



LAPORTE COUNTY PLAN COMMISSION

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ANNEMARIE POLAN
Building Commissioner

LA PORTE COUNTY PLAN COMMISSION MINUTES March 28th, 2017

MEMBERS PRESENT: Earl Cunningham John Carr
Glen Minich Rita Beaty Kelly
John Sullivan Gene Matzat
Anthony Hendricks

OTHERS PRESENT: Annemarie Polan, Recording Secretary; Doug Biege, Attorney; Dar Forker, Secretary.

PLEDGE OF ALLEGIANCE:

ROLL CALL:

Rita Beaty Kelly asked for approval of the agenda.

Glen Minich made a motion to approve. John Carr seconded.

All approved. Motion carried 6-0.

Rita Beaty Kelly made a motion to approve the minutes.

Glen Minich made a motion to approve the minutes as presented. John Sullivan seconded.

All approved. Motion carried 6-0.

Petitions:

1. **Folmer Nyby Trust** comes before and respectfully petitions the La Porte County Plan Commission for a 7 Lot Major Subdivision called "Woods", and a waiver from the La Porte County Plan Commission for a minimum required 200' feet of frontage for Lots 6 & 7. This land is north of Schultz Road, West of Concord Vineyard Subdivision, East of Concord Hills Subdivision, and South of Woods of Concord Subdivision, Center Twp., Section 17, Township 37 North, Range 3 West, and is zoned R1B having parcel ID# 46-06-17-100-003.000.042.

Attorney Biege said notice is adequate.

Rita Beaty Kelly asked for name and address for the record.

Matt Garritano from Hendricks & Associates Surveying & Engineering at 512 Lincolnway, here representing Folmer Nyby Trust, along with David Lee. Mr. Garritano said that they're asking for approval for a 7 lot single family subdivision north of Schultz Road. Mr. Garritano said that the land is presently zoned R1B. Mr. Garritano said that the lots range from 2.8 acres to approximately 10.4 acres.

Mr. Garritano said that four lots will be accessed with private drives off Schultz Road and two of the lots on the north side will access roads Chardonnay Drive and Cabernet Lane off of Concord Drive and Woods of Concord. Mr. Garritano said that there will be no new county roads and the proposed subdivision is single family residential only. Mr. Garritano said that there will be no townhomes, duplexes, condominiums, apartments and no trailers. It is a single family residential seven lot subdivision.

Mr. Garritano said that the seven (7) lot single family residential subdivision if approved, they will replace the presently approved forty (40) lot residential subdivision. Mr. Garritano told the board members that they have a copy of the proposed covenants and restrictions.

Mr. Garritano said that the single family homes will be restricted to reflect the surrounding areas neighborhood in place. The storm water will not be impacted from its present location with respectable volumes. The velocity or upstream affects with regards to Malaga Drive, Concord Vineyard, or any other upstream owner will not be impacted.

Mr. Garritano said that the driveways for lots along Schultz road will be limited to a height of two (2') feet lower than the lowest point on Malaga Drive, thus protecting those possible storm water situation and restrictions in Concord Vineyard. The present county pipe that outflows underneath Schultz Road is a twelve (12") inch pipe, will not be expanded and it will function as it does today. The driveways along Schultz Road have more than the required sight distance outlet on Schultz Road. There will not be a cut through access from Schultz Road to Concord Drive and Woods of Concord. No lots will be accessed from Concord Hills through present home improved road of right-of ways. All driveways passing through the drainage way off Schultz road will require home storm water structures to pass the existing storm water easement area and the minimum culvert size is forty-eight (48") inches.

Mr. Garritano said that this development of the remaining land will create jobs and enhance the property values in the neighborhood without any new maintenance costs to the county, or any maintenance costs to construct a new road. Mr. Garritano said that they're asking for a favorable primary and secondary approval of a seven (7) lot single family residential subdivision with also a request for a variance for the two north lots, being instead of R1B required minimum hundred (100') foot frontage, they're asking for a variance for that.

Mr. Garritano said if you have any questions we're here to answer them. Thank you for your time.

Rita Beaty Kelly asked if there are comments from the board.

Attorney Biege said first we can import questions, or comments.

Glen Minich asked Matt if each individual lot will be serviced by its own septic and its own well.

Mr. Garritano said that's correct.

Mr. Garritano said also in that packet is the report from the soil scientist.

Rita Beaty Kelly asked Mr. Garritano if this was originally a forty (40).

Mr. Garritano said in the 90's they had preapproval for forty (40) lots, but the families are older and they wanted to just finish it out with larger and smaller amounts of lots.

John Sullivan asked Matt if the variance is for lot 6 & 7.

