

Defeated 4/3 Murphy, Hoffman,  
Bowker, Hudson -  
No -

ORDINANCE NO.: 23-2016

**AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF VALPARAISO, INDIANA, AMENDING THE CITY'S OFFICIAL ZONING MAP AND REZONING LAND WITHIN THE CITY FROM THE BUSINESS PARK ZONING DISTRICT ("BP") TO URBAN RESIDENTIAL ZONING DISTRICT ("UR")**

WHEREAS, Ind. Code § 36-7-4-600, *et seq.*, sets forth the procedures that govern the adoption and amendment of zoning maps (a/k/a rezoning) by municipalities located within the State of Indiana; and

WHEREAS, on August 12, 2016, Porter Starke Services, Inc., and Aurora View, L.P. (collectively referred to as the "Petitioner") filed an application to rezone the property generally referred to as 1 Valley Drive, Valparaiso, Indiana, 46383, and consisting of approximately 3.63 acres ("Real Estate") from Business Park Zoning District ("BP") to Urban Residential Zoning District ("UR"). Petitioner's application is incorporated by reference into this Ordinance. The legal description for the Real Estate is attached hereto, incorporated herein and marked as *Exhibit "A"* to this Ordinance; and

WHEREAS, on September 13, 2016, the City of Valparaiso, Indiana, Planning Commission ("Plan Commission") held a duly advertised public hearing on the Petitioner's application; and

WHEREAS, on September 27, 2016, the Plan Commission voted to favorably recommend rezoning the Real Estate from Business Park Zoning District ("BP") to Urban Residential Zoning District ("UR") by a vote of 6-0 (with 2 abstentions and 1 member absent); and

WHEREAS, on October 10, 2016, the Common Council of the City of Valparaiso, Indiana ("Common Council") held a duly advertised public hearing on the Petitioner's application; and

WHEREAS, in accordance with Ind. Code § 36-7-4-603 in preparing and considering the Petitioner's application, both the Plan Commission and Common Council have paid reasonable regard to: (1) The City of Valparaiso, Indiana, Comprehensive Plan; (2) the current conditions and character of the current structures and uses in each district; (3) the most desirable use for which the land in each district is adapted; (4) the conservation of property values throughout the jurisdiction; and (5) responsible development and growth; and

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF VALPARAISO, INDIANA, THAT:

Section 1. Incorporation of Recitals. The foregoing Recitals (or whereas clauses) are incorporated herein by reference into this Ordinance as findings of fact.

Section 2. Amendment to Zoning Map. The Official Zoning Map of the City is hereby amended and the Real Estate legally described in *Exhibit "A"* to this Ordinance is

rezoned from Business Park Zoning District (“BP”) to Urban Residential Zoning District (“UR”) in accordance with the terms and conditions of this Ordinance.

Section 3. Conditional Approval. The Common Council’s adoption of this Ordinance is contingent upon the Petitioner successfully obtaining rental housing tax credits from the Indiana Housing and Community Development Authority (“IHCDA”) to finance the construction of an affordable housing development consisting of thirty-one (31) units on the Real Estate with other units located on adjacent land for residents having low or moderate incomes (“Project”). In the event that Petitioner’s application for rental housing tax credits is not approved by the IHCDA in an amount of not less than **Nine Hundred Thousand Dollars (\$900,000.00) per year for ten (10) years**, for any reason, this Ordinance shall automatically terminate and shall be deemed to be null and void *ab initio* and of no force and effect whatsoever. In the event that Petitioner’s application for rental housing tax credits is not approved by the IHCDA as required above, for any reason, the Official Zoning Map of the City shall not be amended and the current zoning of the Real Estate as Business Park Zoning District (“BP”) shall remain in full force and effect.

The Common Council’s adoption of this Ordinance is also contingent upon the Common Council’s adoption of Ordinance No.: 24-2016 entitled “An Ordinance of the Common Council of the City of Valparaiso, Indiana, Approving the Donation of Land to Porter-Starke Services, Inc.” In the event that Ordinance No.: 24-2016 is not adopted by the Common Council, for any reason, this Ordinance shall automatically terminate and shall be deemed to be null and void *ab initio* and of no force and effect whatsoever. The Common Council’s adoption of this Ordinance is subject to any and all conditions and terms set forth in Ordinance No.: 24-2016 or any exhibits thereto.

