

**MINUTES OF THE REGULAR MEETING OF THE
MICHIGAN CITY PLAN COMMISSION
SEPTEMBER 22, 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, September 22, 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 7:05 p.m.

ROLL CALL

Plan Director John Pugh called the roll with the following noted present: Patricia Boy, John Carr, Michael Gresham, G. Wallace Hook, Tom Milcarek, George Mock, 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.

Note: A workshop was held at 6:30 p.m. prior to this meeting

APPROVAL OF MINUTES

The Chair entertained a motion for approval of the minutes of the regular meeting of August 25, 2009

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

With a vote of 7 ayes, 0 nays, and 2 abstentions as they were not present at the meeting, 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.

PETITION(S)

The Chair called for reading of the first petition.

Mr. Pugh read **Petition 906-09 to vacate certain platted lots in Beachwalk, part of Cason Park II, by Tom Moss.**

Chairman Hook asked for Attorney Hale's comments with regard to this petition.

Attorney Hale stated that he has reviewed the petition, and specifically looked at Indiana Statute 36-7-3-11 which applies to the request in the petition. That statute sets forth very specifically what must be contained in the petition: 1) The petition must state the reasons and circumstances prompting the request; 2) Specifically describe the property in the plat proposed to be vacated; and 3) Give the names and addresses of each of the owners of land in the plat. Attorney Hale stated that in his opinion, the petition as filed, does not meet those standards. It is his opinion that the petition is not in a position to go forward for hearing and consideration this evening. He therefore recommended that the petitioner be given an opportunity to submit an amended or new petition for consideration next month or at a time convenient to the petitioner.

Attorney Hale also pointed out that pursuant to the Commission's new procedure, he reviewed the notices that were provided to what he believes are the adjoining property owners. The cited statute requires that all property owners in the subdivision be given written notice by mail. Prior to the meeting, Attorney Hale advised that he found three property owners who were not notified by mail. Mr. Moss did provide one of those receipts tonight and indicated a second one was included under the new owner's name, which still leaves one property owner who has not been notified. Attorney Hale advised the Commission that there is not proper notice to all property owners in the subdivision and this must be accomplished by the petitioner prior to the hearing.

Additionally, Attorney Hale pointed out that the same statute requires the Plan Commission shall make a positive determination when it considers this matter: 1) Conditions in the platted area have changed so as to defeat the original purpose of the plat; 2) It is in the public interest to vacate all or part of the plat; and 3) The value of that part of the land and the plat not owned by the petitioner will not be diminished by vacation.

Attorney Hale advised the Plan Commission that they do not have the responsibility or authority to enforce covenants. The Commission is to just hear the petition. All other matters that are normally part of the procedure and the determination on a request filed by a petitioner pursuant to both the State Statute and Subdivision Ordinance apply to this situation. He wanted to bring it to the Commission's attention that there is a very specific statute that applies to taking property out of a plat or subdivision without all of the property owners agreeing to it.

Again, Attorney Hale stated that it is his opinion that the petition is not in proper form to go forward and consider this matter this evening, both because the petition itself is not in proper form pursuant to the statute and secondly because at least some notice provisions have not been met. He recommended the petitioner be given the opportunity, if he so wishes, to correct those deficiencies and bring the matter back before the Plan Commission at a later date.

Chairman Hook stated that as agreed by the Plan Commission in past discussions, the Commission will take the advice of their attorney as to whether or not things are in proper order, not only for the sake of the Commission but for the sake of the petitioner as well. Chairman Hook advised Mr. Moss that he could withdraw his petition tonight without penalty for resubmission or the Commission would table the petition to hear it next month.

Mr. Moss stated that he would prefer it to be tabled until next month since he just found out about the deficiencies.

The Chair entertained a motion.

A motion to table Petition 906-09 until October 27, 2009 was made by Mr. Smith. The motion was seconded by Mrs. Boy, with the vote as follows: (AYES): Patricia Boy, John Carr, Michael Gresham, G. Wallace Hook, Tom Milcarek, George Mock, Bill Phelps, Tim Smith, Al Whitlow (NAYS): None

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

OLD BUSINESS

With regard to last month's petition for Billups/Caldwell for rezoning, Mr. Pugh advised that Attorney Hale has prepared Findings of Fact which need to be signed and forwarded onto the City Council.

Attorney Hale distributed copies to the Commission for consideration and read same into the record (attached).

The Chair entertained a motion.

A motion to approve the Findings of Fact for Petition P-101-09 for Rezoning by Jason Billups and Laura Caldwell was made by Mrs. Boy. The motion was seconded by Mr. Milcarek, with the vote as follows: (AYES): Patricia Boy, Michael Gresham, G. Wallace Hook, George Mock, Bill Phelps, Al Whitlow (NAYS): None (ABSTAIN): John Carr, Tom Milcarek, Tim Smith

By a vote of 6 ayes, 0 nays, and 3 abstentions as they were not present, the motion was APPROVED.

