



LAPORTE COUNTY PLAN COMMISSION

Government Complex 5th Level
809 State Street, Suite 503 A
LaPorte, Indiana 46350-3391
(219) 326-6808 Ext. 2591, 2563, & 2221
Fax: (219) 362-5561

ANNEMARIE POLAN
Building Commissioner

LA PORTE COUNTY PLAN COMMISSION MINUTES September 22nd, 2020

MEMBERS PRESENT: Anthony Hendricks Rita Beaty Kelly
 Rich Mrozinski Earl Cunningham
 Harold Parker Glen Minich
 John Carr Walter Sell
 Sean Quinn

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

PLEDGE OF ALLEGIANCE

Anthony Hendricks asked for approval of the agenda for the September 22nd meeting.

Rich Mrozinski made a motion to approve the agenda as presented.

Rita Beaty Kelly seconded.

All approved. Motion carries 9-0.

Anthony Hendricks asked for approval of the meeting minutes August 25th, 2020.

Richard Mrozinski made a motion to approve as presented.

Rita Beaty Kelly seconded.

All approved. Motion carries 9-0.

Petitions:

1. Petitioner Love's Travel Shops & Country Stores, Inc (Love's) represented by CESO, Inc. (CESO) respectfully presents to the Plan Commission a proposed PUD and primary plat with fueling stations, convenience store and restaurant, and a truck tire repair facility located at the intersection of US Route 421 and County Road W. 300 N., Michigan City, IN. Coolspring Twp. Zoned B3 consisting of 56.397. Exhibits attached hereto. (This development will be known as Love's Travel Shop and will only utilize 17 acres and will be known as Phase 1. The remaining acreage will be used for future PUD developments (Phase 2) that may include two hotels.)

Attorney Biege stated notice is adequate.

David Teyber stated his address is 3601 Rigby Road, Dayton, OH. He represents the civil engineers CESO. Love's should be on the Zoom call. There was a decent amount of information submitted as the project is large. Most people are familiar with Love's Travel Stops. They are a nationwide, family-owned, travel center that serve professional drivers. They are headquartered out of Oklahoma. A lot of their locations are in the Midwest and have been expanding outwards to areas like this. Their model is to target professional drivers and drivers with families on longer travel trips. They have on site a Love's convenient store/country store that offers more than food and drink. They offer travel souvenirs as well. Attached to the store will be two fast food restaurants that they have not determined who the tenants will be. They commonly work with McDonald's, Hardee's Bojangles, Taco John's, Subway, Chester's, Godfather's Pizza, etc. They have a handful of vendors that they work with. This location will have an auto canopy. There will be fueling for auto and RV with amenities. There is a diesel canopy that is separated from the auto traffic for safety reasons. There are propane sales as well as air, water, and RV unload station. There is a Speed Co tire shop. Love's recently partnered with Speed Co on a lot of these builds. It is a light maintenance facility for trucks. It is not heavy maintenance; it's more preventative maintenance including oil changes, tire rotations, etc. That encompasses the site and what Love's would develop here. Love's would be Phase 1 of this PUD. They prepared a traffic study with INDOT that was recently approved since they had written everything and submitted their packet of information. With that study, it does have some improvements to county road W 300 N. It recommends a right turn lane into the Love's and a left turn lane if you head eastbound on county road 300 N. By the time those two turn lanes are added in to practice good transportation engineering, they have to add more turn lanes so the lanes align. They don't want vehicles to shift lanes in the middle of an intersection. With the turn lanes, they would have to install improvements to the traffic signals that are currently there. They would change out the lights for new fixtures that would accommodate the new turn lanes. With the PUD, there is a public road they are proposing into the development. It extends north four to five hundred feet (400' - 500'). The intent is for that to be a public road which would be dedicated to LaPorte County. That would give access to Phase 2 that would develop on the west side that would give them access to a right-of-way. If there was not a public road there would need to be some type of shared access easement or privately maintained road. Everything described up to this point is what they refer to as Phase 1 in this application. It would all be constructed at the same time as the Love's. That would get Love's on board and up and running. There is an area reserved for Phase 2 that is predominantly on the west side of the site plan. The seller will retain the land for future developments, but it is not set in stone as it is up to the land owner what gets developed there. The intent of the PUD is for Love's to get operational and provide the ability for future developments down the line. There are some wetlands on site. They did go through the proper protocols with the Army Corp of Engineers and the Indiana EPA to identify those areas and how to mitigate those areas. The mitigation for those wetlands will occur on the northern half of the parcels. Everything on the north of love's and north of the future road isn't developable because of the current pond there and the wetlands. The last component would be the Love's high-rise sign. It would be located on the far northwest corner by Interstate 94. That is consistent with what is present on other sites. There is a variance request as a part of the PUD; there would be an access road back to that sign to allow maintenance of the sign. The intent is to market to customers down the road. It would have the Love's logo and whatever food tenant or tenants are

on the site. That covers a lot of the site development components. They are moving on to utilities. **The County is currently in progress of constructing a water and sewer extension. It would extend about a mile away to get to this point. There are talks about a joint effort between Love's and the county.** They originally started the planning for this project in 2018. There are three pipelines that cross the property that put the project on hold that put the water and sewer extension on hold. This development would support the construction and justification of the sewer and water extension that the county would be building. There would be an immediate user. It would bring development as a result of that extension. Without the water and sewer there would need to be a well and on-site treatment system that is not the preferred method. The other major utilities such as electric, gas, and telephone are all available on county road 300 N right-of-way. There are three gas pipelines that traverse the site diagonally in a northeast-southwest direction. There have been conversations with the pipeline company. They are owned by Trans-Canada based out of Austin, Texas. They have requirements that they must meet to stay safe around those pipelines. There is a forty-two-inch (42"), thirty-six-inch (36"), and twenty-two-inch (22") pipeline. They are all different sizes and built at different time periods. Some were built in the 50's or 70's. They would have to make upgrades to those lines for this to go forward. There is a big commitment from the pipeline company. They would help fund the improvements to their lines. They initially wanted to have Love's pay for it at cost which was a substantial amount and it put the project on hold.

