah Nasser, Bill Phelps, Tim Smith, and Al Whitlow. (9 present – 0 absent) Staff in attendance: Plan Director John Pugh, Attorney Steven Hale and Secretary Debbie Wilson.

A pre-meeting was held at 6:30 p.m. with the above members in attendance along with John Pugh and Attorney Hale.

ELECTION OF OFFICERS

The floor was opened for nominations.

Mr. Phelps nominated G. Wallace Hook, Chairman; Nolah Nasser, Vice-Chairman; and George Mock, Secretary. Nominations were seconded by Mrs. Boy.

There were no other nominations; nominations were closed and the vote taken: (AYES): Patricia Boy, John Carr, G. Wallace Hook, Tom Milcarek, George Mock, Nolah Nasser, Bill Phelps, Tim Smith, Al Whitlow (NAYS): None

With a vote of 9 ayes and 0 nays, nominations were approved.

APPROVAL OF MINUTES

The Chair entertained a motion for approval of the minutes of the regular meeting of October 28, 2008 and the special meeting of November 13, 2008.

A motion to approve the minutes was made by Mrs. Nasser – seconded by Mr. Carr. Upon roll call, the vote was as follows for the October 28, 2008 minutes:

(AYES): Patricia Boy, John Carr, G. Wallace Hook, Tom Milcarek, George Mock, Nolah Nasser, Bill Phelps, Tim Smith (NAYS): None (ABSTAIN): Al Whitlow

With a vote of 8 ayes, 0 nays, and 1 abstention, the minutes were APPROVED.

Upon roll call, the vote was as follows for the November 13, 2008 minutes: (AYES): John Carr, G. Wallace Hook, Tom Milcarek, Nolah Nasser, Bill Phelps, Tim Smith, Al Whitlow (NAYS): None (ABSTAIN): Patricia Boy, George Mock

With a vote of 7 ayes, 0 nays, and 2 abstentions, the minutes were APPROVED.

POLICY OF CONDUCT AND PROCEDURES

With no objections, Chairman Hook dispensed with the reading of the Policy of Conduct and Procedures but asked that it be included as part of the record.

The Policy of Conduct and Procedures for the Michigan City Plan Commission states that the Commission is composed of nine persons. By statute, five must vote affirmatively to approve a petition. Thus, whenever less than a full board is present, the petitioner may wish to continue his/her hearing. Anyone wishing to speak on a petition or to the board in general at the end of the meeting may do so by approaching the speaker's roster and giving his/her name and address. Comments should be addressed to the Plan Commission, not to a petitioner or remonstrator or others in the audience. The Plan Commission vote is based on the evidence presented.

APPROVAL OF LEGAL COUNSEL

Chairman Hook introduced Attorney Steven Hale. Attorney Hale will assume the role of attorney for the Plan Commission and Board of Zoning Appeals.

As such, Chairman Hook entertained a motion to approve the recommendation of Steven Hale as attorney for the Boards.

A motion to approve was made by Mrs. Boy. The motion was seconded by Mr. Phelps, with the vote as follows: (AYES): Patricia Boy, John Carr, G. Wallace Hook, Tom Milcarek, George Mock, Nolah Nasser, Bill Phelps, Tim Smith, Al Whitlow (NAYS): None

With a vote of 9 ayes and 0 nays, the motion was unanimously APPROVED.

PETITION(S)

The Chair called for reading of the first petition.

Mr. Pugh read **Petition 900-09 for Minor Subdivision by Canterbury House on the north side of Pahs Road, directly across from the intersection of Clover Lane and Pahs Road, to create two parcels of approximately 9 acres each (Represented by Robert Palm, Surveyor).**

Robert Palm, Surveyor, came forward to address the Commission. Mr. Palm stated that he is representing the petitioner, Canterbury House - Michigan City, LP (the owner). His office is located at 8888 E. U.S. Highway 20, New Carlisle, Indiana. Mr. Palm provided Attorney Hale with proof of publication and notice to adjoining property owners.

Mr. Palm explained that this plat is a resubdivision of a lot that was approved in November 2006. The purpose of this resubdivision into two lots is so the lots correspond with the two construction phases planned for the project (Canterbury House Apartments). The phase line is actually the lot line between the two lots. They are also asking for a waiver from the City requirements that all lots front on a public road. Lot 1B in the rear would be accessed by the platted ingress/egress easement as shown on the plat.