Mr. Garritano stated yes, the two north lots, that's correct.

Rita Beaty Kelly asked if there are any more questions, or comments from the board.

Earl Cunningham asked if they're sufficiently satisfied with the twelve (12") inch drain pipe on Schultz Road.

Mr. Garritano said yes. Mr. Garritano said even if the situation where the pipe were to get bugged or fail, the road in relation to Malaga is twelve and a half (12 ½'), almost thirteen (13') feet lower than Malaga. Mr. Garritano said with that amount of change in elevation, if it were to fail, it would go up and over Malaga and continue south and they wouldn't impact any owner to the north.

Rita Beaty Kelly said that we've discussed before, this has been before the Plat Committee and the Drainage Board and it has all had approval from all of these.

Annemarie Polan, Building Commissioner, said that he's been to the Plat Committee.

Attorney Biege told Matt that he use the term upstream owner.

Mr. Garritano said owners. Mr. Garritano said that anybody in Concord Vineyard going up Malaga is upstream.

Attorney Biege said upstream meaning all the water is going to be flowing towards these lots and not –

Mr. Garritano said that the water doesn't flow towards the lot, it flows down off Malaga and then there is a catch basin in there that's on the road right-of-way and it travels through two culverts, through the drainage easement if you look at page 2 of 5, there are existing storm water outlets of

thirty-six (36") inch corrugated metal pipe and a eighteen (18") inches corrugated metal pipe and that water flows through the drainage easement to the twelve (12") inch outlet. Mr. Garritano said that its flows really towards the south end of those lots there on Schultz.

Attorney Biege said that the water is flowing away from the existing subdivision towards Schultz road naturally and it's also going to be managed with your storm water management plan, in addition to the natural lay of the land, is that right?

Mr. Garritano stated yes.

Someone out in the audience said that he has a diagram that kind of shows where the water goes.

Attorney Biege told him that he can do it when the remonstrators are up here. Attorney Biege said that he already has it drawn out and engineered here.

Rita Beaty Kelly asked if there is anything else from the board.

Rita Beaty Kelly asked for remonstrators for, or against the petition. Please come to the podium and state your name and address and we try to keep our remonstrators at a three (3) minute minimum.

Attorney Biege said that we try to avoid repetition, so if we have some folks that want to say the same thing, that is great, but use a representative. Attorney Biege said that we don't need thirty (30) people saying exactly the same thing.

Rita Beaty Kelly asked for name and address for the record.

Remonstrators:

1. Dan Woodruff and he lives in Concord Vineyard, and that is 3749 N. Malaga Drive West.

Mr. Woodruff passed out a diagram to the board members showing pictures of the storm water.

Annemarie Polan, Building Commissioner asked Dan when these pictures were taken.

Mr. Woodruff said that this was in the last big rain we had last year. Mr. Woodruff said that is the worst it's ever been.

Mr. Woodruff said that the reason they're here is because they're against the new lots. The proposed lots have a retention pond – a legal drain that services Concord Vineyard. The drain is currently inadequate in Concord Vineyard as evidenced by the street flooding in the photographs. We're worried if these lots are sold and homes are built, the likely hood of the legal drain being altered is very high. If you go out there and look at the lots that they're looking at proposing, it's either ravines and hills, and they're just worried that this will create further issues for Concord Vineyard.

Mr. Woodruff said that they would like to see if we could get this project fixed because it's been an ongoing problem since they moved into the house about twelve (12) years ago and they're just concerned that if anything else happens that is going to affect their neighborhood. Mr. Woodruff said that the road is completely impassable in Concord Vineyard when they get a moderate to heavy rain. Mr. Woodruff said that this is an ongoing issue and they're very concerned.

John Carr asked how much of a rain would it take to get a problem.

Mr. Woodruff said that he would say probably anything over an inch rain would cause the street to flood, which requires him to go out and clean basins off. The rain could be about two and a half (2 ½) foot deep to three (3') feet deep in those photos. Mr. Woodruff said that there are elevations on that diagram.

Mr. Woodruff said that if you look at this diagram you can see where all of the rain flows and it follows the storm sewer out to the retention pond, which is the main entrance to the larger lot that he's proposing.

Mr. Woodruff said that is his only issue and if you have any questions for him ---

John Carr asked Mr. Woodruff if it has flooded ever since he's been at this home.

Mr. Woodruff stated yes. It has been continuous.

Glen Minich said that the main problem there is that you guys have an inadequate size storm sewer, and it's not a blockage in your --

Mr. Woodruff said that they've gone in front of the drainage board and they've been very helpful, but he just thinks the pipe is undersized and that's their main problem. All the storm water goes towards the new lots.

