

STATE OF INDIANA
PORTER COUNTY
FILED FOR RECORD
02/21/2006 12:41PM
LINDA D. TRINKLER
RECORDER

ORDINANCE NO. 8-2004

REC FEE: \$28.00
PAGES: 10

**AN ORDINANCE TO ANNEX AND ESTABLISH ZONING
FOR APPROXIMATELY FOUR (4) ACRES OF LAND
ON THE EAST SIDE OF SILHAVY ROAD BETWEEN
JOHN HOWELL DRIVE AND WILLOW TREE DRIVE**

WHEREAS, the Hollandsworth family has filed a petition to annex approximately four (4) acres of land on the east side of Silhavy Road between John Howell Drive and Willow Tree Drive within the City of Valparaiso and, pursuant thereto, requested that the property be zoned C-3; and

WHEREAS, said petition was referred to the Valparaiso Plan Commission which duly advertised and held a public hearing on the proposed annexation and zoning; and

WHEREAS, the general public was given an opportunity to comment on the proposed annexation and zoning; and

WHEREAS, the Valparaiso Plan Commission voted to recommend approval of the annexation and propose zoning the property C-3 and R-3.

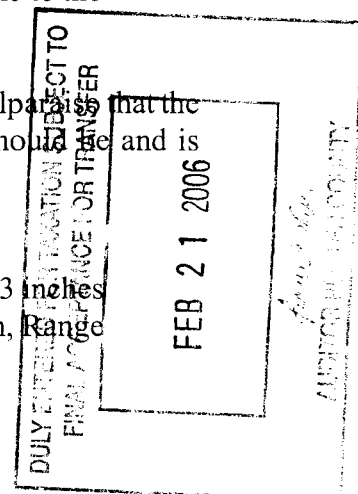
NOW, THEREFORE, BE IT ORDAINED, by the Common Council of the City of Valparaiso that the following described real estate should be and is hereby annexed into the City of Valparaiso:

The South 160 feet and 3 inches of the Southwest 1/4 of the Northwest 1/4 of Section 20, Township 35 North, Range 5 West of the Second Principal Meridian in Porter County, Indiana, excepting therefrom a part of the Southwest 1/4 of the Northwest 1/4 of Section 20, Township 35 North, Range 5 West, of the Second Principal Meridian, Porter County, Indiana described as follows: Beginning at the Southeast corner of said 1/4, 1/4 Section; thence North 89 degrees, 29 minutes, 00 seconds West 288.89 feet along the South line of said 1/4 Section; thence North 47 degrees, 38 minutes, 37 seconds East 235.52 feet to the North line of the South 160 feet and 3 inches of said 1/4, 1/4 Section; thence South 89 degrees, 29 minutes, 00 seconds East 114.72 feet along said North line to the East line of said 1/4, 1/4 Section; thence South 0 degrees, 02 minutes, 40 seconds East 160.25 feet along said East line to the Point of Beginning.

BE IT FURTHER ORDAINED by the Common Council of the City of Valparaiso that the above-described real estate, having been annexed into the City of Valparaiso, should be and is hereby zoned:

C-3 PARCEL

The West 300 feet of the following described parcel: The South 160 feet and 3 inches of the Southwest 1/4 of the Northwest 1/4 of Section 20, Township 35 North, Range



City of Valpo
166 Lincolnway
Valparaiso, In. 46383

5 West of the Second Principal Meridian in Porter County, Indiana.

C-2 PARCEL

The South 160 feet and 3 inches of the Southwest 1/4 of the Northwest 1/4 of Section 20, Township 35 North, Range 5 West of the Second Principal Meridian in Porter County, Indiana, EXCEPTING THEREFROM the following two tracts:

Tract 1: A part of the Southwest 1/4 of the Northwest 1/4 of Section 20, Township 35 North, Range 5 West, of the Second Principal Meridian, Porter County, Indiana described as follows:

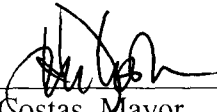
Beginning at the Southeast corner of said 1/4, 1/4 Section; thence North 89 degrees, 29 minutes, 00 seconds West 288.89 feet along the south line of said 1/4 Section; thence North 47 degrees, 38 minutes 37 seconds East 235.52 feet to the North line of the South 160 feet and 3 inches of said 1/4, 1/4 Section; thence South 89 degrees, 29 minutes, 00 second East 114.72 feet along said North line to the East line of said 1/4, 1/4 Section; thence South 0 degrees, 02 minutes, 40 seconds East 160.25 feet along said East line to the Point of Beginning.