Harold Parker asked if the pipes would be relocated.

David Teyber stated no, they will stay where they are at. Love's does install grease interceptors and oil/water separators to meet environment code and EPA requirements to capture pollutants and hydrocarbons before they leave the site. They do have storm water management planned on the site; it naturally drains to the southeast. They will keep that pattern, but control the runoff meeting county and INDOT requirements. They have a second water and sewer extended on the west side of the pipelines. They would run a stub parallel to the pipeline with the intent that it could provide water and sewer for the Speed Co tire shop. Anybody interested in Phase 2 would also have sewer and water readily available for those parcels. Those small extensions are about four hundred feet (400') and would be dedicated to Michigan City Water and Sewer. They have agreed to accept all public water and sewer through this area. There was also a landscape plan submitted; they are minimizing some of the requirements as they will have three public road frontages. It ramped up the number of plantings needed so they are asking for a variance in that perspective. The pipeline company would also not allow any development in their easements and that includes structures and plantings. They will want grass or pavements; nothing else that would limit access to their facilities. They have also presented as part of this PUD is the primary plat consistent with LaPorte County subdivision requirements to help minimize the number of meetings required. Within the submittal, they did provide an Alta survey on the entire parcel. Love's does have a real estate purchase agreement in place with the seller. There is a contract on the property that they can execute at a later date; it is contingent on the surrounding jurisdictions utilities, zoning, the plan commission, etc. There is a figure included of the water and sewer extension by LaPorte County to represent what the plan is. There is a copy of the Army Corp permit for the wetland disturbance. There is a copy of the traffic impact study prepared by CESO that was recently approved by INDOT. They will be moving forward with design drawings shortly.

Frank Ille with Love's stated he is present on Zoom and can address any questions they may have about the company or things that may not be specific to David's expertise.

David Teyber stated he gave background on Love's but Frank may want to elaborate.

Frank Ille stated Love's is a privately held company known by the Love family started in 1964 with one convenient store in Oklahoma. Now there are five hundred and thirty-one (531) stores as of last Thursday. They are the second-largest travel center company in the country. They develop thirty – forty (30 – 40) types of stores a year. They are extremely excited about this particular location. They have been trying to find a spot to fill between their Marshall, MI and Gary, IN locations and this fits right between those. This project was placed on hold because the pipeline was asking them to pay for the four to five million dollars (\$4,000,000 - \$5,000,000) upgrade for the pipeline which is required when a commercial development goes over the pipeline. Currently, the land is ag and the pipeline has fit the standards for ag land. Once it is commercial, they have to put five feet (5') of concrete over it and reenforce the pipe. It is very expensive. Once they have approvals and they are ready to build the location, they will enter into an agreement with Trans-Canada that states if they improve the pipelines and they do not develop, they will reimburse them for the cost. It would not be wise of them to follow through and not develop this site if they are able to. As for the sign, it is taller and bigger than the code allows. In their industry, the highway signage is their primary form of advertising. First, there are billboards, but they never know if they will be available or not. The pylon sign is located where the store is. It will list the gas and diesel prices in a legible format because they offer the lowest prices. It is an advertisement that they want up because a lot of travel centers don't have theirs up because their prices aren't one of their calling cards. The restaurants will also be advertised as well and the Speed Co. They would like to advertise all of them, but if there are multiple restaurants, they may advertise just one or whatever they are advised. The height of the sign is determined by a sign survey. They raise a blimp in the air and drive the site while taking pictures to determine how tall the sign has to be.

Earl Cunningham stated he has seen numerous Love's centers. What is the average height of their signs?

Frank Ille stated the average height of their signs is one hundred and ten feet (110'). The average square feet is a thousand to eleven hundred (1,000² – 1,100²). The taller the sign, the more square footage is required because it is farther in the air. There are stores in Indiana with one hundred-foot (100') signs. Richmond, IN has a sign on Highway 30 that is only forty-five feet (45') tall. The terrain, off ramp, and trees factor into the size. This sign would be about the same size of their average sign and under their square footage.

Anthony Hendricks stated this went through site and planning review. Was anything brought up from there.

Annemarie Polan stated there were several things, but they were all minimal and few. Everybody that was present asked questions and it went smoothly. Does the Board have a copy of the plat minutes?

Anthony Hendricks stated yes.

Anthony Hendricks asked if the Board has any more questions.

Anthony Hendricks asked if the sewer doesn't go through, is this project still a go?

Frank Ille stated the water and sewer lines are necessary for this project to work. Most of the site that they are developing has wetlands. They wouldn't have room for a waste water treatment plant and a water well. With the water well, you often have to have holding tanks and with the waste water treatment plant they take up room. They typically expend enough effluence that they would much rather prefer a commercial or municipal type of system. The three big obstacles with this project over the last three years has been figuring out the pipeline issue, the water and sewer utility issue, and the wetlands. They have a wetlands permit. They have worked things out with the pipeline. The water and sewer, according to the gentleman he met with at LaPorte County, is coming. It will take time. The process is projected to start next spring which is when they would like to start building.