Rita Beaty Kelly asked if there is anything else from the board.

Attorney Biege told Mr. Woodruff that he has this retention pond and you said proposed new homes, and he's trying to figure out where this retention pond is in relation to the new lots.

Mr. Woodruff is going over the site plan with attorney Biege.

Attorney Biege asked Mr. Woodruff if he has had any conversations with MS4.

Mr. Woodruff stated yes, Rick Brown.

Mr. Woodruff is going over the site plan with the board members and attorney.

John Carr asked Mr. Woodruff if any of his neighbors have the same problem with their yards flooding that you've seen.

Mr. Woodruff stated yes, but not to the extent of his.

Rita Beaty Kelly asked if there are any other remonstrators for, or against.

2. Cindy Philipson, 3712 N Malaga and they're neighbors across the street and on the corner of Schultz and Malaga. Ms. Philipson said that they've had flooding problems in their home as well when they first moved in and spent a significant amount of money on Nova coming in and doing a number of things to their basement so their home would not flood again. Ms. Philipson said that the drainage problems that he's mentioned has also significantly impacted their home. It would be nice to see something done with the drainage issue. Ms. Philipson said that their home is the lowest probably in the entire neighborhood and the flooding in their home evidently happened before they bought the home and it was not disclosed, so it was a seventeen-thousand (\$17,000.00) dollar investment that they had to put in their basement after moving in from flooding.

Annemarie Polan, Building Commissioner, asked Ms. Philipson if it has flooded again, or just that first year.

Ms. Philipson said that they've not had the reoccurrence, but they had to spend seventeen-thousand (\$17,000.00) dollars on Nova to come in and do a number of things to avoid that happening again. Ms. Philipson said they put in additional wells in the home and additional battery powered sump pumps to make sure that would not happen again. Ms. Philipson said that there are trenches all the way around their basement to keep it from flooding.

Glen Minich asked Ms. Philipson to identify on the map where her home is.

Ms. Philipson is up at the bench going over the site plan.

John Sullivan said asked Ms. Philipson how long she has lived there.

Ms. Philipson said that they moved in June of 2009.

Ms. Philipson said that she thinks that if the drainage pipes were larger and they didn't have the restriction, it would be a much better situation.

Attorney Biege asked Ms. Philipson if she understands that this is the Plan Commission and they have no power or authority to handle any drainage in the existing subdivision. The only issue we have tonight is these new lots would negatively impact your current situation. If you talk to Rick Brown, that is the right place to go, the County will – I happen to be the lawyer for MS4 also, so they're just now starting to do some projects for older subdivisions that were perhaps poorly designed to alleviate water issues. Attorney Biege said that they just got their first project approved last night from the county council. Attorney Biege said he just wants you folks to understand what we're doing tonight because they already have a forty (40) unit subdivision approved. Attorney Biege told Ms. Philipson to be careful what you wish for.

3. Bill Hackey, 5165 W. Concord Drive.

Mr. Hackey said that he's here for a couple of clarifications. Mr. Hackey said that he believes he spoke to you the other day and you said that those forty (40) lots were not approved; that they never finished.

Annemarie Polan, Building Commissioner, told Mr. Hackey that they were never finished. Annemarie said that they got preliminary approval, but not final.

Mr. Hackey said that he thinks that it's important that the forty (40) lots may have been planned, but it was never approved.

Attorney Biege said that he apologizes and he didn't mean to dis-speak, but if primary plat is done and engineering is correct, then it usually goes forward, either way this is less than what they requested initially.

Mr. Hackey said it's a moot point, but he thinks it's a point of clarification.

Mr. Hackey said he had two questions for the gentlemen. Mr. Hackey said he said four (4) were Schultz Road and he couldn't hear where the other three (3) were entering in.

Matt Garritano said that he misspoke, it's five (5).

Mr. Hackey said that it also sounded like, and again, he spoke quickly so he didn't quite catch it, but that there was a road that was going to be taken through from either Concord Vineyards, or Schultz through to Concord Valley.

Mr. Garritano said that will be no connector road.

Rita Beaty Kelly asked if there are any more remonstrators.

Ms. Philipson told attorney Biege if that was his home on the corner you might feel a little differently.

Attorney Biege told Ms. Philipson that he's not discounting what you're saying, I'm trying to get you to understand what we're doing tonight. Attorney Biege said that we're going for forty (40) units that's already approved down to seven.