Tract 2: The West 300 feet of the following described parcel:

The South 160 feet and 3 inches of the Southwest 1/4 of the Northwest 1/4 Section 20, Township 35 North, Range 5 West of the Second Principal Meridian in Porter County, Indiana.

- ALSO SEE ATTACHED EXHIBIT A - AGREEMENT FOR WRITTEN COMMITMENTS

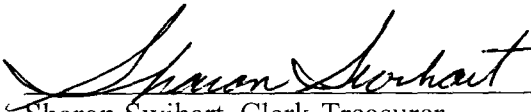
ADOPTED this 26th day of April, 2004, by a 7 vote in favor and 0 vote opposed of all members present and voting.



Jon Costas, Mayor

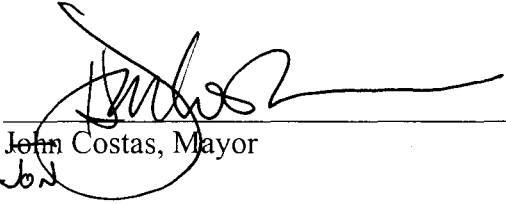
ATTEST: 
Sharon Swihart, Clerk-Treasurer

Presented by me to the Mayor of the City of Valparaiso, Indiana, this 26th day of April, 2004, at the hour of 9:00 o'clock P.M.



Sharon Swihart, Clerk-Treasurer

This Ordinance approved and signed by me this 26th day of April, 2004, at the hour of
9:00 o'clock P.M.



John Costas, Mayor

"EXHIBIT A"

AGREEMENT FOR WRITTEN COMMITMENTS

This Agreement made this 6th day of February, 2006 by and between Silhavy Road, L.L.C., an Indiana limited liability company (hereinafter referred to as the "Owner") for the creation of certain written commitments made to induce the Common Council for the City of Valparaiso (hereinafter referred to as the "City") to adopt an ordinance annexing and establishing the zoning classification of certain real estate located within the City of Valparaiso, Indiana.

WITNESSETH

WHEREAS, the Owner is or is about to become the fee simple owner of the following described real property located in Porter City, Indiana:

The South 160 feet and 3 inches of the Southwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 20, Township 35 North, Range 5 West of the Second Principal Meridian in Porter County, Indiana, EXCEPTING THEREFROM the following two tracts:

Tract 1. A part of the Southwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 20, Township 35 North, Range 5 West, of the Second Principal Meridian, Porter County, Indiana, described as follows:

Beginning at the Southeast corner of said $\frac{1}{4}$, $\frac{1}{4}$ Section; thence North 89 degrees, 29 minutes, 00 seconds West 288.89 feet along the South line of said $\frac{1}{4}$ Section; thence North 47 degrees, 38 minutes, 37 seconds East 235.52 feet to the North line of the South 160 feet and 3 inches of said $\frac{1}{4}$, $\frac{1}{4}$ Section; thence South 89 degrees, 29 minutes, 00 seconds East 114.72 feet along said North line to the East line of said $\frac{1}{4}$, $\frac{1}{4}$ Section; thence South 0 degrees, 02 minutes, 40 seconds East 160.25 feet along said East line to the Point of Beginning.