Rich Mrozinski stated we have been looking at this project a long time; a couple years. When they first started on it they we're going gung ho. The sewer and water project laid out and ready to rock. Love's was not the only customer up there. The Harley shop is in dire straits. They need it. They are pumping and hauling. The Harbor Chevrolet and the other truck stop are there. There have been inquiries about future businesses around the corner there. It's important that we get that done. When the Trans Canadian pipeline stepped in, everything ground to a halt. Everything stopped including the sewer project. There are a lot of people that he deals with that are excited about keeping this going. Love's has been very patient to continue to hang in there. With big projects like this, if it doesn't go here it will go down the road. He would hate to lose it at this point. They will do everything that they can possibly do to make sure that the sewer and water project gets done so that they can get Love's and save these other businesses.

Anthony Hendrick's stated they are definitely committed and that will help them get their sewer and water.

Rich Mrozinski stated we have to get that done.

Glen Minich stated the hospital is in close proximity. Are there any flight restrictions or sign restrictions that come with medical helicopters coming in and out of that facility?

Attorney Biege stated he can double check, but he believes the only height restrictions we have are from the airports. He does not believe our code has any restrictions of sign height in relation to a hospital.

Glen Minich stated he is unsure if there would be a flight plan laid with a local airport.

Earl Cunningham stated generally, it will be helicopters. As long as they know where it is and that it is well lit a helicopter would be able to navigate around it. A helicopter can adjust easier

than an airplane. They have five hundred and thirty-one (531) stores and some of them are close enough to interstates that they may be near other hospitals. Hospital are now building closer to interstates as well. They should probably inform the hospital of the sign.

Anthony Hendricks stated in his experiences, when you get to any certain height, FFA restrictions kick in with lighting and their requirements. That would control anything that they would do beyond their ability for FFA restrictions for flight for helicopter or airplane.

Frank Ille stated that is correct.

Mitch Bishop stated he is the County Planner. There has been engineering done and a spec book has been created. Currently, as of last week, it is out for bid. There is a one hundred and fifty (150) day hold time. They are applying for EDA grants to help finance this. They will not know if they've wone the grant for another two months. They are asking the bidders to hold their bids one hundred and fifty (150) days. The timing will work out well if granted. It may change the bonding. They might not have to bond at all if they win the grant because it will cover eighty percent (80%) of the cost of sewer and water which is four million dollars (\$4,000,000). They will find that out by December and that will let them know if they have to bond for the entire amount, a quarter of the amount, or nothing.

No remonstrators present.

Anthony Hendricks asked Attorney Biege what are they approving or recommending tonight. A planned unit of development of how many lot and what variances.

Attorney Biege stated approval of PUD for Phase 1, variance for the sign, variance for the landscaping.

David Teyber stated they are also including the primary plat as a part of the PUD. Variances included in this are:

Article 14

- i. Restaurant with Drive-Through Services*
 - 1. The drive-through facility shall be on the side of the building and allowed to face the front yard*

This is requested as they have a front yard on three sides.

- 2. There shall be a minimum of 7 stacking spaces for the drive-through lane*
- Article 15*

- i. Uses per Lot*
 - 1. Lot 1 shall be allowed to have multiple principle buildings, structures, and uses*

Article 17

- i. Building Materials:*
 - 1. Overhead doors shall be permitted to face a public street*

This is related directly to the Speed Co. The Speed Co model has a pull through. It does help. Backing up semi's is not easy. It makes it very convenient for the travelers.

ii. *Landscaping Requirements:*

1. *Commercial sites shall provide a minimum of one (1) deciduous tree for every 80 feet of street frontage.*
2. *Off-street parking areas containing 15 or more parking spaces shall provide landscaping at the rate of one (1) canopy tree and 100 square feet of landscaped area per 30 parking spaces.*
3. *A 20-foot wide greenbelt shall be provided between the parking lot and road right-of-way. When the greenbelt is less than 25-feet it shall be landscaped with a hedge row planted with two (2) foot tall evergreen shrubs spaced every five (5) feet apart, or a three (3) foot tall berm. When greater than 25-feet a hedge row or berm is not required.*

iii. *Waste Receptacles*

1. *Waste receptacles shall be allowed to be placed in the front yard and face County Road W 300 N and the Proposed Public Road; they shall not face US Route 421.*

The zoning code likes those to be in the rear yard, but it is difficult when they have front yards on all three sides.

Article 18

- i. *Sidewalks shall not be required on either side of existing or proposed streets*

Article 19

- i. *Allowance of one (1) pole sign with a maximum height of 120-feet and a maximum area of 800 square feet per side*

This would be the high-rise sign.

- ii. *Allowance of one (1) pole sign with a maximum area of 150 square feet per side*

This would be what Love's refers to as their pylon sign. It would be located near the intersection of county road 300 N and US 421. It is similar to other speedway facilities, just slightly smaller.

Anthony Hendricks asked how many lots are there?

David Teyber stated Phase 1 would have the Love's lot and the right-of-way dedication. Phase 2 is untouched as one lot, but Phase 2 has the potential to be divided for development, but it would then be present as Phase 2 before this Board.

Rita Beaty Kelly stated the Article 15 variance mentions lot one (1) allowing multiple principal building, structures, and uses. How many multiple buildings is that? Are they going to limit that?

David Teyber stated that it was added because they have the store, the attached food tenants, and the Speed Co. That request is related directly to those two buildings.

Earl Cunningham asked if all of that is on approximately seventeen (17) acres of the fifty-seven (57) total.

David Teyber stated that is correct. Love's would end up with around seventeen to eighteen (17 – 18) acres.

Earl Cunningham stated there is approximately fifty-six-point-four (56.4) total so they will leave about thirty-nine (39) acres left.