4. Gene Witek, 3822 N. Malaga Drive West

Mr. Witek said that he lives slightly north of where this drawing is. Mr. Witek said that he got that lot back in 2000/2001 and before that storm sewer was there in that particular picture, it wasn't there. When it rained, water came down various directions and all the streets came right past by Dan's house. Mr. Witek said that he wasn't there then. Mr. Witek said that he said to himself that if somebody is going to move into that lot someday, they're going to get flooded out.

Mr. Witek said that it doesn't have to be a big storm, water comes from four or five different directions and it settles right there. Mr. Witek said that his basement was flooded going back several years ago and that water was two (2) to two and a half feet (2 ½) deep. Mr. Witek said that he can't get out of his neighborhood because that water is standing there because if it's the fall of the year, there are leaves coming down and that drain is only so big. Dan goes out there and cleans it out. Mr. Witek said that the county came out there one time and put saw horses out there because they couldn't drive through. Mr. Witek said he would have to take another route to get out of the subdivision and that was before the horseshoe went all the way around. Mr. Witek said that something is wrong with that picture.

Mr. Witek said that the gentleman can say be careful what you wish for. We didn't know we had a problem at that time when they bought houses and property there; it eventually accumulated -- came along, because he was in phase three (3) and when phase four (4) came along, more water kept coming down from the north. Mr. Witek said that water wasn't there back in 2000. It accumulates because of the construction that takes place. You can say what you want, but you're wrong. We have a water problem there in the fall of the year, winter time with snow and ice when the snow plows comes by and they get a rain, the street is flooded. Mr. Witek said it can be six (6) inches deep -- they come and then they have to back up and go around another direction, which is over a mile to get to his driveway.

Mr. Witek said that it's a problem that is not going away and he doesn't care about those new lots. Those new lots are in another place over there and the water is going to come down and right over to where that little pond is, and whoever buys those lots are going to have a problem.

Rita Beaty Kelly asked if there are any other remonstrators for, or against.

5. Anthony Oss, 3846 N. Malaga Drive and he's on lot 10 (ten) and on the west side of Malaga as you count up. Mr. Oss said that his only concern and question is he knows that there are covenants that were apparently submitted to the board this evening for the new subdivision. Mr. Oss said that there were covenants placed on his property and those covenants tie themselves to other subdivisions out in that area that have been developed over the years. Mr. Oss said that there are provisions within the covenants that kind of allow them protection from each other, specifically paragraph 28 that discusses storm water. Mr. Oss said that it discusses the impacts that we may have during construction on each other and the ability for owners of the other subdivisions to actually come back have those rights towards each other. Mr. Oss said that he doesn't know if you have a copy of this.

Mr. Oss is up at the bench passing out the covenants from Concord Vineyard, Unit 3. At the end of these covenants they do discuss this and it states some rights that are granted. Mr. Oss said that he just wants to make sure that the homes back here are going to be similar in nature.

Rita Beaty Kelly asked if there are any other remonstrators.

6. Charles Siedlecki 4998 W. Concord Drive -- Woods of Concord. Mr. Siedlecki said that his question is similar to one that was just asked. He understands they're going to need a variance to

bring entry into two of those homes off of Concord Drive. Mr. Siedlecki said that he was told that this was going to be a gated community and he's not sure how that is going to work. Mr. Sidelecki asked if there is going to be a name of another subdivision inside their subdivision. The other thing is, they have covenants in their subdivision as well that elevations weren't to be changed, and unfortunately they will and no action was taken on it and they had to deal with it themselves between neighbors over the years, but it has been expensive. Mr. Siedlecki said that some of the fixes for instance his house and the house next to his had problems flooding out the neighbor behind them, which would be Concord Hills. To fix that the poor guy behind them in Concord Hills former son Kai (sic) put a big pipe through the berm and it was designed to protect that property and it coupled up like a fountain. Mr. Siedlecki said that he always has water sitting in his yard. Mr. Siedlecki said that the lot on the one side of him he tried to buy it, but his house was already sold. Mr. Siedlecki said that he was told it was unbuildable.

Mr. Siedlecki said that it was backfilled fourteen (14) feet to put a house on it. Mr. Siedlecki asked who is enforcing these covenants. The inspectors aren't out there stopping that. Mr. Siedlecki said if they try changing those elevations, it does slope down towards the Vineyards. Mr. Siedlecki said that there is a creek down there. If you're going to access these lots, unless you put a huge pipe in there and a concrete driveway over it, he doesn't see how you're going to do that without creating more (unintelligible).

Mr. Siedlecki said in their subdivision if they're going to raise the elevations of this property, there will be more water coming their way. Having the variance is odd in that the other subdivisions doesn't have them and they're accessed off of main roads, but if it's only going to be seven (7) single family homes, half those streets are in already and he doesn't have a problem with that, but he's concerned about the elevations and the covenants. Mr. Siedlecki said that it is the lack of information here.

