



LAPORTE COUNTY PLAN COMMISSION

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ANNEMARIE POLAN
Building Commissioner

LA PORTE COUNTY PLAN COMMISSION MINUTES January 28th, 2020

MEMBERS PRESENT:

Anthony Hendricks Rita Beaty Kelly
John Carr Earl Cunningham
Harold Parker Glen Minich

OTHERS PRESENT: Annemarie Polan, Building Commissioner, Doug Biege, Attorney, Ashley Kazmucha, Secretary.

PLEDGE OF ALLEGIANCE

Annemarie Polan asked for approval of the meeting minutes of September 24th, 2019.

Rita Beaty Kelly made a motion to approve as presented.

Harold Parker seconded.

All approved. Motion carries 6-0.

Annemarie Polan asked for approval of the agenda for the January 28th meeting.

Earl Cunningham made a motion to approve the agenda as presented.

Rita Beaty Kelly seconded.

All approved. Motion carries 6-0.

Elections:

Annemarie Polan asked for nominations for president.

Rita Beaty Kelly nominated Anthony Hendricks.

John Carr seconded.

Annemarie Polan asked if there were any other nominations.

Hearing none the motion carried.

All approved, motion carries 6-0.

Anthony Hendricks asked for a nomination to maintain the present officers: Rita Beaty Kelly for vice-president; Annemarie Polan for secretary; and Doug Biege for attorney of record; Glen Minich as BZA member.

John Carr made a motion to nominate the officers as Anthony Hendricks stated.

Harold Parker seconded

All approved. Motion carries 6-0.

Petitions:

1. Petitioner Donald H. and Catherine S. Boody represented by Andrew D. Voeltz of Howes & Howes, LLP (“Petitioner”) respectfully petitions the Plan Commission to vacate the undeveloped but plotted roadways and/or alleyways adjacent to and between the property commonly known as 115 Maple Drive LaPorte, IN., Center Twp., zoned R1B. Exhibits attached hereto.

Attorney Biege stated notice is adequate.

Andrew Voeltz of Howes & Howes, LLP stated he is representing Donald and Catherine Boody in their petition to vacate an undeveloped, but plotted roadway and/or alleyway that is adjacent to their property. The original petition that was filed indicated a map area that is much larger than what it is now. It included a two hundred fifty feet by thirty feet (250' x 30') stretch of what used to be referred to as Beach Drive. The Tree Haven Plat of Albrecht Island that was surveyed in 1938 shows the tail end of what was once referred to as County Road, there was a Beach Drive plotted, but undeveloped, along the southeastern to the eastern and then north and back to the west where it intersected with Maple Drive again. The neighbor directly to the south of his clients, the Slater Trust, successfully petitioned this Plan Commission late last year for vacation of the Southernmost portion of the North-South plotted, but undeveloped roadway that was once known as Beach Drive. Concern with that lies with adjacent land owners, as indicated by the statute, no one needed to be notified. The only portion remaining is seventy-eight feet ten inches (78'10") by roughly twenty-eight to thirty-two feet (28'-32'). It is the remainder of the north-south portion of Beach Drive. The petitioners' parcel is the adjacent parcel to the west as well as a portion shown in the water. They do pay taxes on the portion. They have prima facie evidence to support such a petition to vacate this portion of the undeveloped, but plotted roadway. There is no intention to vacate or petitioning to vacate the portion of Beach Drive that runs east-southeast to the north-northwest that then intersects with Maple Drive. Their reason for requesting the vacation is to join their two parcels together to provide lakefront access as a contiguous parcel and to maintain their privacy and security. There is no intent to encroach on the area referred to as Beach Drive connecting Maple Drive to the lake. There are many plotted, but undeveloped roadways all over the island. Beach Drive is not an easement. It was not granted to interior residents to access the lake. They do exist on the other side of the island, but this is not one of them. The southern portion recently vacated did not encroach upon Beach Drive still allowing

access from Maple Drive to the lake. The remonstrators intend to remonstrate based on the existence of a pier as shown in the aerial shot. It is a pier with docks attached to it. The docks in the summertime extend north-northwest along the Boody property to the north that is vacant and undeveloped towards the Stein property which is directly north of the Boody property. Is it the Board's jurisdiction to determine what riparian rights are? That may be an argument that is used in remonstrance, however there is nothing in the area that is being petitioned for vacation that would impact any of the public's access to Pine Lake along what has been known as Beach Drive. There is no encroachment. It is simply an effort by the Boody's to firm up their property boundaries to provide for privacy and security and to allow them to combine all three portions together and add them to the tax records. They respectfully petition the Plan Commission find a favorable ruling to recommend to the Board of Commissioners with regard to vacation of the tiny portion of what was formerly known as Beach Drive.

Earl Cunningham asked what the measurements of the red portion on the map are.