(hereinafter referred to the "Real Estate") which is currently unincorporated land zoned R-1 Single Family Residential District on the Porter County Zoning Map; and

WHEREAS, the Owner has filed an application for annexation and rezoning on or about October 24, 2003 seeking to annex and establish the zoning classification for the Real Estate; and

WHEREAS, the Owner believes that proposed use of the Real Estate as commercial development adjacent to the existing commercial development acts as an appropriate transition to existing uses and provides a good and efficient use of the Real Estate; and

WHEREAS, the Owner shall and does hereby agree to certain commitments to be placed upon and binding upon the Real Estate pursuant to Valparaiso Zoning Ordinance; and

WHEREAS, the City, after paying reasonable regard to the Valparaiso Growth Management Plan, current conditions and the character of current structures and uses in each district, the most desirable use for which the land in each district is adapted, the conservation of property values throughout the jurisdiction; and the responsible development and growth of the City, deems that the petition filed by the Owner should be granted and the zoning classification for the Real Estate be established under certain and specific terms, conditions, and restrictions, all of which the Owner has consented and agreed to be bound thereby.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Owner and City covenant, promise and agree as follows:

1. **Ownership of the Real Estate.** The Owner represents and warrants that Owner is or about to become the holder of the fee simple title to the Real Estate and that the Real Estate is not encumbered with any contract purchase, lease, tenant farmer, or any other interest inconsistent with the grant of covenants, conditions and restrictions made herein.

2. **Zoning Classification.** The zoning classification of the Real Estate shall be divided between the C-3 and C-2 zoning classifications as set forth below, subject, however, to the terms, conditions, and restriction on use and development, which is in addition to, and not in lieu of, all other zoning restrictions and limitations applicable to land located in the respective district requirements for the zoning classifications in the City of Valparaiso, Indiana:

C-3 PARCEL

The West 300 feet of the following described parcel:

The South 160 feet and 3 inches of the Southwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 20, Township 35 North, Range 5 West of the Second Principal Meridian in Porter County, Indiana.

C-2 PARCEL

The South 160 feet and 3 inches of the Southwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 20, Township 35 North, Range 5 West of the Second Principal Meridian in Porter County, Indiana, EXCEPTING THEREFROM the following two tracts:

Tract 1. A part of the Southwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 20, Township 35 North, Range 5 West, of the Second Principal Meridian, Porter County, Indiana, described as follows:

Beginning at the Southeast corner of said $\frac{1}{4}$, $\frac{1}{4}$ Section; thence North 89 degrees, 29 minutes, 00 seconds West 288.89 feet along the South line of said $\frac{1}{4}$ Section; thence North 47 degrees, 38 minutes, 37 seconds East 235.52 feet to the North line of the South 160 feet and 3 inches of said $\frac{1}{4}$, $\frac{1}{4}$ Section; thence South 89 degrees, 29 minutes, 00 seconds East 114.72 feet along said North line to the East line of said $\frac{1}{4}$, $\frac{1}{4}$ Section; thence South 0 degrees, 02 minutes, 40 seconds East 160.25 feet along said East line to the Point of Beginning.

Tract 2. The West 300 feet of the following described parcel:

The South 160 feet and 3 inches of the Southwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 20, Township 35 North, Range 5 West of the Second Principal Meridian in Porter County, Indiana.

3. **Condition Precedent.** This entire Agreement is conditioned upon the approval of this Agreement by the Common Council for the City of Valparaiso, by duly passed and adopted ordinance incorporating this Agreement and its terms therein, in accordance with the laws of the State of Indiana. In the event said Common Council shall fail to so approve this Agreement or adopt the ordinance anticipated herein, this Agreement shall, *ipso facto*, be and become null and void and of no force or effect.

4. **Conditions on Development of the Real Estate.** The Owner shall comply with the following requirements, conditions and stipulations upon which the City's approval and adoption of the ordinance to allow for development of the Real Estate under the Valparaiso Zoning Ordinance is specifically and expressly made a condition thereof:

- (a) No portion of the Real Estate shall be developed as two-family or multi-family residential dwellings.
- (b) All private roads shall be no less than 26' wide and shall be constructed to standards for public roads in the City of Valparaiso.
- (c) On that portion of the Real Estate zoned C-2 hereunder, no alcoholic beverages shall be sold or served unless associated with a sit down restaurant where alcoholic beverage sales are associated with the sale of food.
- (d) No outdoor lighting shall be allowed to be installed on the Real Estate that may become an annoyance or a nuisance to residents or occupants of adjacent properties.