Attorney Biege said that there really is no monitoring of covenants. If the covenants have their restrictions, the county does not have the ability to enforce the covenants – that's a general statement, but for the most part the individual homeowners association in the subdivision that agree to it, you folks have the ability to enforce.

Mr. Siedlecki asked isn't there some process to get the plat in the subdivision plat approved – don't they have to make certain promises to the county on what they're going to do with the land as far as elevation.

Attorney Biege said unless there is a certain elevation restriction, no.

Mr. Siedlecki said so they can backfill on that lot.

Attorney Biege said arguably. Attorney Biege said that we need to get with MS4 to try to engineer something to take care of some of these water problems. Attorney Biege told Mr. Siedlecki said that his subdivision is not the only one out there where there are engineering issues with surface runoff.

Mr. Siedlecki said that he's had the county there a couple of times and you're not supposed to do anything to alter the normal flow of the water. Mr. Siedlecki said that has already been done and if he doesn't put something up here, he has a lake.

Attorney Biege said that is why he asked Matt about the natural flow and drainage, because he knows that is going to be a concern for the commission because he's assuming they're not going to make a decision to make anything worse. Attorney Biege said as far as what's there now, let's start with MS4 to see what we can do to fix it, at least on the storm water and the roads.

Attorney Biege said that when it comes to private property then for the county, for the most part, can't do a whole a lot.

Rita Beaty Kelly asked if there are any other remonstrators for, or against.

7. Dan Buresh, 4976 W. Tokay Drive in Concord Hills Subdivision. Mr. Buresh said his neighbor, (unintelligible) Schmidt lives on the northwest side of proposed lot 1. Mr. Buresh said that the question they have is just a clarification of the little black dots on the notice that was sent to them and what they represent, along with red lines that kind of go all the way around.

Annemarie Polan, Building Commissioner, said soil borings.

Mr. Buresh said that the other thing is the restricted covenants between the subdivision and the owner at the time you buy the house, is that correct?

Rita Beaty Kelly said yes, that is a legal landowners.

Rita Beaty Kelly asked if there are any other remonstrators.

8. Andy Philipson, 3712 N. Malaga Drive W. Mr. Philipson said just a quick question based on what's going on to the east of the subdivision in Concord Vineyards and all the sand removal. Mr. Philipson said that he would expect that's not going to be possible, but with the size of the lots it could be possible. Mr. Philipson asked if the development is going to insure that they're not going to dig out like they did on the east side of the subdivision. Mr. Philipson said that they have those signs up on Schultz Road "Improving Our Water". Mr. Philipson said that he totally agrees that seven (7) houses aren't going to affect the wells at all. Runoff could change, and he understands the concerns with storm water, but is there anyway those people are going to go in and dig, bringing horses and animals.

Rita Beaty Kelly said that it's going to be a covenant restriction.

Attorney Biege said that it's a covenant issue, but this is also zoned as residential so there are restrictions on what you can do with animals and those types of things. If whether or not they can build a pond, that is a permit issue.

Mr. Philipson said so in theory they could dig just like they have on the east side.

Attorney Biege said that the east side is fifty-two (52) acres, and the largest lot here is ten point four/five so he doesn't think that we're going to have nearly the impact, even if they choose to do so. Attorney Biege said they can dig a hole, there is nothing that's going to stop them from digging a hole.

Mr. Philipson said along those lines where the corner house on Malaga and Schultz, the decrease in elevation there is probably closer to twenty (20') feet actually from their yard down to where that drainage pond is, which more is like a mud hole most of the time because it's not really a pond. The concern with the driveways coming across even with a forty-eight (48") culvert is there is going to be potentially some restriction – his preference would actually be to make a pond there so it actually did hold more water, long term if you get into storm water solution and improve the drainage out of Concord Vineyards would make sense to him and not something that's not going to infringe upon him. Mr. Philipson said that would be his two cents on what you guys should do.

Rita Beaty Kelly asked if there are any others for, or against.

9. Anthony Oss, 3846 N. Malaga Drive. Mr. Oss said that he quickly reviewed the covenants and one concern is it does not appear that the other developments are referenced in here. Mr. Oss said that ones that they already have for lot 3 in Malaga, or lot 3 – whatever, there is a portion there at the very end that he highlighted it where it does afford some protection between the various subdivisions, specifically in regard to that one, he will have to read exactly what paragraph 28 talks about, but there is a paragraph 28 in their covenants that kind of wraps all these developments all together and he thinks that paragraph 28 specifically discusses storm water. Mr. Oss said that he feels for these folks because he lives on fill and he has to drive through that lake essentially at the bottom of the hill.