Andrew Voeltz stated seventy-eight feet ten inches by thirty feet (78'10" x 30')

Anthony Hendricks stated that Pine Lake is a very unique lake in the state of Indiana. Pine Lake is a court ordered lake. It was defined by court and it has legal lake limits. There are legal lake limits in which the State has control and then then land owner has control. Typically, the legal lake limit ordered by the court is about where the vegetation stops and where the sand starts.

Andrew Voeltz asked which portion he is referring to.

Anthony Hendricks stated the east of the Boody lake portion. Beyond that property line is roughly where the legal lake limit starts and stops. It is about where the vegetation stops and the sand starts. Pine Lake is a different kind of lake in the state of Indiana. It is a court ordered jurisdictional lake with defined boundaries.

Andrew Voeltz stated those boundaries change based on pumping or water or moisture running into the lake from the various drains. The boundaries vary.

Anthony Hendricks stated they do vary from the shifting of the sand underneath the bed.

Earl Cunningham asked who owns the pier.

Andrew Voeltz stated he believes it is owned by one of the remonstrators and represented by counsel here tonight. It is not owned by the Boody's. Does this open up the possibility of a race to the shoreline as Beach Drive has a pier at the end of the drive, placed on a public way. When the lake thaws, whoever puts their piers in first gets to claim access? That concern is peripheral to what his client's petition is.

Earl Cunningham stated that if his client owned the pier, it wouldn't be peripheral.

Andrew Voeltz stated correct, but his client does not own the pier.

Remonstrator:

Anthony Novak stated he is an attorney with Newby, Lewis, Kaminski, and Jones. He is representing the neighbors known as Josef and Meghan Jongkind, Brian and Erica Omalley, Jeremiah and Norma Ashe, and Todd Reid.

Anthony Novak supplied a map depicting where his clients are located in relation to Beach Drive.

Anthony Novak stated he does recognize that Mr. Voeltz is only asking for a portion of Beach Drive, not the entire section as was indicated on his map. The basis for their objection is in state statute IC-36-7-3-13. It is grounds for filing a remonstrance in a petition to vacate. Subsection three says that the vacation would hinder the public's access to a public place. That is the basis of their objection. The passing of this vacation could hinder their access to the waterway. He recognizes that the long strip is now available, but based on the remaining argument they still have concerns. He is not asking the Plan Commission to determine riparian rights, but simply asking to preserve this public way. It is a unique situation. Most of the time, he is petitioning vacations in Rolling Prairie, but those are platted ways that are placed in the middle of somebody's property that are never used whatsoever. To the contrary, this public way is used all the time to go to and from the water. Also, due to riparian rights that are involved, the pier can be placed without the homeowner's consent. If the public way is vacated, they believe they will no longer have the ability to place a pier there. They recognize that the pier is under the jurisdiction of the DNR and another entity. Leaving the public way intact would ultimately help them preserve their access to Pine Lake. If they lose this sort of access it will no longer be somewhat the lake access that they have, but be turned into lake view access where they can only view it and not take their boats out there. It could lead to a decrease in property values. In short, they believe the vacation will do more harm to the public than good to one private property owner. Factually, the neighbors shown on the map use Beach Drive to access Pine Lake. The island is very limited in space and there are certain access points that can be accessed. The Tree Haven Plat was drawn with beach access. They gave access by way of Beach Drive to the waterway. There is also a roadway along the waterway, similar to Lakeshore Drive, so people can enjoy the lake. Each year, there is a pier that is placed on the lake by one of his clients. It is a temporary structure. It has been done since about 2008. Mr. Jongkind specifically bought his property in 2008 because he believed to have and was told that he has "lake access". He has lake access by way of Beach Drive which includes the section they are petitioning to vacate. He could ultimately place the pier in the area they want vacated. He does not place it there as he is trying to keep it out of Mr. Boody's view. Legally going forward, it could be placed there. Anthony Novak stated he had many conversations with Andrew Voeltz to negotiate on an access agreement, but no agreement was made. They acknowledge that the long strip will still be in place, the little portion is also very important. The lake can be the public by boat, swimming, etc. The use of Pine Lake is subject to the owners along the shoreline. Those are the riparian owners. As a riparian owner, you have certain rights to the waterway that can essentially be obstructive. That is important because the pier that is placed by his client is a temporary structure and under title 3-12 of the Indiana Administrative Code a temporary structure is one that is used by four or less homeowners. Technically, it does not need a specific permit from the DNR, but if there is no public way, they would need consent of the riparian owner to place the pier. By having the

public way where it is, they can access the lake by Beach drive, but there is a public way that is in front of Mr. Boody's property that does not require Mr. Boody's consent as a riparian owner to place a pier. They imagine that if vacated, Mr. Boody or a future homeowner will revoke their consent. If they own all the way to the water and there is not that public way then any riparian owner could say that there is a waterway, but they will not allow placement of a pier. They believe that the vacation of the little strip will ultimately give Mr. Boody more rights and prevent the placement of a pier. If the petition is granted, they believe they will no longer have access to the public way and be prevented from using the waterway. That, in turn, has the possibility of lowering home values as the difference between lake access and a lake view. Lower values lead to lower assessments and ultimately less tax dollars coming into the County.