Chairman Hook asked if there were any comments or questions from the Commission.

Mrs. Boy commented in regard to the soil conservation maps, specifically the PE and BAA. She stated that the PE indicates it is severely limited and generally unsuitable for building sites because of ponding and this requires extra drainage. She stated that she is aware they do have a drainage plan and it has been approved by the Sanitary District, but she did not think it was approved by IDEM. She acknowledged IDEM signed for it because the MS4 Coordinator had just been hired and he did not have time to review it, so he forwarded it to them before it was too late to do anything on it. She also does not believe anyone has reviewed the fact that the water from the drainage will go directly to Trail Creek, which is a salmonid stream and has restrictions. She noted drainage to designated salmonid waters from the Indiana Waters Designated for Special Protection – Trail Creek and the tributaries upstream from US Highway 35. Mrs. Boy wanted it to be in the record that this needs to be addressed.

There were no other comments or questions from the Board; therefore, Chairman Hook opened the hearing for public comment.

Hearing none, Chairman Hook closed the public portion of the hearing.

The Chair called for reading of the Department reports.

Mr. Pugh read:

**REPORT ON THE PETITION OF
CANTERBURY HOUSE 900-09**

PLANNING DEPARTMENT: The Planning Department recommends approval under the provisions of the Michigan City Subdivision Ordinance.

WATER DEPARTMENT: R. E. Russell, Superintendent, had no objections.

SANITATION DEPARTMENT: Al Walus, General Manager, had no objections.

ATTORNEY: Attorney Steven Hale stated that the application and other submitted documentation and the proposed secondary plat appear to meet the intention and requirements of the subdivision ordinance. He said it should be noted that approval, if any, should address specifically the petitioner's request for approval of a waiver of the requirements of Chapter 9 (page 34) of the subdivision ordinance that all lots have frontage on a public street.

Mr. Pugh added that the easement is sufficient to provide access and frontage to the road.

Chairman Hook asked Mr. Palm if there was anything else he had to say in summation.

Mr. Palm stated that he did not.

Mr. Smith asked if it would be correct to say that they were asking for a waiver because there isn't any frontage road on the back side of the lot they are splitting.

Mr. Pugh stated that was correct. He explained that the second lot (back lot) would not have frontage on a public street, except for the easement they are providing. The requirement in the ordinance is that the lot has 50' of frontage on a public street. He advised that the Commission has accepted plats in the past with an easement as long as the easement is on the plat and recorded as such. That can be used to develop their frontage/access road.

Mr. Smith stated that he is not seeing the access road on the drawing.

Mr. Pugh pointed out that these are not construction drawings – this is the plat that creates the two lots with two new legal descriptions, which is then recorded. He explained that if the Commission approves this tonight, they are recording the fact that there is a permanent easement of 50' in width to the road.

Mr. Palm added that in the overall picture of the development, this easement corresponds with the proposed roadway through the project and access to phase II. There will be cross easements for drainage, utilities, maintenance, etc. The project will be phased because the banks/lenders need a legal piece of property.

Mr. Carr asked if it is necessary for the Commission members to give their approval if they so choose conditioned upon this being a part of the plat eventually.

Mr. Pugh and Mr. Hook replied that it currently exists on the plat.

Mr. Carr asked if that becomes a permanent part of the plat.

Chairman Hook replied affirmatively.

There were no further questions or comments from the Commission.

The Chair entertained a motion.

A motion to approve Petition 900-09 for the proposed minor subdivision was made by Mrs. Nasser. The motion was seconded by Mr. Milcarek, with the vote as follows: (AYES): Patricia Boy, John Carr, G. Wallace Hook, Tom Milcarek, George Mock, Nolah Nasser, Bill Phelps, Al Whitlow (NAYS): Tim Smith

With a vote of 8 in favor and 1 opposed, the motion CARRIED.

Mrs. Boy asked for it be stated in the record that there is a request for the developer to pursue the IDEM permits for water quality.

Chairman Hook asked for advice from counsel.

Attorney Hale advised that a vote has already been taken. He suggested either redoing the motion or adding the request as a new motion.