10. Scott Niceley, 4934 W. Schultz Road. Ms. Niceley said just to put to the water situation, he remembers when they didn't finish the last house in the area they're speaking about and they had a bulldozer and cut that trench across the street – he lives across the street from where that retention pond is. Mr. Niceley said that they tried their best to get rid of the water situation, but there is a lot of water there. Going down a manmade culvert, if they're going to build some kind of property there, obviously they're going to fill it in they're absolutely right; he feels for these people; it would be on the west side of Schultz Road and they're pretty high up.

Mr. Niceley said that if he was going to buy a ten (10) acre lot, he wouldn't want a trench through it. Something has to happen to that, and if they fill that in, that water is right there on that corner where Malaga comes out. Mr. Niceley said that he doesn't remember a storm drain going under Schultz Road anywhere. Mr. Niceley said that he knows the one goes under Malaga and comes in where they added that because that house was flooding. They dug up that property to let that water run out and go somewhere.

Mr. Niceley said that he's related to Marlow Harmon, who at the time was a County Commissioner and all hell broke loose and he remembers them adding a pipe and digging that trench out there.

Mr. Niceley said his only other question is, what is going to happen to the electrical that runs down right through those yards. Mr. Niceley asked if they're going to bury that? The electrical runs right through those woods north of Schultz Road.

Attorney Biege said that he's guessing, an educated guess, if there is already an easement there, it is going to stay in that vicinity, otherwise they would have to redraft all the easements.

Mr. Niceley said that they're going to try to build the driveway over – under that electrical and over that ---

Attorney Biege said probably. Once electrical has been set, it's very rare that they move it.

Rita Beaty Kelley asked if there are any more for, or against.

Dan Woodruff said that he lives on Malaga Drive. Mr. Woodruff said it just seems the layout is not a good layout. If somebody is able to go out and look at it. What you have is a six (6') foot deep ravine in this section here; you have a hill here, so they're going to turn off Schultz, go over the hill and then there is a six (6') foot deep ravine that's about five (5') foot across. It doesn't seem like it is laid out very well. If they put the culvert over that, that's fine, but they still have six (6") foot ravine running through the middle of all these lots. It just doesn't seem like a very good idea to him.

Mr. Woodruff said that they talk about the overflow underneath Schultz Road. Mr. Woodruff said that he doesn't know if anyone has ever gone out and looked at it, or when they did the survey, design and layout, but that culvert is like a ten (10') foot pipe and it has three (3') foot of dirt in front of it and it looks like a groundhog has been living in it the last ten (10) years. There hasn't been any water that has gone under that culvert and to think that's an escape for water is just not accurate. It just doesn't seem like a lot of thought was put into this and it seems like it was put together at the last minute.

Mr. Woodruff said that this lot here has a retention pond with a culvert, so they're going to be driving over the storm sewer that's already present. If you're able to go out and look at it, it just seems like it's not a very good idea.

Rita Beaty Kelly asked Matt to come back to the podium.

Matt Garritano said that as far as the legal drain, it will not be altered. If you look at sheet 2, lot layout, they made that storm water easement much larger than the natural flow of the water. Mr. Garritano said that they aren't going to be changing that at all.

Glen Minich said that they mentioned that culvert on the road. Glen asked if that is sufficient.

Matt Garritano said it's a twelve (12") inch pipe. Mr. Garritano said that they were just out there last week and it did appear that there was some sort of animal in that area and it was not covered with dirt and there wasn't any water in it. Mr. Garritano said that the water filtering through the ground before it even gets there. Mr. Garritano said that if you look at the storm water

management plan, he believes that they calculated at about two (2) acre feet of water, and they have seven. Mr. Garritano said that they have the capabilities of taking on much more for that area. Mr. Garritano said that he's pretty sure that you have that in your packet.

Rita Beaty Kelly said it's there.

Mr. Garritano said as far as the condition of the pipe, he can't say as to directly underneath the road, but if there is a situation with wild life, or whatnot, that's a pipe that's maintained by the county.

Earl Cunningham asked Matt how far south on Schultz Road does that pipe exit.

Mr. Garritano said that it's pretty steep there on the south side.

Earl Cunningham said that the pipes go under the road and he asked Matt if he sees any evidence of water coming out of the south side and washing away ground, then there is no water running through.

Mr. Garritano said that it's filtering through the ground before it even gets to there. Mr. Garritano said as far directly after a storm, he can't say because –

Attorney Biege asked Matt to speak up because people keep talking and he can't hear him.