Mr. Pugh advised that Attorney Hale has also prepared an Approval and Order of the Plan Commission for the Billups/Caldwell Minor Subdivision.

Attorney Hale noted that this was a separate petition for Minor Subdivision. He read same into the record (attached).

The Chair entertained a motion.

A motion to approve the Approval and Order for Petition 905-09 for Minor Subdivision by Jason Billups and Laura Caldwell was made by Mr. Whitlow. The motion was seconded by Mrs. Boy, with the vote as follows: (AYES): Patricia Boy, Michael Gresham, G. Wallace Hook, George Mock, Bill Phelps, Al Whitlow (NAYS): None (ABSTAIN): John Carr, Tom Milcarek, Tim Smith

By a vote of 6 ayes, 0 nays, and 3 abstentions as they were not present, the motion was APPROVED.

NEW BUSINESS

Mr. Pugh reported on the progress of the update of the County-wide Zoning Ordinance which includes the City of Michigan City and the City of LaPorte. The Technical Committee has been meeting with the consultants, LSL of Indianapolis, throughout the summer. The work is proceeding on the draft for the Zoning Ordinance re-write update. The Steering Committee has scheduled a meeting for October 22nd at the Courthouse in LaPorte at 6:00 p.m. Prior to that, the Technical Committee will be meeting on October 8th. They meet to review the draft and the Steering Committee will get the overview on October 22nd. The process is continuing and they expect to have it ready this time next year.

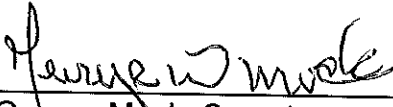
PUBLIC COMMENT

Dennis Boy, 218 Southwood Drive, commented that the last vote had four abstentions.

Mr. Pugh advised that he recorded three abstentions – Mr. Carr, Mr. Milcarek, and Mr. Smith

ADJOURNMENT

The Chair declared the meeting adjourned at 7:25 p.m.



George Mock, Secretary

**MICHIGAN CITY PLAN COMMISSION
RESOLUTION AND
FINDINGS OF FACT**

Petition No. P-101-09 - Petition for Re-Zoning

Jason Billups and Laura Caldwell (the Petitioners) filed Petition No. P-101-09 seeking to rezone certain real estate from M2 to R2. The property in question consists of approximately one and one-half (1½) acres and located generally South of the Southern boundary line of the Town of Long Beach, North of U.S. Highway 12, West of Karwick Road and immediately East of Storey Avenue in Michigan City and is immediately adjacent to property commonly known as 1704 Story Avenue, Long Beach, Indiana and the property in question is described in more detail in Exhibit A attached hereto and made a part hereof.

A Public Meeting to examine the Petition was held on August 25, 2009 at 7:00 p.m. before the Plan Commission of the City of Michigan City, at City Hall, 100 E. Michigan Blvd., Michigan City, IN. Petitioners submitted proof of notice (pursuant to I.C. 36-7-4-604, (b) and (c) and Section 160.125(E)(6) which was examined and found sufficient.

Based upon the Petition filed by the Petitioners to re-zone the property described above, the reports of the various department heads, the Petitioners' presentation at said public hearing, and all remonstrances presented, the Commission now finds as follows pursuant to the Michigan City Zoning Ordinance Section 160.125(G) (15) and (16):

1. There was an error in the original zoning of the property when the zoning ordinance was adopted. Manufacturing and industrial uses was (and may still be) appropriate for the U.S. Highway 12 corridor but it is not compatible with the residential uses in the areas abutting the residential community of Long Beach.
2. The character of the area under consideration has changed through development changes. The general uses of properties in the neighborhood has changed, due to developmental changes, specifically including an expansion of Residential uses, in the form of apartment complexes from the east and expanded housing from the north, into the area in question.
3. A change of zoning will not be injurious or detrimental to the surrounding property values. Additional residential uses will fit in with the immediately adjacent property.
4. If the change were granted it would promote orderly community growth. The history of residential use growth in the immediate neighborhood of the property in question has been orderly and consistent with the Master Plan.

5. The petition is not "spot zoning" and will not confer a special benefit on a relatively small tract without commensurate benefit to the community. This is not spot zoning because: one purpose of this rezoning is to correct an error made in the zoning map; in addition, significant benefits accrue to the community if the current adjoining residential uses are expanded onto the property in question, including increases in property tax assessments.
6. The proposed change will not adversely affect the community. Both the community and the neighborhood will be positively affected by new homes in the neighborhood.
7. The neighborhood plan will not be disrupted or destroyed. Increasing residential uses is consistent with the neighborhood and Master plans. The only access to the property in question is through the residential streets of the Town of Long Beach; manufacturing or industrial uses would not have reasonable access.
8. The topography, soil condition, and other physical features of the land involved are suitable for the proposed use and zoning change. Similar uses in the immediately adjoining property over the past eighty years have demonstrated that there are no physical features of the land that will be adversely affected.
9. The proposed land use will not have an adverse effect upon the surrounding land. There has been significant residential uses in the immediately adjacent neighborhood for eighty years or more with no adverse effects; the proposed use will continue the improvement of the neighborhood.