Section 4. Agreement for Written Commitments. In addition to the conditions set forth in Section 3 of this Ordinance, the amendment to the City’s Official Zoning Map and rezoning of the Real Estate is also subject an Agreement for Written Commitments between the Petitioner and City. The Agreement for Written Commitments is attached hereto, incorporated herein and marked as **Exhibit “B”** to this Ordinance.

Section 5. Effective Date. This Ordinance shall be in full force and effect from and after its passage, approval and publication according to law and after the above-described written commitments are made by the Petitioner and recorded in the chain of title of the above-described real estate in the Office of the Recorder of Porter County, Indiana.

Passed by the Common Council of the City of Valparaiso, Indiana, by a \_\_\_\_\_ vote of all members present and voting this \_\_\_\_\_ day of October, 2016.

\_\_\_\_\_  
Jon Costas, Mayor

ATTEST:

\_\_\_\_\_

Sharon Swihart, Clerk-Treasurer

Presented by me to the Mayor of the City of Valparaiso, Indiana, this \_\_ day of \_\_\_\_\_, 2016, at \_\_\_\_\_ o'clock p.m.

\_\_\_\_\_  
Sharon Swihart, Clerk-Treasurer

This Ordinance approved/denied and signed by me this \_\_ day of \_\_\_\_\_, 2016, at \_\_\_\_\_ o'clock p.m.

\_\_\_\_\_  
Jon Costas, Mayor

Exhibit A – Legal Description for the Real Estate

The East 200' of Parcel D in Vale Park South, in the City of Valparaiso, as per plat thereof, recorded in Plat File 15-D-2, in the office of the Recorder of Porter County, Indiana.

Parcel No.: 64-09-13-201-005.000-004

Commonly known as: 1 Valley Drive, Valparaiso, Indiana 46383

Exhibit B – Agreement for Written Commitments

## AGREEMENT FOR WRITTEN COMMITMENTS

This Agreement for Written Commitments (“Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 2016, by Porter-Starke Services, Inc., an Indiana nonprofit corporation (the “Owner”) for the creation of certain written commitments to induce the Valparaiso Plan Commission and the Common Council (collectively, the “City”) to approve the application for an Amendment to the Zoning Map filed by Owner pursuant to I.C. 36-7-4-600 *et seq.*, and Division 15.100 *et seq.*, of Valparaiso Unified Development Ordinance.

### WITNESSETH

*WHEREAS*, Owner is or about to acquire the fee simple title of the real property consisting of approximately 3.63 acres and located in Porter County, Indiana, generally referred to as 1 Valley Drive, Valparaiso, Indiana 46383 and more fully described on attached ***Exhibit “A”*** (hereinafter referred to as the “Real Estate”); and

*WHEREAS*, Owner filed an application (“Application”) to amend the City’s Official Zoning Map by changing the zoning classification of the Real Estate from Business Park Zoning District (“BP”) to Urban Residential Zoning District (“UR”); and

*WHEREAS*, Owner shall and does hereby agree to certain commitments to be placed upon and binding upon the Real Estate; and

*WHEREAS*, the Common Council for the City of Valparaiso, after paying reasonable regard to the Comprehensive 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 Application should be granted under certain and specific terms, conditions, and restrictions set forth herein.

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

1. **Ownership of the Real Estate.** Owner represents and warrants that they are or about to become the fee simple title owner of the Real Estate as described on ***Exhibit “A”***, and this Agreement is expressly conditioned upon Owner acquiring the fee simple title to the Real Estate. In the event that Owner is not or does not acquire the fee simple ownership of the Real

Estate then this Agreement and the related Ordinance shall automatically terminate and shall be deemed to be null and void *ab initio* and of no force and effect whatsoever.

2. **Approval of Application for Zoning Amendment.** Subject to the limitations set forth in Section 1 of this Agreement, the Application is hereby deemed approved and the Official Zone Map for the City amended to reflect the Real Estate rezoned to the zoning classification of Urban Residential Zoning District (“UR”).

