

**MINUTES OF THE TOWNSHIP OF PORTER ZONING BOARD OF APPEALS  
REGULAR MEETING HELD MARCH 10, 2011**

A special meeting of the Porter Township of Porter Zoning Board of Appeals was held on March 10, 2011 commencing at 6:00 p.m. at the Porter Township Hall.

**1. CALL TO ORDER AND ROLL CALL**

The Chairman called the meeting to order and roll was called.

Members present: Steve Northrup, Acting Chairperson; Mike Rivers, Phil Yoder, Tom Robbins, Bob Temple, Jon White.

Members Absent: Hank Yeomans.

Also present were Township Planning Commission Chairman Dave Nagy; Deputy Zoning Administrator Mike Alwine; Township Attorneys Craig Noland and Roxanne Seeber; David Hoffman and attorney David Ryan; and approximately 25 interested persons.

**2. APPROVAL OF MINUTES FROM FEBRUARY 24, 2011 ZBA MEETING**

There were no additions or corrections offered to the draft minutes of the February 24, 2011 Zoning Board of Appeals meeting. Upon motion by Rivers, supported by Yoder and unanimously approved the proposed minutes were adopted as submitted.

**3. SETTING OF AGENDA**

Yoder moved, supported by Robbins to accept the proposed agenda as the agenda for the meeting. The motion was approved unanimously.

**4. PUBLIC HEARING APPEAL AND INTERPRETATION –**

Applicant: Dave Nagy  
Property: Island in Shavehead Lake  
Parcel No.: 14-120-019-014-00  
Request: Appeal and interpretation of zoning map/ordinance as to island in Shavehead Lake

The acting chairman introduced the next item on the agenda, which was the request of Dave Nagy, Chairman of the Porter Township Planning Commission appealing the January 2011 determination

Minutes of Zoning Board of Appeals Meeting  
March 10, 2011

by the Porter Township Deputy Zoning Administrator that the island owned by David Hoffman in Shavehead Lake is “not zoned; ”a Zoning Ordinance and map interpretation as to which zoning district, if any, the island in Shavehead Lake is located in; and a resultant determination as to which district standards apply.

The Acting Chairman stressed that there was no variance request on the table respecting the island and that there were no current building plans. Seeber indicated that the Township Zoning Administrator was also a realtor, who at one time had offered the island for sale. The Township Board had determined that there may be at least an appearance of a conflict of interest and as a result had appointed Mr. Alwine as Deputy Zoning Administrator.

Seeber provided the members with a copy of Mr. Alwine’s January 2011 decision, pointing out the last line in which the comment was that the island was “not zoned”. She explained that there were at least three places in the Porter Township Zoning Ordinance in which an intent to zone all of the property within the Township could be found. She also indicated that if the ZBA determined that the island was zoned, the next step would be to determine which zoning district it was located in. She provided each ZBA member and Mr. Ryan with a packet, which included the County’s parcel information for the island and a shoreline parcel owned by Hoffman, assessment cards for the island, photographs of the island taken by Chairman Hank Yeomans and a few color copies of the Township Zoning Map taken off of the Township’s website. She pointed out that the island does appear on each map and that each version of the map was a zoom of the previous version. She indicated that the island does not appear to have a color.

Nagy spoke with respect to the request. He explained that he was interested in the issue as chairman of the Planning Commission. He explained that the primary function of the Planning Commission is to develop and identify zoning districts for all property in the Township. He indicated that the Zoning Ordinance would control that question. When he was advised of the determination that the Hoffman island was “not zoned”, he as the chairman of the planning commission appealed for a determination as to whether the island was zoned. A secondary question was what zone the island is located in.

Nagy presented a large aerial photograph of Shavehead Lake which was taken for the county in April 2010. He pointed out the island in question on the aerial photograph. He indicated that the entire shoreline of Shavehead Lake on both sides of the peninsula is zoned “Lake Residential”. A smaller portion of the shoreline is owned by Camp Freidenswald and that is zoned “PRC” or “Parks, Recreation and Campground”. He indicated that almost 90% of the shoreline of Shavehead Lake is zoned LR, with the exception being the very small portion belonging to the camp.

Nagy presented the large-sized official zoning map for the township. He pointed out that the zoning map establishes different colors for different zoning districts. He pointed out the lake and a small sliver within it denoting the island. He advised that nearly the entire shoreline is purple, with the exception being the PRC camp zoning. He read the map legend, indicating that purple is for Lake residential, green is for PRC and white is Agriculture. He commented that the island appears to him to be white. He indicated there is some property off of the waterfront which is zoned agricultural. He referred the ZBA to the “island” created by a man-mad channel on the southeastern side of the lake. There is a 30-foot strip of land connecting that “island” over the manmade channel. That “island” on the southwest appeared to him to be zoned agricultural. He indicated that he wanted a clarification from the ZBA as to whether the Hoffman island was zoned AG based on its interpretation of the map.