David Teyber stated that is correct.

Harold Parker asked who owns that.

David Teyber stated the remaining thirty plus (30+) acres would be retained by the seller. They are listed as Route 421 Partners.

Harold Parker asked if they have options on the rest if they need more.

Frank Ille stated at one time the seller wanted them to put a hotel or two in that location, but they wanted to start with the travel center. They don't have an option to buy those parcels, but their site plan was formed in a way to accommodate two hotel sites on the west side. He cannot confirm if there will ever be a Love's Hotel. Love's Hotels are branded Holiday Inn Express, Hampton Inn, etc. It would be a regularly branded hotel; they franchise. They have opened eighteen (18) or so of those across the country in the last seven to eight (7 – 8) years. Their initial plan right now is to just do the travel center.

Anthony Hendricks asked Annemarie Polan if they make these roads and they are public roads and they have two (2) parcels, they have the ability to split one (1) parcel off each one potentially having four (4) parcels with this approval with the proper road frontage and acreage. Otherwise, they would have to come back to the Plan Commission.

Annemarie Polan stated that is correct.

David Teyber stated they laid out Phase 2 with the intent that it does not need to be hotels. It is zoned B3 and would fit any use that matches that code. He doesn't want to lock in the idea of the hotels because it could be something different.

Harold Parker made a motion for a favorable recommendation for Petitioner Love's Travel Shops & Country Stores, Inc (Love's) represented by CESO, Inc. (CESO) for a proposed PUD and primary plat with fueling stations, convenience store and restaurant, and a truck tire repair facility located at the intersection of US Route 421 and County Road W. 300 N., Michigan City, IN. Coolspring Twp. Zoned B3 consisting of 56.397. Exhibits attached hereto. (This development will be known as Love's Travel Shop and will only utilize 17 acres and will be

known as Phase 1. The remaining acreage will be used for future PUD developments (Phase 2) that may include two hotels.)

Rich Mrozinski seconded.

Anthony Hendricks stated there is a motion on the floor for favorable recommendation to the Commissioner's for the planned unit development of this two-phase development with the variances of record that the engineer spoke of.

All approved. Motion carries 9-0.

2. Petitioners Lisa A. Lakin, Scott Chapman and Kim Huston represented by Andrew D. Voeltz of Howes & Howes, LLP ("Petitioner") respectfully petitions the LaPorte County Plan Commission to vacate the undeveloped but plotted roadways and/or alleyways commonly known as Canal Street and adjacent to and between their properties in New Carlisle, IN. Hudson Twp. More commonly known as 7196 Canal Street and E. Lakeshore Drive, New Carlisle, IN 46552. Exhibits attached hereto.

Attorney Biege stated notice is adequate.

Andrew Voeltz stated he is representing Lisa Lakin, Scott Chapman, and Kim Huston in a joint petition to vacate the undeveloped, but plotted roadways and/or alleyways commonly known as Canal Street that is or are adjacent to and between their properties in Hudson Township, County of LaPorte, State of Indiana. Lisa Lakin as the petitioner is the owner of lots 16, 17, 24, and the west half of lot 25, which is commonly known as 7196 Canal Street and identified in the map provided to the Board from Beacon. Petitioners Scott Chapman and Kim Huston are owners of lots 18, 19, 20, 21, 22, and 23 in the same area. This is a situation where this was platted out many years ago. The reality is that lots 19, 20, 21, 22 and a portion of 23 and 18 in regards to Scott Chapman and Kim Huston is in the middle of a swamp. With reference to petitioner Lisa Lakin, there was a previous petition to vacate a plotted, but undeveloped roadway that you can see on the map attached from Beacon. This is an effort to sure up their property lines out there. The issue is that people are driving through the middle of their property with no knowledge that it is not an actual road. People are coming in to the beach access. They are seeking to vacate these as they serve no purpose where they could be placed on the tax roll and sure up his clients' ownership of the property pout there. It was determined that this was appropriate to be submitted to the Plan Commission as a joint petition because as adjacent landowners they all have the same interests here. For sake of expediency and efficiency that this was the proper route to go. He doesn't see any reason why this should not be vacated.

Rich Mrozinski stated he visited the site and walked the property all around. Mr. Voeltz is right. There's no reason not to vacate. The petitioners own the whole corner. It's all theirs. He doesn't understand how anybody could possibly remonstrate against it when they own it all and in between. They have issues with people driving though their yard and over their septic system. It would make sense.

Andrew Voeltz stated that is part of the problem. The Plan Commission is well aware of the issues out at Hudson Lake and in this area, there are septic fields that extend into these plotted, but undeveloped roadways. They shouldn't but they in fact do. Then you wind up with whether it's an access cover or something like that, are people driving through and over the septic's, and they have to perform repairs on their property that they shouldn't have to do.

Remonstrators:

John Matwyshyn stated he is the Deputy Trustee in Hudson Township. He is here to remonstrate. They own a great deal of that portion of Hudson Township. There is also an unimproved plotted road going through there. The septic system is built under the plotted road surface. How that was approved or if it was is a mystery. It is important to maintain County ownership of that particularly unimproved surface so it can be improved for life safety issues, to provide a means for EMS service and fire vehicles to get close to the water for rescue efforts. That portion of Hudson Township, approximately two (2) square miles within one hundred (100) yards of the water, is the location of about twelve hundred (1,200) of Hudson Township's fifteen hundred (1,500) residents. It is used heavily and very heavily populated. The only other location currently available for water rescue is at the DNR boat launch, which is two (2) miles away across water. He has little experience with boats, but estimates at twenty to thirty (20 – 30) miles per hour a six to eight (6 – 8) minutes for a boat to make a round trip from the DNR site to the area where there is a high population density. The unimproved plotted surface is about twenty feet (20') wide, the standard plotted road area. It forms a "U" shaped drive that could be a one-way driveway that even a fire rescue could come through. It is a large truck, granted if it came through it would probably destroy the septic system under the surface, but it shouldn't be there in the first place. It is currently an asset. Mr. David Lakin, the husband of Lisa Lakin, the owner, said that he would be willing to sell the property to the Township for one -point-six million dollars (\$1,600,000). He doesn't think it is worth quite that much, but if the unimproved plotted roadway were to turned over and they had to duplicate that kind of "U" shaped drive, they would be looking at an expenditure of more than half of a million dollars (\$500,000+). That particularly area around the lake is that valuable. They could not improve it. There is no other "U" shaped drive anywhere around. There is no area where a rescue vehicle, ambulance, or fire truck could access the water shore. He is raising this point that from the life safety issue, it is an asset that they should think about before they vacate.

Anthony Hendricks asked if emergency services are coming through the Chapman's ground and using their driveway. How would they be accessing today that portion of the lake in that area. It looks like Chapman's driveway is on private property, crosses a platted right-of-way, and goes to their private property again.

John Matwyshyn stated he hasn't seen the drawing, but there is a drive going around the two Chapman buildings, between the house that fronts Lakeshore Drive to the south of there is the portion they are asking to vacate and then it comes around. Currently there are two sheds and a wooden deck blocking a portion of the north-south portion of the plotted unimproved roadway. Then the roadway turns back toward Canal Street. That would be the "U" shaped drive that would be available for use by the EMS service and fire rescue.

Glen Minich stated that was about as clear as mud. Can you draw this on a map?

John Matwyshyn showed the "U" shape on a map and it was shown to the Board.

Earl Cunningham asked if he talked to the fire department or EMS.

John Matwyshyn stated they are currently forming a volunteer fire department in Hudson Township. He has spoken with the Trustee's office. They are organizing a volunteer fire department.

Earl Cunningham asked who services that Township now.

John Matwyshyn stated New Carlisle.

Earl Cunningham asked if he spoke to the New Carlisle Fire Department.

John Matwyshyn stated he has not. That is the trustee's function.

Earl Cunningham stated in regards to this issue.

John Matwyshyn stated no.

Earl Cunningham stated in the past people from the Fire Department or EMS come in a remonstrance which is clearer than him speaking on their behalf.

John Matwyshyn stated he is speaking on behalf of the Township.

Andrew Voeltz stated while he understands the trustee's position, if you look at the aerial, it is hard to believe that a "U" shaped access for heavy equipment that is rescue vehicles would be able to be driven on the beach and then back up and around if you are approaching from Canal Street. His clients are not seeking to vacate the portion of the roadway that still exists on the south of their property; it's still there. There will still be beach access coming off of Canal Street. He doesn't believe that this would restrict access in anyway, but rather would provide a dedicated approach that could be developed potentially by the County or by Hudson Township to provide for beach access there. They would then have a dedicated approach on that side of the lake as opposed to directing fire or EMS to make some "U" shaped turn and come around the corner and be able to drive out as opposed to back out. Knowing a number of firefighters, first-responders, and police officers, they do not have a problem backing a vehicle out when they put it in there. That is a little overblown with regards to maintaining this "U" shaped drive which isn't contiguous anyway. The bottom portion of it is right up to the beach; he can't believe that an emergency vehicle could be driven on the beach like that.

Rich Mrozinski stated he has been out there and the place they are talking about to drive in there has trees growing. Nobody has driven in there for so long there are trees that are probably twenty-five feet (25') tall. You couldn't drive through there anyway. And as for beach access, right behind there is the Yacht Club which is a huge plot. Several fire trucks and rescue vehicles

could get in there if they needed to get water. It's a pretty lame excuse. He looked it over and recommended the vacation to the Lakin's for all the issues they've had out there. Between the two petitioners they own the whole corner. Nobody else has a dog in the fight. They own it all. There's no reason why they shouldn't be able to vacate.

Rich Mrozinski made a motion for a favorable recommendation for Petitioners Lisa A. Lakin, Scott Chapman and Kim Huston represented by Andrew D. Voeltz of Howes & Howes, LLP ("Petitioner") to vacate the undeveloped but plotted roadways and/or alleyways commonly known as Canal Street and adjacent to and between their properties in New Carlisle, IN. Hudson Twp. More commonly known as 7196 Canal Street and E. Lakeshore Drive, New Carlisle, IN 46552. Exhibits attached hereto.

Earl Cunningham seconded.

All approved. Motion carries 9-0

3. Petitioner Dennis R. and Cynthia L. Dittrich 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 7189 North Point Road, New Carlisle, IN., Hudson Twp., zoned R1B on .242 acres. Exhibits attached hereto.

Attorney Biege stated he reviewed the title work, the documents provided by the participants, and the Building Commissioner's office did some pretty significant and thorough research on the issue. In this case, we find that the plat when the subdivision was formed there are two steps to it. First, you bring the plat to a committee. They review it and make recommendations. If it's all approved the plat is then recorded. In this case, the plat was never recorded. Essentially, the subdivision although they see it does not legally exist. What that means is that there was never a dedicated way. That way through there was never dedicated to be a public space. So, the end result is that the Plan Commission doesn't have the authority to do anything here. This is an issue amongst the parties. The Plan Commission only has the authority if the dedicated walkway or the plat is government controlled for lack of a better term and it's not. Is that as thick as mud?