3. **Restrictions on Use and Development of the Real Estate.** In order to promote Owner’s stated purpose and intent to construct an affordable housing development consisting of thirty-one (31) units on the Real Estate (“Project”) with units located on adjacent land for residents having low or moderate incomes , the Owner and Real Estate shall be subject to the following conditions and stipulations:

- A. **Local Contractors, Suppliers and Vendors.** Reasonable best efforts shall be made by Owner to use local contractors and vendors located Lake, Porter and/or LaPorte County, Indiana, for site development and building construction for the Project.
- B. **Prohibition on Request for Reduction of Utility Tap-On Fees.** Owner shall not seek a reduction of the applicable Utility tap-on fees for the Project.
- C. **Emergency Access.** Owner’s site plan for the Project shall incorporate a second and alternative emergency access to the residential structures to be constructed on the Real Estate by cross access easements to Valley Drive via the James Hutton and Beverly A. Charitable Trust or Visiting Nurses Association Foundation, Inc., property or Purdue University property to Valparaiso Street for the purpose of a second access for the City’s public safety departments. The access shall be designated to accommodate fire apparatus.
- D. **Limitation on Variances.** Without the consent of the City’s Planning Director, Owner shall not seek any variances to the standards set forth in the City’s Unified Development Ordinance relating to the landscaping, density or architectural features of the Project.
- E. **Bus Shelter.** Owner shall at its sole cost and expense install a bus shelter in close proximity to the Real Estate. The bus shelter shall match the existing V-Line bus shelters utilized by the City. The location of the bus shelter shall be mutually approved by the City’s Transit Director and the Owner.
- F. **Landscape Plan.** Prior to the Common Council of the City taking final action on the ordinance approving the rezoning of the Real Estate, Owner shall submit a final landscaping plan which shall include the following:  
(1) the addition of a berm and dense vegetative screening along the south

and southwest portions of the Real Estate (adjacent to the Montessori School, Phoenix Center and Hospice Center facilities); and (2) a sidewalk connections from the Real Estate to Valparaiso Street.

G. Limitation on Request for Reduction of Park Impact Fee. Owner shall not request more than a fifty percent (50%) reduction of the applicable park impact fee for the Real Estate and Project.

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

5. Duration and Termination. This Agreement shall be effective at such time as this Agreement is fully executed by the parties and shall continue in full force and effect.

6. 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.

7. Construction. This Agreement is entered into in the State of Indiana and shall be construed in accordance with the laws thereof. In the event of a conflict or ambiguity within this Agreement, the more restrictive provision shall be deemed to prevail. 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.

8. Counterpart Execution. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original but all of which shall be deemed one and the same instrument.

9. Designated Party of Enforcement – Variances. The City shall be the designated party of enforcement of this Agreement and the covenants and agreements contained herein. The Valparaiso Plan Commission may grant variances to the terms of this Agreement provided the standard provision to be varied would be a developmental standard variance under Indiana law.

10. Enforceability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable for any reason or if in the event any portion of this Agreement becomes unlawful by proper legislative or municipal action, the invalid or unenforceable covenants and restrictions shall be severed from this Agreement and the remaining covenants and restrictions shall continue and be given their full force and effect of law.

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

**PORTER-STARKE SERVICES, INC.**



By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF PORTER     )

Before me, a Notary Public, in and for said County and State, this \_\_\_\_ day of \_\_\_\_\_, 2016, personally appeared \_\_\_\_\_ who acknowledged the execution of the foregoing instrument to be his/her free and voluntary act.

Commission Expires: \_\_\_\_\_  
Resident of \_\_\_\_\_ County

\_\_\_\_\_  
Notary Public  
Printed: \_\_\_\_\_

**CITY OF VALPARAISO, INDIANA**

\_\_\_\_\_  
Jon Costas, Mayor

ATTEST:

\_\_\_\_\_  
Sharon Swihart  
Clerk-Treasurer

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each social security number in this document, unless required by law. *Ethan S. Lowe.*

This Instrument Prepared By:  
Ethan S. Lowe  
Blachly, Tabor, Bozik & Hartman, LLC  
56 Washington Street, Suite 401  
Valparaiso, Indiana 46383  
Telephone: (219) 464-1041