The acting chairman opened a public hearing on the request. Jamie Thompson, 65871 Center

Minutes of Zoning Board of Appeals Meeting  
March 10, 2011

Street, Cassopolis suggested that the island in question was not necessarily white, but that it was “not colored” meaning maybe it wasn’t zoned at all. Darla Simpson-Jones of Dolans Avenue pointed out her residence on the map, indicating that her property is zoned R-1 “on the creek”. She presented the assessment card for the island, indicating that the island is zoned “rural residential”. The ZBA members confirmed that the assessment card was already in their packets. Jones commented that the island may have been overlooked when the zoning map was produced. She inquired as to whether the island was “not colored” or if it was intended to be colored white.

Jones produced copies of the Township Board’s August meeting minutes, pointing out that the Township Board had determined that no building permits could be issued for the island. She indicated that if the island was less than 5 acres in size, even though it is zoned AG, the zoning standards would default to “Rural Residential” according to the Ordinance.

Mr. John Kerr of J15320 Joseph Road, Shavehead Lake questioned whether the map was correct. He felt the island was too small to have been zoned agricultural.

Deputy Zoning Administrator Alwine stated that he had researched the property file for the island that there was apparently no zoning classification for it. He indicated that when Mr. Hoffman presented his initial plan for construction on the island, all of the setbacks would be met. Hoffman had filed an application for a zoning variance based on Alwine’s denial of zoning compliance. That application was never turned in.

In late December or early January, Hoffman had approached him with a different set of plans for construction of a residence on the island. In the meantime, Alwine had been advised of a lawsuit respecting the island. He indicated that all of the zoning districts have different setbacks and standards. The determination of the district would determine the standards. In response to an inquiry from Mr. Kerr, Mr. Alwine indicated that the second Hoffman application appeared to meet all setbacks regardless of the district; however, there was no application pending at this time. Kerr indicated that common sense would tell you that with surrounding property being zoned LR that the island was simply overlooked when the map was produced. Alwine felt that the island was not zoned because it was not considered big enough to bother with.

In response to an inquiry from Rivers, Nagy indicated that the lake level was controlled by the dam. Wayne Brandt of Shavehead Lake indicated that the standard lake level for Shavehead was set by the County at 793.5 feet. He indicated that the property should be zoned “not buildable” and “wetlands”. Rivers was concerned that the setbacks would not be met when the lake level was high.

Jones indicated that over the years the island has been washed away by the natural ebb and flow of the lake. It was deteriorating at the edges. She had been on the island and it was very soft. She urged the ZBA to protect the “deity” of the island. She had swum around the island many times. Brandt indicated that he has spent many years chasing and saving geese on the island. It is not walkable. It is swampland. He urged the ZBA to save the island for the geese and swans.

Northrup summarized the issues at hand. First, is the property zoned and if so, what is the zoning district? He indicated that Nagy felt it was zoned agricultural based on the “white” indication on the map. Temple read correspondence from Carl Vander Molen into the record.

Thompson presented documents from the Hoffman v. Porter Township circuit court file. He pointed out that Hoffman had received state authorization to place a house on pilings on the island. He stated that beach houses are banned by Section 11-08 of the ordinance. He commented that the island should be zoned LR like the rest of the property surrounding the lake. He reminded the ZBA

Minutes of Zoning Board of Appeals Meeting  
March 10, 2011

that the assessment card shows the island as “unbuildable”. He stated that the dam controls the lake level. In the winter it is 793.5 and in the summer it is 793. It only fluctuates 6 inches because of the dam.

Jones indicated that the island is unbuildable. She read minutes from a wetlands committee meeting of 2010 in which a former DNR officer represented the property owner. The wetlands committee had determined that the island was not buildable. She read the minutes of the Porter Township Board’s July 13, 2010 meeting into the record.

Alwine indicated that he did not disagree with the statements made at the meeting; however his job was to impartially review an application in light of the Zoning Ordinance and map.