Andrew Voeltz stated pretty much. The precedent that has been established by this Plan Commission considering that the neighbors Steve Liskey and Natalie Chabot applied for a petition to vacate the alleyway and it was granted. We are past the point in time where that could be appealed, but does the decision today or does the legal opinion from the Plan Commission render that vacation of a public way moot or does that still stand? Then would his clients the Dittrich's need to proceed in other avenues including a court of law.

Attorney Biege stated that information was not in front of the Commission when the first one was granted. He doesn't think any legal authority exudes from the Plan Commission. They are simply making a decision based upon each inquiry. He doesn't think there's any stare decisis that would apply here. The proper venue for resolution of this would be the court rather than the Plan Commission itself.

Andrew Voeltz asked if his opinion would then be that the proper venue for resolution of this would apply to both the Dittrich's and Mr. Liskey and Ms. Chabot or has that issue already been decided.

Attorney Biege stated that goes beyond what the Plan Commission can decided here.

Andrew Voeltz stated he is fishing.

Attorney Biege stated nice try.

Andrew Voeltz stated it was worth a shot.

Anthony Hendricks stated there's some pretty good fish in Hudson Lake.

Attorney Biege stated to be clear, the Plan Commission only has the authority that the Indiana Code gives to it. It doesn't have unlimited parameters. They can only make decision within this small window. That is why they're getting the opinion they are getting.

Anthony Hendricks stated in a layman's point of view, it's not a plat of record or recorded right-of-way that has been through a legal world so their avenue is either the Commissioner's decide whether they accept it as a platted right-of-way and they can legally vacate it or they can go to circuit court and they decide whether it is a platted right-of-way. The Plan Commission right now is sitting on an unrecorded plat that shows a right-of-way that may or may not have legally existed that they can take action on.

Attorney Biege stated there are recorded easements and some deeds have easements to other parcels, but the Plan Commission has no jurisdiction over easements. What they are saying today has nothing to with whatever easements somebody may have in a deed.

Attorney Biege asked Andrew Voeltz if he wanted to go to the Commissioner's.

Andrew Voeltz stated based upon his research that he has done, it is murky at best as to whether or not the executive of the County has the ability to vacate something that was never recorded in the first place.

Attorney Biege stated it would be cleaner to dismiss the petition here and then he could petition the Commissioner's directly.

Andrew Voeltz stated then it wouldn't be coming from a recommendation or an approval from the Plan Commission.

Attorney Biege recommended to make a motion to dismiss for lack of jurisdiction.

Andrew Voeltz stated he will withdraw the petition.

Pat Gilmore stated she owns 7188 N. Point Rd, New Carlisle, IN.

Pat Gilmore stated she gave extensive documentation that showed over and over when she purchased the property that it was accessed. The circuit judge also signed so there was a court of law that came through and said that it exists. She is not a lawyer and cannot attest to what has been said right now, but she does know that when this Board granted Liskey their right for that five-foot (5') it is a ten-foot (10'). Unless it is rescinded, she doesn't understand how this goes forward. They were never notified of an action that the Board took. They were never given an opportunity to speak before the Board or to give legal documentation and this Board granted the removal of five feet (5') from herself and the other land owner. Now they are saying they can't find where it was ever official. She has the South Shore records that show that they owned the land and it was then platted off and given. She is only reading and it sounds like there has to be attorneys involved, but if they took away five feet (5') and Liskey's own that whole ten feet (10'). She knows this for a fact because she owned the land before they did. She quieted that access from being a public access to being a private access. That private access was signed by a judge that said it was no longer a private access, but an access for the Dittrich's, the Liskey's who have beach front so they don't need it, and they two houses directly behind them. Ten feet (10') walk on access.

Attorney Biege stated this decision doesn't affect anything the court may or may not have done. It does not affect ownership in any way, shape, or form.

Pat Gilmore stated she understands that. But the Plan Commission made a decision without them being notified.

Note of Record: The adjoining landowners we're adequately notified in both cases. The Building Department has record of this.

Attorney Biege stated that she does not have standing that the previous decision was invalid. That is not before the Commission today at all. The Commission doesn't have the authority to reverse a previous decision.

Pat Gilmore stated it is moot.

Attorney Biege stated it is here, but he's not saying anywhere. Just here, yes. The Plan Commission is only allowed to do certain things. All it can do is undo a subdivision essentially. That's all they have the power to do. That doesn't mean they can't go to court or go about it by other means.

Pat Gilmore stated she wanted to repeat what she heard him say. It means that that decision is moot. It does not count.

Attorney Biege stated no. For the Liskey decision?

Pat Gilmore stated yes.

Attorney Biege stated no he didn't say that. It does not have the authority to reverse a previous decision. That has to be done otherwise.

Pat Gilmore stated they can make a decision, but they cannot reverse it.

Attorney Biege stated that is correct. Time has passed, but if they want to appeal a decision by the Plan Commission or the Commissioner's they appeal that to the superior circuit court. They don't go back to the Plan Commission to undo it. The place to go is the court room.

Pat Gilmore stated she id just asking for clarification because it isn't making sense to her.

Attorney Biege stated he understand, but if she gets a lawyer, they may be able to help.

James Staatz stated his address is 57944 Lemon Road, New Carlisle, IN.

James Staatz stated his daughter is a part of this easement question. He is unsure if it was the Dittrich's or Liskey's, but somebody blocked their access to the lake. They removed the stairs that gave them access to the water and put a berm up. What do they do about that?

Attorney Biege stated it is a civil matter. Talk to a lawyer. They have remedies, but not here.

James Staatz asked if they can still use the property.

Attorney Biege stated he cannot give legal advice.

James Staatz stated it wasn't vacated so.