Mrs. Boy made a motion that the developer be contacted to make sure they applied to IDEM for the water quality permits and keep in mind it is a salmonid stream where the water will be draining to. The motion was seconded by Mr. Smith, with the vote as follows: (AYES): Patricia Boy, John Carr, G. Wallace Hook, Tom Milcarek, George Mock, Nolah Nasser, Tim Smith (NAYS): Bill Phelps

During the roll call vote, Mr. Whitlow pointed out that there was no discussion on this. Before he voted he asked if this is just a cosmetic motion – if it is something that will have to happen anyway.

Mr. Pugh replied that permits have been issued and construction has started. He stated that he thinks these issues were addressed in the various appeals and the developer has moved forward. Mr. Pugh pointed out that Mr. Palm is just the surveyor for the subdivision and that is all the Commission is looking at tonight.

Mr. Whitlow stated that he understands that, but wanted to know if this is cosmetic and if it is something that has to be done for the construction anyway.

Mr. Pugh stated that he believes this is cosmetic.

In that case, Mr. Whitlow advised that his vote would be “no”.

With Mr. Whitlow’s vote, the ayes and nays were as follows: **(AYES): Patricia Boy, John Carr, G. Wallace Hook, Tom Milcarek, George Mock, Nolah Nasser, Tim Smith (NAYS): Bill Phelps, Al Whitlow**

Mr. Phelps explained his vote in that the original motion was on the two parcels which has nothing to do with construction, land, or anything on the land.

Mr. Smith stated that with all due respect there should have been an opportunity to ask questions, and he therefore called for a revote if possible.

The Chair asked Mrs. Boy to restate her motion.

Mrs. Boy restated her motion to have the Planning Department contact the developer and remind them that they need to have water quality permits for the water that will be draining into Trail Creek, which is a salmonid stream and has specific requirements by law. The motion was seconded by Mr. Smith.

Chairman Hook asked if there was any other discussion.

Mrs. Nasser asked if any of the other people who have developed property in that area have had to go through this, or if this is the first time the Commission has requested the Planning Department to remind anyone they had to do this.

Mr. Pugh replied that the Planning Department has not done this before. The developer normally would proceed on their own and contact IDEM, local county representatives, etc. Mr. Pugh stated that the building permits have been redesigned to include signing off for MS4 by the Sanitary District. It is the owner/developer’s responsibility to do that, the Department does not get involved.

Mr. Smith questioned the check off area on the permit for MS4.

Mr. Pugh stated that it was added some time ago when MS4 first came into being. The Department worked with the Sanitary District and Engineer. It was a requirement of state law that MS4 be enforced. The body that enforces it is the Sanitary District. In order to assist that, the Department added a sign off area on the permit application to let the applicants know it is required.

Mrs. Boy reiterated that it was sent to the MS4 Coordinator who had just been hired. He did not have time to review it and forwarded it to IDEM and IDEM checked it off but they did not check it out.

Chairman Hook asked if checking it off is approval by IDEM.

Mrs. Boy stated that it's approved but they did not look at the fact that it is going into the Trail Creek salmonid waters.

Mr. Smith asked if there is a point in time and procedure after construction starts in where they look at the runoff, or if they have to meet certain runoff requirements before the building is approved.

Mr. Phelps explained that a Sanitary District representative checks the construction plans for anything over 10,000 s.f. for drainage, retention/detention. He noted a similar situation across the street at the high school last year when they built their new parking lot. He said he does not see any difference.

Mr. Smith asked if that runs off into Trail Creek as well.

Mr. Phelps replied that it is right across the street from this project. That is the way the water slopes and the only place it can go.

Mr. Phelps added that he does not think it is the prerogative of the Plan Commission to get into this – it is not their job as it is the responsibility of other agencies.

Chairman Hook asked if there were any other questions or comments from the Commission.

There being none and with a motion and second on the floor, Chairman Hook called for the vote.

(AYES): Patricia Boy (NAYS): John Carr, G. Wallace Hook, Nolah Nasser, Tim Smith, Tom Milcarek, George Mock, Bill Phelps, Al Whitlow

With a vote of 1 aye and 8 nays, the motion was DENIED.

The Chair called for reading of the next petition.

Mr. Pugh read **Petition 901-09 for Minor Subdivision by Kenneth Kainz on the east side of Royal Road, south of Tryon Road, to create two parcels. (Represented by Steven Thate, Surveyor).**

Steven Thate, Thate Land Surveying, 3301 Franklin Street, came forward representing the petitioner. Mr. Thate provided counsel with proof of publication and notice to adjoining property owners.