Attorney David Ryan indicated that the island had an “absence of color” and should be considered not zoned. He indicated that the interpretation could not be that ‘it’s either zoned ag or its unbuildable’. He indicated that the makers of the initial Zoning Ordinance probably thought that they didn’t need to worry about zoning the island because no one could build anything on it. However, the permit his client now had indicated that it could be built on. He stated that the island could not meet the 5-acre minimum for Agricultural zoning. Furthermore, there were activities permitted in the agricultural district, such as farming, that cannot take place on the island. He indicated that an ambiguity in the law is to be construed in favor of the property owner. He requested that the ZBA confirm Mr. Alwine’s opinion that there is no zoning for the island. He indicated that the ZBA could not find that the zoning district was to be colored green or purple by implication. The planning commission would have to rezone the island. He felt that the intent not to zone at all could be inferred by the assessment card in which it was denoted an “unbuildable island”. He indicated that Mr. Hoffman had beautiful plans for what kind of house can be put on the island.

Nagy reiterated that from the Planning Commission standpoint all property in the Township is zoned because the Zoning Ordinance states the same in more than one place. Mr. Ryan commented that if the property was determined to be in a Lake Residential district it would have four front yards. He wished to have the ZBA determine that the narrow sides were the side yards and the north and south were front and back.

Marilyn McLane of Shavehead Lake inquired as to whether emergency vehicle access had been considered.

In response to an inquiry from Kerr, Hoffman indicated that he owns a small outlet on south drive, south of the island. That lot is only 15 feet wide and it is between the Long and Wieber properties. Kerr inquired as to whether the island was a result of a split. Hoffman indicated that the island had always been there.

Pete Petty of Shavehead Lake indicated that residents are very passionate about the real estate on Shavehead Lake. Gert Temple and the wetlands committee had determined that it was a wetland. It was also a habitat for birds. He stated that the island cannot and should not be built on. His wife, who was serving in the air force and not able to attend the meeting had sent a letter requesting that all of the risks and benefits be weighed before and construction was permitted. He stated that a “local and precious” bit of wetlands would be destroyed if the island was zoned for building. He presented a letter from his wife, Constance Huff to the wetlands committee chair dated June 2010, which was included in the record for the meeting. He indicated that his neighbors are in a considerable amount of distress over the rezoning of the island. He felt that the ZBA should think of all of the owners and guests on Shavehead Lake, indicating that an even bigger lawsuit may ensue if the island is build on. He was concerned that he and his neighbors would not be able to see

Minutes of Zoning Board of Appeals Meeting  
March 10, 2011

across the lake. Petty indicated that the ZBA should consider the adverse effects a house would have on the island. He did not think anyone in their right mind would want to live in a house on that island. Letters from Ellis Butler and Harley and Vivian Sellers opposing construction on the island were received.

Tim Braun and Alicia Lilliquet presented a letter requesting that the ZBA consider the future on the Shavehead Lake Island, requesting that the Zoning Ordinance be applied so as to “prevent building or residential construction”. Braun commented that they would be adversely affected. The island is an ecological asset. It is a home for animals. It provides shelter from boat traffic. Watercraft go around the land. It is a good fishing spot. It is an asset to property values on North Drive. The construction process would cause problems. They loved the lake and requested that the ZBA balance the need and desire for growth with their concerns. Mr. Ellis Butler of Shavehead Lake wished the ZBA to consider three points: 1—the July 13 meeting of the wetlands committee indicated that the island is not buildable. 2—no building permits are to issue for the island. 3—the state has defined areas to be considered wetlands and the island is one of them. He was furthermore concerned about sub-surface water resources.

Brandt indicated that the ZBA should consider that if “for some stupid reason, you would allow any building on this, not just the geese and the swans [would be affected]”. He indicated that the bedding on the east side is the prime area for fish reproduction. Jones reminded the ZBA that the assessment card called the property “unbuildable”. Seeber explained the general lack of interrelationship between the assessing classification and the zoning classification. She reminded the ZBA that there was not an issue of “building” on the island on the table for the meeting. The two questions were “is the island zoned?” and “if so, what zoning district is the island located in?”

Noland introduced himself as the attorney representing the Township in the pending lawsuit. He commented that it should be understood that the existence or non-existence of lawsuit should not influence the decision. The applicant should be treated the same as everyone else. He commented that the issue here is not whether the property is buildable. That question was not up for consideration at this meeting. Furthermore, there was no issue as to whether the island was a wetland under consideration at this meeting. The issues were 1—is it zoned?; and 2—what is the zoning district?

He referred the ZBA to Section 111.201 of the Township Zoning Ordinance which provides that all areas of the township are divided into zoning districts. He suggested a decision tree for the meeting. First, is the property zoned or not? He requested that the ZBA consider whether it was the intent of the original Zoning Ordinance to include all property within the township? If so, then the ZBA has a question as to what the intended district for the island is. He commented that the ZBA need not tackle more difficult standards such as setbacks and the like. He urged the ZBA to focus on the issue that had been presented for consideration.