Earl Cunningham asked if the placement and angle of the pier is so a boat can be dropped in at that location.

Anthony Novak referred to Josef Jongkind who stated no.

Earl Cunningham stated all boats are coming in from another access and coming to the pier.

Josef Jongkind stated yes.

Earl Cunningham stated the pier could be straighter coming directly out from Beach Drive.

Anthony Novak stated yes.

Earl Cunningham asked if the pier is portable.

Anthony Novak stated yes, it is a temporary structure that can be moved.

Glen Minich stated there will still be a riparian buffer in their right of way that goes directly to the water. He does not see how access will be taken away from the County and the island to get to the pier or place a pier.

Anthony Novak stated it would be a DNR issue about placement of the pier and whether or not it truly is a riparian owner, but the owners are subject to the water levels. The Tree Haven Plat does not show Mr. Boody's east parcel as a part of the plat, but rather looks like it was held in the public trust for people to use. He is not sure if Beacon is accurate on whether or not he actually owns it, but there would need to be a survey performed and be developed. Regardless, while he could have an argument that he is a riparian owner, there is a public way currently in place that will essentially be parking spaces on the public waterway, which is Pine Lake. As a result of the public way, they have the ability to drop the pier there and park their boats even if he does have a parcel of land in the water.

Anthony Hendricks asked if a pier is placed and directed straight into the lake thirty feet (30'), but extended out in front of the riparian owners, can they block the Boody's access as riparian owners to Pine Lake? The public loses a bit of their argument if they have the pier and tee off in front of the owners. Can a pier be placed and extended out in front of the owners?

Anthony Novak stated a pier can be placed, but it cannot reasonably obstruct a riparian owner's access to the owner or obstruct the public's use of the water. In an extreme example, the pier could not be placed one hundred and fifty feet (150') out there because it would be unsafe for those traversing on Pine Lake. The pier could also not be placed in an obstructive way in front of Mr. Boody's property. It has to have some level of reasonable that weighs the rights of Mr. Boody and the public's access to Pine Lake.

Anthony Hendricks stated it is a balancing act.

Anthony Novak stated he believes so.

Rita Beaty Kelly asked if there has been a pier at the end of Beach Drive, why wouldn't it still remain there as nobody has an issue with it. She doesn't understand why the neighbors wouldn't be able to continue to utilize the pier. Anthony Novak said it would be lake view rather than lake rights when it will still be accessible in the exact same spot.

Anthony Novak stated his clients are appreciative that it has never been an issue. Their concern with the vacation of the small portion is that it will become an issue; the ability of a riparian owner to withhold their consent to the placement of a pier. The previous petition vacating a portion of Beach Drive by 111 Maples, LLC in July of 2019 had sold their property two months after the vacation was approved. They are concerned the exact same situation could happen. He does not know how long Mr. Boody has owned the property, but the previous petition's owners had owned the property over fifty (50) years. The neighbors appreciate and recognize that there has been no issue, but their concern is that if it is vacated it will become an issue in the future. Any owner can then say that the neighbors can no longer place a pier there.

Earl Cunningham stated that nobody on the Board has any inclination to vacate any portion of the thirty foot (30') wide extension of Beach Drive, the straight strip leading to Pine Lake. The question is whether or not they will be vacating the small portion directly East of Mr. Boody's home and between two pieces of his property.

Anthony Novak stated it is shown between two pieces of his property per Beacon, but he doesn't know how accurate that is.

Earl Cunningham asked if he disagreed that the line runs straight down thirty-foot (30') wide between his two parcels?

Anthony Novak stated he understands what he is saying, that they are talking about the thirty-foot (30') section between the home and lake portions of property, not the strip with the pier.

Earl Cunningham stated south of the portion they want to vacate; they have already vacated. The only portion not vacated is the one being discussed tonight.