The Petition was approved by the Plan Commission on August 25, 2009 on a vote of 6-0.

Based upon the presentation of the Petitioners, the matters brought forth in the public hearing and the findings set out above, the Plan Commission of the City of Michigan City, in accordance with the Michigan City Zoning Ordinance Section 160.125(E) and (G) and Indiana Code 36-7-4-605, voted 6-0 to approve the Petition and do hereby resolve and set forth the following certified recommendation to the Michigan City Common Council and the Office of the Mayor of the City of Michigan City:

RESOLVED, that upon convening on March 24, 2009 for the purpose of a public hearing to determine whether the Michigan City Zoning Ordinance No. 2114 together with all amendments and supplements should be amended, the Plan Commission recommends that the property, consisting of approximately one and one half (1½) acres and located generally South of the Southern boundary line of the Town of Long Beach, North of U.S. Highway 12, West of Karwick Road and immediately East of Storey Avenue in Michigan City, Indiana which is more

particularly described in Exhibit A attached hereto, be rezoned from M2 to R2 to promote more orderly growth and development in the City of Michigan City.

RESOLVED, that based on the above listed certified recommendation to the Michigan City Common Council and the Office of the Mayor of Michigan City, the Plan Commission of the City of Michigan would request that the Michigan City Zoning Ordinance No. 2114 together with all amendments and supplements be amended as indicated above.

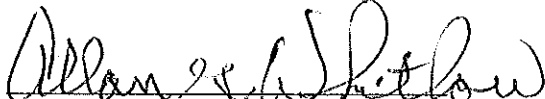
All of which is Ordered this 22ND day of SEPTEMBER, 2009.



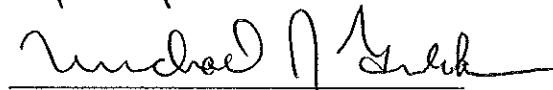
President of the Plan Commission



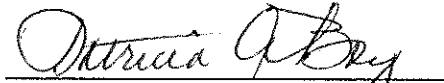
Secretary of the Plan Commission



Member

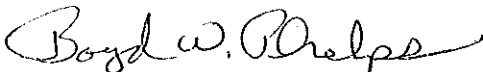


Member



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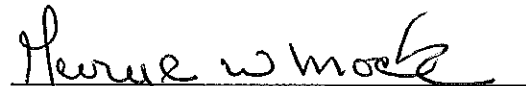
APPROVAL AND ORDER
OF THE PLAN COMMISSION
OF THE CITY OF MICHIGAN CITY, INDIANA

It is hereby ordered that Petition 905-09 submitted by Jason Billups and Laura Caldwell for a minor subdivision to be named "Billups Caldwell Minor Subdivision" is hereby approved and primary and secondary approval of Billups Caldwell Minor Subdivision is hereby granted. In support of this order, the Plan Commission finds that: said Petitioners meet the requirements for a minor subdivision as set forth in the Subdivision Control and Condominium Division Standards Ordinance of the City of Michigan City, Indiana (the "Subdivision Ordinance") and, specifically the provisions of Chapter 4 and Chapter 14(m) of the Subdivision Ordinance; said Petitioners conform in all material respects to the Comprehensive Zoning Ordinance of Michigan City, Indiana; the proposed final plat submitted by the Petitioners meets the requirements for a minor subdivision plat as set out in the Subdivision Ordinance; and said final plat has been or shall be endorsed and approved by the appropriate officers and agents of the Plan Commission

Dated this 22ND day of SEPTEMBER, 2009.

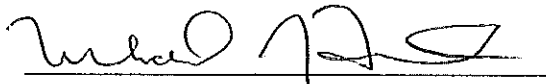
Plan Commission of the City of Michigan City, Indiana


G. Wallace Hook, President



George Mock, Secretary


Patricia Boy

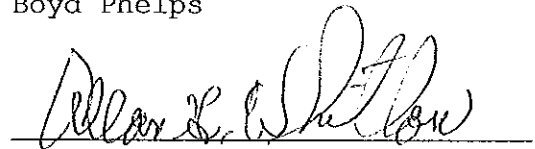
John Carr


Michael Gresham

Thomas Milcarek


Boyd Phelps

Tim Smith


Al Whitlow