Thompson inquired as to how the island could be zoned differently from the surrounding properties on the lake. Did the printer make an error on the map?

Jones commented that the zoning makes a big difference because of the existing wetlands and swampy low area on the island. Therefore, if the ZBA were to call this property unbuildable it would make a big difference. She commented that the island was being offered for sale with “various permits in the works”. She did not want to misrepresent the “deity” of the island; it should be zoned so as to be unbuildable. She did not want this island issue to be coming up continuously. A builder might purchase it and decide to construct a house on it. She commented that the lake residents would keep fighting as long as the issue kept coming back in different ways. If the ZBA calls the

island “unbuildable” then there will be no more meetings. They already live there. He wants to sell it. She indicated that the Township will always be dealing with “this monster”. They want to protect the lake. Do they have the right to build whatever they want on their lake property? She asked the ZBA to name the island “unbuildable” and to “make sure the integrity of the intentions and the lawsuit and name it for what it really is.”

Ryan concurred that the assessment card is a summary for tax purposes. He commented that what controls the construction is how the property is zoned. The Zoning Ordinance and the zoning map need to be considered to answer that question.

There being no further public comment Temple offered a motion, supported by Yoder to close the public hearing. The motion passed unanimously.

Northrup indicated that board deliberation would ensue. He summarized the comments from Nagy and Alwine. He commented that if the property is zoned AG and it is under 5 acres in size, then the Zoning Ordinance provides that the default standards are those of the R-1 zoning district. Temple commented that public sentiment is clearly against construction on the island. In response to an inquiry from Temple, Seeber commented that the zoning district would control the standards that apply. A question as to height limitations was raised. Nagy commented that each zoning district has its own specifications. There is no zoning district that would outright ban construction or development.

Yoder commented that some property which is zoned agricultural is unbuildable. The code restrictions are going to control the buildability of the property, regardless of what it is zoned. He commented that any construction process it going to be very difficult. He commented that the property is not suitable for standard agricultural uses. For instance, he commented, no one would build a pig barn on pylons.

Temple commented that agriculturally-zoned lots on less than 5 acres go to R-1 for standards. Even with R-1 standards, the property owner is going to have to adhere to the setbacks and the code. Nagy commented that SPD would not necessarily prevent building, but it was a scenic property district and it was colored dark green on the map. Alwine commented that R-1 and R-2 uses, including residential buildings, were allowed by reference in the SPD.

Temple made a motion to 1--reverse the decision of Mike Alwine that the property is not zoned, thereby determining that the island is zoned and 2-to interpret the zoning map to determine that the property is zoned AG. Rivers supported the motion. Ryan inquired as to what zoning district guidelines applied to the island. Northrup commented that the Zoning Ordinance referred agricultural properties of less than 5 acres to the R-1 district and that controlled. The motion passed unanimously.

The Acting Chairman prepared the notice of decision and hand delivered it to Nagy and to Attorney Ryan. He signed the proof of service on the bottom indicating the same.

**5. OTHER MATTERS**

None.

**6. REPORT OF PLANNING COMMISSION REPRESENTATIVE**

Nagy indicated that there was nothing to report.

**7. ADJOURNMENT**

There being no additional business to come before the Zoning Board of Appeals, the meeting was adjourned at approximately 8:00 p.m.

**Respectfully Submitted**

**Bob Temple**

**Secretary of the Zoning Board of Appeals**

Date minutes prepared: March 16, 2011

Date minutes approved: \_\_\_\_\_

PORTER TOWNSHIP BOARD OF APPEALS  
March 28, 2011

The meeting was called to order by Hank Yeomans, Chairman, at 6:00 p.m. at the Porter Township Administration Building.

Pledge of Allegiance

Roll Call:

Present: Steve Northrup  
Mike Rivers  
Robert Temple  
Hank Yeomans

Absent: Phil Yoder  
Tom Robbins  
Jon White

Minutes of March 10, 2011 meeting were discussed.

Motion to approve the minutes as presented was made by Steve Northrup.  
Motion seconded by Mike Rivers. A voice vote was unanimous.

Robert Temple asked that the letters from the Shavehead Lake residents be returned for the ZBA files.

There was no new business.

A motion to adjourn was made by Steve Northrup and seconded by Robert Temple.  
A voice vote was unanimous.

Meeting was adjourned at 6:30 p.m.

Respectfully,



Robert Temple  
Secretary