Anthony Novak stated that portion was vacated last July, but it is factually distinguishable from this situation for multiple reasons. One being the historic nature of Beach Drive in that location

versus the historic nature in this location. If you view an aerial, there was not a pier placed on the southern portion. There were not homeowners that were continually accessing and having concerns about riparian rights about placement of a pier. Also, notice of adjoining landowners can work in your favor with some petitions because you may own some of the surrounding land which limits the amount of other people that have to be noticed. That was the situation in July as they only had to notice two people, one of which was Mr. Boody, and both people consented. There was no remonstrance during that petition. This is factually different. Anthony Novak stated Andrew Voeltz said there was precedent as this was done in July. Anthony Novak stated he does not distinguish as this was done in July. He would like to call to attention that this is completely different. Under IC 36-7-3-13, which is grounds for filing a remonstrance, a valid remonstrance basis is that the vacation would hinder the public's access to a public place. His argument, while unique, is that Pine Lake is a public place. As a result of the public way, they do not have to get a riparian owners' consent to place their boats. If it is vacated, they believe it will substantially impair their ability to use Pine Lake.

Earl Cunningham asked if any of the clients are currently using the portion requesting to be vacated.

Anthony Novak stated that the pier is placed to the north to prevent placing the pier in front of Mr. Boody's house. He realizes his argument would have them placing the pier toward the home, but it is currently going the other direction. They believe that as a riparian owner he could revoke his consent and say a pier couldn't be place there.

Earl Cunningham asked if the Plan Commission has the authority to ensure that the pier could not be removed.

Anthony Novak stated no.

Earl Cunningham stated they could assure that the thirty feet (30') is not vacated.

Attorney Biege stated there are two factors in deciding whether or not a plat is vacated. Whether the vacation of the plat, or part of the plat, abridges or destroys public rights in any of the public uses, improvements, utility easements, streets, or alleys OR whether the vacation of the plat, or part of the plat, would adversely affect the general policy and pattern of the development as set out in the County Land Development Plan. Attorney Biege asked when referring to the Beacon aerial, where does the water end and the land begin? They are talking about installing piers hypothetically behind the house, but it does not look like the portion they want vacated touches the water.

Andrew Voeltz stated that based on a review he did this week when he visited the property is that the portion does not touch the water, but that is subject to the lake rising and falling and with the precipitation. The lake fluctuates. His client's position is that he is not extending into the thirty-foot (30') of what is Beach Drive where the pier currently exists. The parcel located in the water fluctuates as well. There are times when that is beach area and others when it is underwater. It does not encroach in any way, shape, or form Beach Drive. There is a stairway down from where

Beach Drive is that leads to where the pier begins and then the docks are hooked up. There is some elevation change there.

Earl Cunningham stated if the water went up by three feet (3') there would still be thirty feet (30') at the end of Beach Drive.

Andrew Voeltz stated that is correct. From his viewing of aerials and visiting the location, there is a stairway that leads down to the shoreline. Even if the water were to raise, it would not encroach Beach Drive.

Earl Cunningham stated the argument would be harder if Beach Drive was narrowed as water level rose, but that is not the case.

Andrew Voeltz stated that where Beach Drive crosses over Maple Drive in a small sliver and is referred to as the remonstrator's property by Mr. Novak is actually considered an extension of Beach Drive. It doesn't exist on Beacon.

Harold Parker asked if anybody can tie up to the pier? What are the economics?

Anthony Novak stated he is unsure that the economics are, but he isn't saying his clients have exclusive rights to the waterway.

Harold Parker stated they are talking about a private pier in a public domain.

Anthony Novak stated it is permitted by Indiana law.

Harold Parker asked if the DNR receiving any funds from it.

Anthony Novak stated DNR has regulation over it, but there are certain situations where a permit is not necessary and this is one of them. It is allowed under Indianan Code.

Harold Parker asked if he tied up to the pier, will he be shot? How is the pier being run?

Anthony Novak stated he does not have the specific answer to that. He would think that he could tie up as it is in the public way and he could not be excluded.

Rita Beaty Kelly stated the Boody's do not have riparian rights on the thirty-foot (30') Beach Drive.

Anthony Novak stated not specifically because of that drive. Riparian rights are strictly for any portion of your property that is adjacent that touches on water.

Rita Beaty Kelly asked if they would have the legality to say a pier could not be place because they do not legally own that thirty-foot (30') strip.

Anthony Novak stated he would like that to be the basis of an argument.

Earl Cunningham stated that in terms of Lake Michigan, isn't this similar to the people on Lake Michigan saying they don't want people sitting in their lawn chairs in front of their house?

Anthony Novak stated yes, and the Indiana Supreme Court approved the public's right to use the land up to the ordinary high-water mark. The idea is that water is held in trust for public use and enjoyment, not for the benefit of one private property owner.

Earl Cunningham stated if they do not vacate this small portion, what is to prevent the neighbors from setting their lawn chairs in front of Mr. Boody's lawn. If they deny them this portion, what is to keep the future neighbors from setting lawn chairs between Mr. Boody's parcels? There is nothing is there?

Anthony Novak stated no, it is a public way.

Josef Jongkind stated his address is 126 Maple Drive, LaPorte, IN.