5. **Subsequent Owners.** This Agreement shall run with the land and be binding upon subsequent owners of the Real Estate, unless modified or terminated hereinafter.

6. **Duration and Termination.** This Agreement shall be effective at such time as an Ordinance adopted and ordained by the Common Council for the City of Valparaiso, Indiana changing the zoning classification for the Real Estate to the C-3 and C-2 zoning classification pursuant to the Valparaiso Zoning Ordinance shall become effective and shall continue in full force and effect unless and until modified or terminated at a public hearing after notice as provided by the rule consistent with the provisions of Indiana Code §36-7-4-613, as amended from time to time.

7. **Merger.** This Agreement constitutes the entire agreement of the parties, and all promises, undertakings, representations, agreements, understandings, and arrangements with reference to representations are herein merged.

8. **Construction.** This Agreement is entered into the State of Indiana and shall be construed in accordance with the laws thereof. The headings appearing as titles for each of the provisions of this Agreement are included for purposes of convenience only and shall not be considered in the construction of any of the substantive provisions herein.

9. **Designated Party of Enforcement.** The City shall be the designated party of enforcement of this Agreement and the covenants and agreements contained herein.

10. **Enforceability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable for any reason this Agreement and the other provisions herein shall be deemed to be null and void *ab initio* and of no force and effect whatsoever.

IN WITNESS WHEREOF, the City and the Owner have executed this Agreement at
Valparaiso, Indiana, upon the date and year first above written.

SILHAVY ROAD, L.L.C., and Indiana
limited liability company

By: Frank Pressel
Frank Pressel
Manager

CITY OF VALPARAISO

H. Jonathan Costas
H. Jonathan Costas, Mayor

ATTEST:

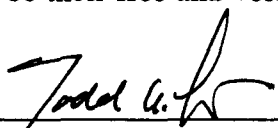
Sharon Emerson-Swihart
Sharon Emerson-Swihart
Clerk Treasurer

STATE OF INDIANA)
) SS:
COUNTY OF PORTER)

Before me, a Notary Public, in and for said City and State, this 6th day of February 2006, personally appeared Frank Pressel, Manager of Silhavy Road, L.L.C. and acknowledged the execution of the foregoing instrument to be their free and voluntary act.

My Commission Expires:

TODD A. LEETH
Porter County Resident
Commission Expires: 9/20/2008



Notary Public

Printed: _____

County of Residence: _____

This Instrument Prepared By:

Todd A. Leeth
HOEPPNER WAGNER & EVANS LLP
103 East Lincolnway
P.O. Box 2357
Valparaiso, Indiana 46384
Telephone: (219) 464-4961

February 1, 2006 U:\tleeth\hwe\ARCHIVE\2004\Pressel\WrittenCommitments4-27-04.wpd

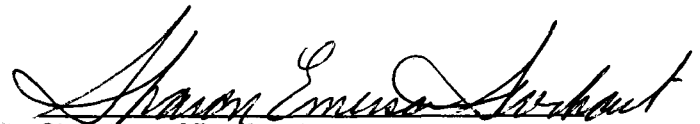
Declaration

This form is to be signed by the preparer of a document and recorded with each document in accordance with IC 36-2-7.5-5(a).

I, the undersigned preparer of the attached document, in accordance with IC 36-2-7.5, do hereby affirm under the penalties of perjury:

1. I have reviewed the attached document for the purpose of identifying and, to the extent permitted by law, redacting all Social Security numbers;
2. I have redacted, to the extent permitted by law, each Social Security number in the attached document.

I, the undersigned, affirm under the penalties of perjury, that the foregoing declarations are true.


Signature of Declarant

Shaven Emerson Surhart
Printed Name of Declarant