Attorney Biege stated everything is just like it was.

James Staatz so they can use the property.

Attorney Biege stated he can't give them permission one way or another. He suggests he calls a lawyer and has a talk with them because that is the correct venue. This is not the correct place for it.

James Staatz stated the lawyer he spoke to said they could use it whether it is vacated or not.

4. Remanded Back to Plan Commission for Review 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.

Andrew Voeltz stated third times a charm right.

Attorney Biege stated we'll see.

Anthony Hendricks stated we've never been here before Andrew.

Andrew Voeltz stated he represents Donald and Catherine Boody with regard to their petition to vacate what's left of Beach Drive. This is the only portion of Beach Drive that has not been vacated. Previous petitions have been before this Board on January 28th, June 23rd, and the Commissioner's on two occasions. They are all very well aware of what they are trying to do here. Just to be completely clear, this is a petition to vacate the portion that Beach Drive that remains that he will refer to as an "upside down seven" with approximately thirty feet by one hundred feet (30' x 100') that runs north by northwest to south by southeast and then the portion between the parcel that ends in 46-06-27-328-006.000-042, which is there the residence is, and the thumb that is actually a parcel that is platted, but is in Pine Lake. He is unsure if there are any other questions at this point because obviously the petition has remained the same the entire time.

Anthony Hendricks stated for clarity, the Boody's own both sides of this right-of-way.

Andrew Voeltz stated that is correct.

Anthony Hendricks stated that for clarity for the Board attorney, they had remonstrance and acceptable notification.

Attorney Biege stated that is correct.

Anthony Hendricks stated this is a platted of record legal subdivision.

Andrew Voeltz stated that for transparency sake, at the earlier meeting there was a group of property owners on the island that presented a remonstrance. Mr. Novak represents those inland land owners and it would be Mr. Novak's position that they are going to withdraw their remonstrance and pledge their support of this petition at this point.

Anthony Hendricks stated let's open the floor to Mr. Novak on Zoom.

Anthony Novak stated he agrees with Mr. Voeltz. They no longer have no any objections that are not in support of his petition.

Remonstrators:

Lisa Schoetzow stated she represents Sharon Stine and Mr. Stine. Their property is up against Mr. Boody's property. Sharon came to all of the Commissioner's meetings. She attended all the commissioner meetings as well. Not the Plan Commission meetings unfortunately because at the time it was explained to her, it was explained to her that only the part of the upside down seven of beach drive that was being vacated was the original petition in January. She realized that what Mr. Voeltz said is not true, but if you read the minutes it has changed. They are not only doing the upside down seven portion but the whole street, the undeveloped road plus the upside down seven part. Mrs. Stine objects to that. What is not being told is there is a side agreement between

the four other remonstrators and Mr. Boody and it includes moving Beach drive in the form of an easement. It was first fee simple and now it's an easement. They are moving the easement. It will be ten feet (10'). *(She has shown the distance with a tape measure.)* There are four neighbors that will drive their tubes, their boats right next to Mrs. Stine's property where the easement will be moved.

Anthony Hendricks stated for full transparency, he is the County Surveyor and private surveyor. His firm has worked with Mr. Boody and Mr. Novak and all the attorneys involved with the property. Could she answer for the Board, the Stine's are a north and adjacent of the Boody property lots; they are not adjacent to the vacation in any way.

Lisa Schoetzow stated their property does not touch Beach Drive.

Anthony Hendrick asked Attorney Biege if this Board if when they ask for remonstrators, the petition that is vacating this street is owned by land surrounded by Boody. Do they now open this back up to petitioners at any distance away? For a private agreement between Mr. Boody and the landowners using an easement now, does this Board have any jurisdiction to delve into a private agreement on private property?

Attorney Biege stated absolutely not. This Board has no jurisdiction over easements. The Board can't stop that. The Plan Commission can't do anything with that. Unless they have authority to show him that there is some new statutory authority for the Plan Commission, there is no way the Board can stop that.

Lisa Schoetzow stated the Board can stop vacating Beach Drive. That's what they're able to do today is to stop this. It came back to you because we went in front of the Commissioner's and made arguments on how this has changed. She has heard at least three times or more to come up with an agreement. Her client has not been approached. The same thing that happened in July. They were told they can take three feet (3'), but you have to buy it.

Anthony Hendricks stated this Board's motion did not include a caveat of saying they wanted an agreement. The motion was clear and just a vacation. They moved a favorable recommendation to the Commissioner's with only a vacation, not a caveat to come up with some other agreement between access. The attorney told the Board it is beyond their purview to require an agreement outside of a vacation for an easement on a private piece of ground.

Lisa Schoetzow stated she would argue that they could deal with land use. That this will be a land use issue. Mr. Boody cannot just build a factory on his property.

Anthony Hendricks stated he is not asking to do that.

Earl Cunningham asked if Mrs. Stine is losing any access to the lake.

Lisa Schoetzow stated absolutely. She can use Beach Drive just like every other person on Pine Island can use Beach Drive. She can absolutely and she has.

Earl Cunningham stated he is asking is if she has access to the lake if this ten-foot (10') easement goes through Mr. Boody's property. Does she lose any access to the lake?

Lisa Schoetzow stated she doesn't lose access.

Earl Cunningham stated thank you.

Lisa Schoetzow stated it does move it.

Earl Cunningham stated he understand it moves it, but that's Mr. Boody's property, it's not her property.

Glen Minich stated it will be adjacent to her.