Josef Jongkind stated he is one of the people that is interested in preserving Beach Drive. About ninety percent (90%) of the portion asking to be vacated is touching the water. It is already half underwater. The water fluctuates, but there is a retaining wall along there and it is in the easement. When it comes to lawn chairs on the lake, people do that to everybody's front yard. It's not new. If he wants to put a lawn chair there and watch the lake, he feels like that is his right because it is a public access and he is a neighbor. They do not shoot people that try to tie up to their dock. They do not stop them if they are coming to visit a neighbor. They encourage it. They are a friendly neighborhood. That's why all the neighbors that are in question are present. They're not there to prevent Mr. Boody from having his property, but the portion underwater should remain public.

Leo Jongkind stated his address is 1856 N. 400 W. He stated he used to live on 105 Lakeside right off Waverly Road. He had access to the lake with no problems. When looking at the aerial for Beach Drive, he is concerned about extending the boundary on the lake. They could put in a sea wall and fill in the lake. It would raise the price of their property and diminish the view of the lake for everyone.

Anthony Hendricks stated that Pine Lake is a unique lake. It has a legal lake limit. DNR has full control on the legal lake side of that. The private owner has full control on the other side. Once they build a retaining wall, they are governed by the DNR. They can only build so far out into the lake. There is a legal limit.

Brian Omalley stated his address is 334 Oak Drive, LaPorte, IN.

Brian Omalley stated that in terms of the thirty-foot (30') access they have been using more than thirty feet (30"). When they purchased their homes, they had the understanding that they would have access to more than thirty feet (30'). By vacating this portion, they will be taking away about eighty feet (80') of access to the lake from the neighbors. They have been using it for years and had the assumption that it would be available to them when they purchased their homes.

Harold Parker asked what they are doing with more than their allotted thirty feet (30') of access.

Brian Omalley stated that is where the pier goes. The pier is more than thirty feet (30') wide. It branches out. The pier cannot be extended into the lake as there is a limit to the length.

Earl Cunningham asked how many boats are normally at the pier.

Brian Omalley stated it varies between four to six (4-6) boats.

Earl Cunningham asked Anthony Novak that permission wasn't needed if there were four or less boats.

Brian Omalley stated four property owners.

Anthony Hendricks stated that DNR also has a maximum pier length that cannot be extended out for more boaters.

Rita Beaty Kelly asked if he is aware that by using more of the thirty feet (30") they are using Mr. Boody's property.

Brian Omalley stated he was unaware that Mr. Boody owned the portion past Beach Drive in the water.

Rita Beaty Kelly stated they have been using that and it has been acceptable, but it's understandable why he wants the portion vacated.

Brian Omalley stated his understanding is that if you land in front of your house on the lake, but the lake level changed and extended towards the house, you wouldn't necessarily own the land underneath the lake. The lake parcel is always underwater and the lake is always up to the retaining wall.

Glen Minich stated it is, but the map shows that the lake is extremely shallow there. That is the lake limit and DNR does not have control there.

Brian Omalley stated he does not know how old the aerial is, but the pier hasn't looked like that years.

Anthony Hendricks stated by deed the Boody's do own the portion in the water. Whether it has water or not, between the DNR and them as owners, they could build a sea wall and fill in that parcel and make it contiguous.

Jeremiah Ashe stated his address is 338 Oak Drive, LaPorte, IN.

Jeremiah Ashe stated he spoke to Mr. Boody about the underwater parcel about a year ago. He stated Mr. Boody didn't feel he should have to pay taxes on it so it went to tax sale from lack of

tax payments. From his understanding, another party attempted to buy that parcel at the tax sale and a lawyer got it back for Mr. Boody. He then began paying taxes on the parcel. Jerimiah Ashe stated that now that he can use that for his argument it is ok that he pays taxes on the property, but didn't for many years.

Donald Boody stated his address is 115 Maple Drive, LaPorte, IN.

Donald Boody stated the water parcel was being negotiating on with the tax board. They wanted to increase the taxes and they were trying to make a settlement on what would be paid. It has been paid on since 1960 when he purchased the property. He has been there over fifty (50) years. The tax board accidentally put it up for Sheriff's Sale. Mike Conner represented him on all property tax matters and was able to retain the parcel for Mr. Boody against Josef Jongkind. Josef Jongkind then told Mr. Boody that some fool just paid a lot for the lake parcel without knowing that it was him. He had to get his money back on the tax sale and Mike Conner had to get his money back. The County then had to put it back where it was to start with where he always paid taxes on it. People have always put the pier out on the lake and he has no problem with it. They extend over to his other lot about forty feet (40') and he has no issue with it. His issue is with security and privacy in the front of his house. There is an electrical outlet down there that he keeps it shut off so it's not used by the public as it has happened before. That is his only issue. He does not intend to build in or fill out into the lake. He did place all the stone frontage in from the Slater property to the Stine property to keep his property from flooding when the lake level is high. He was president of the lake association when they managed to get the money from the Build Indiana Fund to get the drain system on the lake to establish a regular lake level. The DNR controls how much level can be taken off. His lake parcel had been underwater ever since they established the lake level because that is the level the DNR allows the city to drain the lake down to. They have always owned and paid taxes on the lake parcel. It was error by the County when it went to the Sheriff's sale.