Mr. Garritano said that they have twenty-five (25%) percent on the storm water management plan and a lot of that is good soil sand. It's filtering through the ground relatively easily.

Mr. Garritano said as far as the photos go, this subdivision is not adding water up hill. If you look again on sheet 2 and 5, the lowest elevation of Malaga is eight thirty eight (838). We're requiring that any driveways built on any of these five (5) lots are two (2') foot lower than that. No driveway actual top of the driveway, is going to be two (2') foot lower than the lowest part of Malaga. Mathematically they aren't going to be adding that water up hill.

Mr. Garritano said that this is not a subdivision that is associated or it's not going to be connected through in any other subdivisions. It sets by itself and accessed by public roads.

Mr. Garritano said that there was another comment about it being a gated community and he doesn't know where that came from. Mr. Garritano said that it's not going to be a gated community and accessed by public roads.

Mr. Garritano said as far as changing the elevation on the lot that Mr. Biege said, once the lots are subdivided and granted approval here tonight and a person purchases that lot, if they decide to raise their driveway up higher than the maximum requirement of two (2') foot, or if they change their lot, that would be a situation that would involve them and not the owner or the subdivision.

Attorney Biege said that he wants to add to that. Attorney Biege said that we have building inspectors and they have to get permits and inspections as process goes. Attorney Biege said that there is monitoring during construction.

Mr. Garritano said that they can't control that. If they make a bad decision and impacts somebody else's, that is their consequences.

Mr. Garritano said where it talks about it being a retention pond, the water naturally flows that direction. Mr. Garritano said as it goes southwesterly towards Schultz Road to the outlet, at the same time filtering through the ground, they're not holding on to any water. Mr. Garritano when they talk about electrical utilities being within the road right-of-way, those are going to remain in the road right-of-way.

Mr. Garritano said that he understands the situation with the other subdivision having preexisting water conditions, but this is all downhill.

Attorney Biege said if we're going to do a new plat, his question, did we have retention pond designed with the plat preliminary approval? He wants to make sure that we're not removing the retention and it was designed to be there to begin with.

Mr. Garritano said that it's his understanding that was put in when the gentleman explained that they put the two culverts and they cut the road, because the drainage easement allowed them to put those pipes in to grab some of that water and alleviate the situation and then the easement to access onto the lot that the owner had owned. Mr. Garritano said that it's not a retention pond, it's a drainage easement to allow the installation to the pipe to the water to go that way.

Attorney Biege asked Mr. Garritano if this label came from him.

Mr. Garritano stated yes.

Attorney Biege said that he just wants to make sure what was approved last time in front of the Plan Commission and what was planned.

Mr. Woodruff said that originally when the subdivision was originally designed in Concord Vineyard, they forgot to allocate – they didn't legally label it as legal drain that is why they are a little leery about the design of the project. Mr. Woodruff said they did it in hindsight - they made that a retention pond. It was a retention pond. Mr. Woodruff said that they continue to have the problem so they cut the culvert and they added that in hindsight the ravine.

Attorney Biege said his question is, we have an easement for the pipe, but we don't have a legal easement for the retention pond, or to hold water there coming from the storm sewer.

Mr. Garritano said if that were the case, and it was a retention pond, it would have been a revision in the secondary Plan for that subdivision.

Attorney Biege said correct him if he's wrong, so we have a retention pond, but it could disappear theoretically.

Mr. Garritano said that it's a drainage easement.

Attorney Biege asked the commission if they're clear on that point, because we're looking at preliminary plat approval, but you can put conditions on that preliminary plat approval. Attorney Biege said that these folks are concerned about drainage and we have what looks like storm water running into this depression, but no legal preservation of the depression. Attorney Biege asked if that makes sense.

Mr. Garritano said that they're allocating the storm water easement. Mr. Garritano said that nothing can be built or changed in that, the only thing that can be added in there is the driveway with the mandatory minimum forty-eight (48") inches. Mr. Garritano said that there is going to be no changing inside that storm water easement.

Mr. Garritano said that they aren't going to make the secondary Plat, and then eliminate the existing storm water drainage.

Attorney Biege said we may want to expand this because it looks like the storm water is running to that spot and if MS4 does any work to increase the flow –

Mr. Garritano asked attorney Biege if he's speaking strictly up on lot 5.

Attorney Biege stated yes, just on lot 5, the spot that is retaining water.

Mr. Garritano said that he can't attest what MS4 may, or may not, come up with.

Attorney Biege said that seems like the logical place. Attorney Biege said if MS4 were to expand and it sounds like they need to, but that's not his decision to make however, then that is the actual spot for the water to be deposited.