Mr. Thate explained that his client owns 3.8 acres on Royal Road, south of Tryon Road. There is an older house on lot 1. In the future his clients plan to build an additional house on lot 2 and sell off lot 1.

Chairman Hook asked if there were any questions or comments from the Commission.

There being none, Chairman Hook opened the hearing for public comments.

Hearing none, Chairman Hook closed the public portion of the hearing.

The Chair called for reading of the Department reports.

Mr. Pugh read:

**REPORT ON THE PETITION OF
KENNETH KAINZ 901-09**

PLANNING DEPARTMENT: The Planning Department recommends approval under the provisions of the Michigan City Subdivision Ordinance.

WATER DEPARTMENT: R. E. Russell, Superintendent, had no objections.

SANITATION DEPARTMENT: Al Walus, General Manager, had no objections.

ATTORNEY: Attorney Steven Hale stated that the application and other submitted documentation and the proposed secondary plat appear to meet the intention and requirements of the subdivision ordinance. He noted the minimum lot width in the RE district is 150 ft. Lot 1 of the proposed subdivision has 129 ft. He also noted that approval, if any, may be conditioned on Board of Works acceptance of Royal Road street dedication.

Chairman Hook asked if Mr. Thate had any summation.

Mr. Thate replied that he did not.

Chairman Hook asked if there were any other comments or questions from the Commission.

There being none, the Chair entertained a motion.

A motion to approve Petition 901-09 was made by Mr. Carr. The motion was seconded by Mrs. Nasser, with the vote as follows: (AYES): Patricia Boy, John Carr, G. Wallace Hook, Tom Milcarek, George Mock, Nolah Nasser, Bill Phelps, Tim Smith, Al Whitlow (NAYS): None

With a vote of 9 ayes and 0 nays, the motion was APPROVED.

The Chair called for the reading of the next petition.

Mr. Pugh read **Petition 902-09 for Minor Subdivision by Raab Investments, in Blair's Second Addition to the City of Michigan City, to create two parcels on West Sixth Street (Represented by Steven Thate, Surveyor).**

Steven Thate, Thate Land Surveying, 3301 Franklin Street, came forward representing the petitioner. Mr. Thate provided counsel with proof of publication and notice to adjoining property owners.

Mr. Thate explained that his client has a lot on Sixth Street which is almost 100' wide x 190' deep. There is an existing house on the western half of the parcel. His client wants to sell the house and lot separately, thus splitting the parcel into two lots. The house has been rehabbed. It is located across the street from the skate park.

Chairman Hook asked if there were any questions or comments from the Commission.

There being none, Chairman Hook opened the hearing for public comments.

Hearing none, Chairman Hook closed the public portion of the hearing.

The Chair called for reading of the Department reports.

Mr. Pugh read:

**REPORT ON THE PETITION OF
RAAB INVESTMENTS 902-09**

PLANNING DEPARTMENT: The Planning Department recommends approval under the provisions of the Michigan City Subdivision Ordinance.

WATER DEPARTMENT: R. E. Russell, Superintendent, had no objections.

SANITATION DEPARTMENT: Al Walus, General Manager, had no objections.

ATTORNEY: Attorney Steven Hale stated that the application and other submitted documentation and the proposed plat appear to meet the intention and requirements of the subdivision ordinance. Approval, if any, should address specifically the petitioner's request for a variance from the zoning ordinance that lot widths be 50 ft. (lot 1 width is 49.81 ft.).

Chairman Hook asked if Mr. Thate had any summation.

Mr. Thate replied that he did not.

Chairman Hook asked if there were any other comments or questions from the Commission.

There being none, the Chair entertained a motion.

A motion to approve Petition 902-09 was made by Mr. Phelps. The motion was seconded by Mr. Mock, with the vote as follows: (AYES): Patricia Boy, John Carr, G. Wallace Hook, Tom Milcarek, George Mock, Nolah Nasser, Bill Phelps, Tim Smith, Al Whitlow (NAYS): None

With a vote of 9 ayes and 0 nays, the motion was APPROVED.

OLD BUSINESS/NEW BUSINESS

None

PUBLIC COMMENT

None

ADJOURNMENT

The Chair entertained a motion to adjourn.

A motion to adjourn was made by Mrs. Nasser – seconded by Mrs. Boy and unanimously approved.

The Chair declared the meeting adjourned at 7:30 p.m.

/s/ George Mock, Secretary