Jason Seifert stated his address is 505 Lakeside Street, LaPorte, IN. He also owns property near Hudson Lake at 7888 E. Poppy Lane, New Carlisle, IN.

Jason Seifert stated he has experience based of issues he encountered in Hudson Lake regarding some of the docks and riparian rights. The dock cannot be extended limitlessly. The lake cannot be "claimed" as riparian rights prevents that issue. In Hudson Lake, there is an area east Lakeshore Drive that is a county road that leads to the water; it is public with lake access, but that isn't true as riparian rights covers that. Riparian rights appear to cover this issue as well. This is a public roadway with docks on it currently that has been there over a decade. It should be covered by riparian rights. It is a different issue for DNR. This is a public easement. It always has been. Mr. Boody bought these properties knowing that these public areas went through his parcels. It's odd to hear it referred to as a small space that isn't a big deal because they will still have their dock space. As a family member that is able to visit his family on the other side of the lake via boat, he doesn't want to have that taken away from him or future generations. He appreciates Mr. Boody not wanting to encroach the pier, but they need to think beyond that. It's as if they are going to go for a walk on Pine Lake on thin ice and the vacation of this portion will force a run to the lake. He understands this is a County issue and Pine Lake is different than Lake Michigan; the State affirmed that throughout Indiana many people have properties that extend

into the lake in which they pay taxes on, but they cannot take away the public's access. There is one property owner that is trying to claim land that could implicate and deteriorate the public's access to a public lake. He brought up Hudson Lake because if this vacated as a public way and public right-of-way then it would set a precedent across the county and other lakes. It works how it currently is. The pier is currently placed in such a way to be out of sight and out of mind of Mr. Boody. He has never known of any problems or disturbances near the pier. This has snowballed from the previous decision to vacate in July 2019. Some people did not get notified the way they should have and now here we are with a lot of remonstrators. Please preserve this lake for family and for access. Please see the interest of the public which are numerous over the request of one property owner who knows how it was platted when he bought the property.

Glen Minich stated it is being referred to as a roadway, but this is a proposed roadway that was never built.

Attorney Biege stated it is a platted roadway that was never improved. It is not an easement in any way, shape, or form.

Glen Minich obtained a large plat for the whole development. He stated that the development was put together in 1938 before the Kabelin drain was put in and brought all the water into the lake. One the original plat, Beach Drive was put in and there was a beach there, but it doesn't exist anymore. The water has risen to where that road could never be put in. It's all in a floodplain. The map also shows the inland lots do have access to the lake, but not via Beach Drive. There are four dedicated easements that run through property owners that give access to the lake for the inland lake residents. They are being used by several of the inland lake residents. Those easements are the rights of the island inland residents and not the public's right.

Valerie Seifert stated her address is 505 Lakeside Drive, LaPorte, IN.

Valerie Seifert stated she is one of the people who gets to use their boat or kayak across the lake to use this dock and visit people on the island. It has always been a nice and cordial system in which the neighbors get along in regards to the docks. The community is very understanding of the temporary usage. Nobody tries to take the spots of the dock owners. They walk the narrow path through the grass that runs between the two parcels. They do not veer from the path into private property. The northern parcel is a marshy area that is unkempt and unused. They were always advised to only use the path that is public access. The lake parcel and proposed portion is nearly always under water for the previous ten years that she has lived on the lake. She lives across the lake in an area where she does have a dedicated easement that is a developed road through her two parcels of property. Her kids may play in the easement, but there are cars coming through there. Her road goes through the neighbors as well and she has had complaints of neighbors saying she is walking her dog through their yard. It is a paved road though. Whether it is an easement or public road, it should still be available for the neighborhood for lake use. There are five other places in which boats can be docked, but those spaces run out quickly. The pier is the most beautiful part of their community.