Mr. Garritano said that he doesn't want to make it sound like it's deposited like staying there, it all flows westerly. Mr. Garritano said that he guesses pond is the wrong word for it.

Attorney Biege asked Mr. Garritano to tell him what the right word is.

Mr. Garritano said it could be drainage way – drainage easement – legal drain. The water is going that direction and is out letting to the southwest.

Attorney Biege said based on your calculations, if MS4 were to make modifications in this neighborhood and increase the water flow, how would that affect the area. Attorney Biege asked Mr. Garritano if he would have to sit down and recalculate it.

Mr. Garritano said without comparing calculations, he can't attest as to what may, or may not, get bigger.

Attorney Biege said that he hopes the commission sees where he's going with this, because if MS4 were to do a project, his thought is we should plan for whatever is approved, if the Plan Commission chooses to go that way. Let's reserve the capacity to handle this additional water and then perhaps in the future MS4 can design something else, but Matt can also calculate for increased water flow if we're going to increase the water flow from the neighborhood. Attorney Biege asked if he's making sense.

Mr. Garritano said that it would all be determined on how many unimproved lots that are in the water shed there, east of the preexisting subdivision, and he doesn't know how many that is.

Glen Minich said that we're talking about forty-eight (48") inch culverts.

Mr. Garritano said proposed for the driveways.

Glen Minich said that is a large water flow.

Attorney Biege said if you approve the preliminary, you can put a reservation in there that we get approval from MS4 to do a recalculation of the water flow so it will handle any improvements that we may make to the neighborhood.

Glen Minich said he has one other question. Right there where we're talking about, they say there is an existing thirty-six (36") inch corrugated metal pipe and –

Mr. Garritano said its eighteen (18") inches; side by side.

Glen Minich asked if that was part of the drainage plan on the original.

Mr. Garritano said that it wasn't part of the original drainage plan, it was added later to alleviate the issue there at the intersection of Malaga when they cut the road and added the pipe.

Glen Minich said the eighteen (18") inches from the intersection and the other comes from actually ---

Mr. Garritano said they both come from the intersection.

Board members speaking amongst themselves.

Rita Beaty Kelly asked Matt if he has anything else.

Mr. Garritano stated no.

Rita Beaty Kelly asked if there are any other questions from the board.

Attorney Biege said nothing further, but just to remind you that this is for preliminary approval and you can put conditions on the preliminary approval and you don't have to do a specificity,

because this is still a work in progress before they come for final approval, but you can put requirements on what you want clarified, or further investigated.

Mr. Garritano said today they came with a proposal for the variance for the frontage for R1B on the north two lots and they were seeking primary and secondary approval. How that works, he doesn't see how that would be an issue, but that is what they're seeking.

Attorney Biege said there was an issue. He would suggest if the commission is so inclined to approve to give preliminary approval, reexamination of the covenants so we can tie it in with other covenants of the other phases of the subdivision.

Earl Cunningham asked if there is a motion to deny until some future date until they can meet with MS4 and clear up the covenants, is there a restriction on how long before they can come back.

Attorney Biege said that he thinks they would have to wait a year. Attorney Biege said he might add, this is part of our process to drill out any questions and issues for neighbors and preliminary plan approval is to look at this and see if this is workable and then we drill down to the specifics throughout the process before we get to secondary. Attorney Biege said if you deny it they're done for a year. Attorney Biege said that if you approve it with conditions, they can work on those conditions and they have to bring those back –

Earl Cunningham said if you table it then they don't have to wait a year; the difference between denial and tabling it.

Attorney Biege said you can table it.

Earl Cunningham made a motion to table this.

John Carr seconded.

Voting Aye: Earl Cunningham, Rita Beaty Kelly, John Sullivan and John Carr.

Voting Nay: Glen Minich and Gene Matzat.

Anthony Hendricks joined the board for the discussion on the fee schedule.

Annemarie Polan, Building Commissioner was explaining to the board members that the Building Department is asking for \$150.00 per ten (10) kilowatts. We're charging \$50.00 for all solar permits at this time.

Glen Minich needed more information on the solar panels and the need in La Porte County.

John Niegos, our electrical inspector was out of town for a seminar and will be available in April to explain the solar panels to the board members.

Earl Cunningham made a motion to table so the electrical inspector can come before the board.

John Carr seconded.


All approved. Motion carried 7-0.

Rita Beaty Kelly asked if there is any old business.

Rita Beaty Kelly asked if there is any new business.

Hearing none.

There being no further business, meeting adjourned at 7:22 p.m.


ANTHONY HENDRICKS, President


ANNEMARIE POLAN, Rec. Secretary