Andrew Voeltz stated terminology is important. Beach Drive is not an easement nor ever platted to be an easement. It is a platted, but undeveloped roadway. This Plan Commission has

established a precedent on Beach Drive to vacate that roadway because it is unused, undeveloped and serving no purpose. The extension of that to the North between his client's properties would continue to serve that purpose. Attorney Biege has quoted the two statutory considerations that there are for this; whether the vacation abridges or destroys anybody's access to a public area. That is not the case here. Or the vacation adversely affects the public's interest in the area. This is not encroaching onto the thirty-foot by two hundred and fifty-foot (30' x 250') section of Beach Drive that still remains that has been undeveloped for eighty (80) years at this point. It is still the area in which the inland residents can use because it is a plotted, but undeveloped roadway to access the lake. The question is not riparian rights, that would be a question for the DNR. There is a concern that there has been some type of private encroachment upon a public way. They say that the pier is open to the public, but it has been there nearly twelve (12) years. At what point in time does that amount to a private taking of a public way? They ask that pursuant to the petition that was filed in December that the Plan Commission find a favorable ruling and recommend to the Board of Commissioner for vacation that is defined in red on the secondary map that was provided (the small portion of Beach Drive located between Mr. Boody's home and lake parcels). Not influencing in any way, the thirty-foot by two hundred and fifty-foot (30' x 250') strip that still would remain of Beach Drive for anybody in the public to access that area of Pine Lake.

Rita Beaty Kelly stated that the Boody's and other property owners have been generous to utilize the area for the boat docks and pier, but there is a concern. Knowing now that the Boody's own the parcel located in the lake, how do they feel about using the section of Beach Drive between his parcels. It may be underwater now, but it may not be all the time. If they leave the area that is considered public area and walking into the beach/water, they are actually trespassing. She urges the neighbors to think about this. It may be underwater and they have always used it, but there is an area of privacy for Mr. Boody who is asking for this area to be vacated to make his property contiguous that will not affect the thirty-foot (30') area. There is a little portion that may have been utilized, but would lead to trespassing to the lake parcel.

Anthony Hendricks asked Attorney Biege if the Board does not recommend to vacate the thirty-foot by seventy-eight-foot 10-inch (30' x 78' 10") piece of public right-of-way to the Commissioners, potentially Mr. Boody or a future owner who own the parcel in the lake could go through documentation to establish the legal lake limit and build a seawall around it and fill it in leaving a thirty-foot public strip between a portion of two private property including the built up lake portion. It could be done by Mr. Boody or the future owners. The end of the island has done that by installing a sea wall.

Attorney Biege stated a sea wall could be built to the property line which is currently underwater.

Anthony Hendricks stated they would leave a public strip between Mr. Boody's properties if they vote not to recommend.

Attorney Biege stated yes.

Anthony Hendricks stated if this Board vacates this piece, it puts the owners at a disadvantage whether they can get easement rights or buying the piece.

Harold Parker stated that the community could have made it a park or something instead of waiting until a vacation is being requested. It's hindsight if you're going to beat the Earth and call it yours just because you're there.

Anthony Hendricks agreed. He stated whether or not they had the right to deed this beach property is beyond their authority. It is a civil matter. The Boody's have a deeded piece of beach and so do the Slater's.

Glen Minich stated they have no intent of putting in a road; it is a floodway.

Earl Cunningham stated they vacated one hundred and fifty feet (150') of it anyway.

Glen Minich stated they vacated one hundred and fifty feet (150') of it that had no beach and was not being used. There was no intent of building a road there. Their only right is to build a road on that platted roadway, not a park or anything else. Perhaps there could be a way of creating a permanent right-of-way on Beach Drive rather than making sure it's never vacated because they do not plan on making it a road. Can the Board make it a permanent right-of-way? Can they ask the Commissioners that?

Attorney Biege stated no. They are here to discuss vacating a platted road. A platted road has one use; to drive on or provide access. They cannot change the nature of the ownership to the real estate.

Earl Cunningham stated Glen Minich is referring to the strip connecting Maple Drive to the lake. Could the Commissioners act to make that permanent beach access for the inland owners? Commissioners own the roadway that is public access.

Attorney Biege stated the Commissioners do not own the roadway. It was dedicated to be a roadway when the subdivision was platted, but it is still technically owned by the people who created the subdivision until the road is improved to County standards and then it is turned over to the County.

Anthony Hendricks agreed. The Commissioners were granted this right-of-way for use of the public. If the Commissioners or public choose to spend money and dedicate some improvements to this right-of-way it would make it near impossible to come before the Plan Commission and take those dedicated improvements out of the right-of-way. It would be just like any other road with pavement or bike trails. When the Commissioners expend money on the roadway, they make it near impossible to remove. They have expended tax payer funds or they have accepted private funds on a roadway or right-of-way that is now near impossible to vacate.

Earl Cunningham asked if the County does not own the strip of Beach Drive, is the original owner paying taxes on it?

Attorney Biege stated no.

Earl Cunningham stated the County should take it for lack of back taxes so that the County can make that decision. If nobody is paying taxes on Beach Drive somebody has to own it. Doesn't the County own property that had unpaid taxes?

Attorney Biege stated all the subdivisions that are incomplete in the County has roadways that are in stasis. They are not on the tax rolls and the are owned by the original person who started the subdivision, but once the subdivision is platted the roadways are no longer considered a taxable parcel. He is unsure if there is law on this, but it is the way the County had handled it for over one hundred (100) years. There is no law dictating ownership. There are no parcel numbers assigned to the roadways. If there is no parcel number there are no taxes.

Anthony Hendricks stated there are dedicated pieces of ground for public use until that point that they are improved. It is in limbo that a platted owner has freely dedicated a piece of County, through the Plan Commission and the Commissioners that until the roadways is improved, they can return to the Plan Commission to recommend to the Commissioners to undedicated the property.

Earl Cunningham asked if taxes are currently being paid on the portion they are being asked to vacate.

Attorney Biege stated no.

Earl Cunningham asked if somebody will be paying taxes on the portion if it vacated.

Attorney Biege stated yes.

Anthony Hendricks stated they can make a recommendation to approve or deny the vacation, or make no recommendation. There are nine members on the Board. It has to pass with the majority of the members so there has to be five members voting for the motion or it sits on the table.

Glen Minich made a motion to approve the petition for Donald H. and Catherine S. Boody represented by Andrew D. Voeltz of Howes & Howes, LLP ("Petitioner") to vacate the undeveloped but plotted roadways and/or alleyways indicated by the red portion in the exhibited map and leave intact the thirty-foot right-of-way to all the way to Maple Drive adjacent to the property commonly known as 115 Maple Drive, LaPorte, IN., Center Twp., zoned R1B.

Earl Cunningham seconded.

Roll Call Votes as read by Ashley Kazmucha:

Harold Parker stated yes.

Earl Cunningham stated yes.

Glen Minich stated yes.

Anthony Hendricks stated no.

Rita Beaty Kelly stated yes.

John Carr stated no.

Motion failed 4-2.

Rita Beaty Kelly made a motion for no recommendation for the petition for Donald H. and Catherine S. Boody represented by Andrew D. Voeltz of Howes & Howes, LLP (“Petitioner”) to vacate the undeveloped but plotted roadways and/or alleyways indicated by the red portion in the exhibited map and leave intact the thirty-foot right-of-way to all the way to Maple Drive adjacent to the property commonly known as 115 Maple Drive, LaPorte, IN., Center Twp., zoned R1B.

John Carr seconded.

Roll Call Votes as read by Ashley Kazmucha:

Harold Parker stated yes.

Earl Cunningham stated yes.

Glen Minich stated yes.

Anthony Hendricks stated yes.

Rita Beaty Kelly stated yes.

John Carr stated yes.

All approved. Motion carries 6-0.

Anthony Hendricks asked if there is any old business.

Anthony Hendricks asked for any new business.

Annemarie Polan stated she is asking the Plan Commission for an increase to driveway fees. They have been twenty-five dollars (\$25) for years. Porter County were charging one thousand dollars (\$1000) per driveway, but are lowering to five hundred dollars (\$500). St. Joe charges two hundred dollars (\$200) per commercial driveway. She is asking one hundred dollars (\$100) for driveways and twenty-five dollars (\$25) remain the same for second driveways.

Harold Parker made a motion to increase driveway permit fees to one hundred dollars (\$100) and twenty-five dollars (\$25) for second driveways.

Earl Cunningham seconded.

All Approved. Motion carries 6-0.

Annemarie Polan stated she will discuss partial building fees with the Council. Other counties building departments retain ten percent (10%) of their building permits fees for their non-reverting fund. She stated the fund needs built back up again.

Anthony Hendricks asked for any other new business.

Earl Cunningham asked if Attorney Biege could send a letter to the Commissioners and Council if they could establish with Anthony Hendricks a universal alternate in case of absence.

Anthony Hendricks stated three officials can appoint a singular alternate.

Attorney Biege stated a recommendation letter was sent to the Commissioners last year on appointments and no action was taken.

Earl Cunningham asked if they could be asked to use Jeff Wright as he is the current alternate for Anthony Hendricks.

Anthony Hendricks stated he would be comfortable using somebody else if the Council and Commissioners agreed on another alternate.

Anthony Hendricks stated they need an appointment from Purdue since Gene Matzat's retirement.

Annemarie Polan stated Purdue estimated an appointment by March.

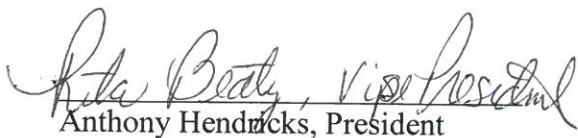
Anthony Hendricks asked for a motion to adjourn.

Earl Cunningham stated so moved.

Rita Beaty Kelly seconded.

All approved. Motion carries 6-0.

There being no further business before the Plan Commission, meeting adjourned at 7:25 p.m.


Anthony Hendricks, President


Annemarie Polan, Recording Sec.