Andrew Voeltz stated he is asking for a point of order to clarify. There is no easement that exists on Beach Drive right now. Th characterize something as moving an easement is not factual and not legal. There is a plotted, but undeveloped roadway that is known as Beach Drive that ninety percent (90%) has been vacated by this Plan Commission. Whether or not his clients or anybody enter into an easement agreement for access over his property to the lake is irrelevant for any determination by this Commission because under Indiana Code 36-7-3-13. There are four grounds for remonstrance:

(1) The vacation would hinder the growth or orderly development of the unit or neighborhood in which it is located or to which it is contiguous.

(2) The vacation would make access to the lands of the aggrieved person by means of public way difficult or inconvenient.

(3) The vacation would hinder the public's access to a church, school, or other public building or place.

(4) The vacation would hinder the use of a public way by the neighborhood in which it is located or to which it is contiguous.

There are no other remonstrators here present. And in fact, the remonstrators that existed in the beginning are now in support of this petition. He doesn't believe that this remonstrator meets the statutory requirement for standing to be a remonstrator against this petition.

Attorney Biege stated the Boards absolutely does not have jurisdiction over an easement that does not exist. You have no decision-making authority with regard of that tape measure at all.

Lisa Schoetzow stated they do have authority to not vacate Beach Drive, a thirty-foot (30') strip of property that the people of Pine Island can use. Go back and read the minutes from January. There were all kinds of people here. There was a woman that said she comes across the lake and ties up at the pier so she can access Pine Island. You are going to deprive her. You're depriving people.

Earl Cunningham stated they are not going to deny her. She will have access to do the same thing it's just going to be in a slightly different location.

Lisa Schoetzow stated that wouldn't be true

Glen Minich stated that is not true. They are making a private easement not a public easement. But that was a undeveloped plotted roadway. Nobody had rights to travel up and down that unless the County had built a road. Otherwise, the County had no ownership of it. It was undeveloped and people that were using it were using it illegally because they had no right to it. Vacating that right-of-way is the proper thing to do. He owns the whole property. There is certainly a disservice to the community because he was held ransom and he is giving the right for private ownership of an easement in payment of that. It's not right, but they can't change it.

Anthony Hendricks stated there is a new remonstrator and the petition was remanded back to us. Is there any discussion from this Board on how they should handle this situation? This is something he has never seen in his career on the Plan Commission.

Attorney Biege stated he hasn't either. He's been the Board Attorney about fifteen (15) years and he's never seen this.

Anthony Hendricks stated he's been around this court house since he was twelve (12) years old and hasn't seen this.

Attorney Biege stated they could reaffirm the previous petition if the Commission is so inclined.

Rich Mrozinski stated this started in January. We have been through a couple meetings. Remonstrators all had the chance to speak their peace. We had a disagreement at first and was worked out at the last meeting. There were no remonstrators. Everything was good. They gave it a favorable recommendation to the Commissioner's. Remonstrators showed up at the Commissioner's meeting which is improper. It was out of line. That's not the way we do business. His fellow Commissioner's didn't understand that. In fact, one Commissioner made the comment that it's never too late to remonstrate. Yes, I'm afraid it is according to the law. We've given this a favorable recommendation to the Commissioner's once. It should have been ended there. It didn't. It cost the Commissioner's money to have to bring it back here which is totally unnecessary.

Rich Mrozinski reaffirmed his motion for a favorable recommendation for Petitioner 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 adjacent to and between the property commonly known as 115 Maple Drive, LaPorte, IN., Center Twp., zoned R1B. Exhibits attached hereto.

Earl Cunningham seconded.

Lisa Schoetzow stated it seems like this is her chance and she doesn't want to be told when she goes to the Commissioner's meeting that she is once again improperly remonstrating. They will be there again and Mrs. Stine is not giving up on this. Mr. Boody is gaining thirty feet (30') at a one hundred-foot (100') roadway as his property. It will be his.

Rich Mrozinski stated he will pay taxes on it.

Attorney Biege stated point of order, there is a motion on the floor. Presentations have been given. Presentations are closed. Now they're supposed to vote.

Approved 8-0. Motion carries.

Anthony Hendricks stated he is abstaining as he worked on the survey between the final petition and this remonstrance.

Lisa Schoetzow stated there are other remonstrators. Mrs. Stine would like to speak.

Anthony Hendricks stated she is representing Mrs. Stine.

5. Solar Ordinance

Attorney Biege apologized to the Commission for receiving the draft this afternoon. He thought it was done. His secretary didn't do it. He did it three weeks ago to his defense, but they may or may not have had a chance to look at it thoroughly. He did include the sections they discussed last time, especially on the reclamation and disposition.

Anthony Hendricks stated he read through it. He doesn't see anything he could pick a part. They did as thorough of a job as they could have.

Harold Parker asked if the owner was ever specified. Owner of the property or owner of the solar. Define owner for him.

Anthony Hendricks stated who is defined as owner. Owner of the land or owner of the panels.

Attorney Biege stated that's a good point.

Harold Parker stated who owns this thing. Who are they going to sue? Would it be some old lady that rented to them for one hundred (100) years and they only did fifteen (15) and they skipped town or is it the guys that actually put it in? Or is it five (5) corporations ago that kept switching around.

Attorney Biege stated they need a better definition of owner.

Harold Parker stated that's all I said. He wanted to know who gets hit with the club when it ends at the end.

Annemarie Polan stated that is a good question.

Attorney Biege stated that is a good point.

Mitch Bishop stated he has a meeting tomorrow with Michigan City Planner, Skylar. This will be within their joint zoning ordinance within the two cities, it is proper that they comment. They might have some additions and we don't want to go over it twice.

Attorney Biege stated he agrees, but he would like to get their version how they like it before they send it over.

Annemarie Polan asked Mitch Bishop if the other cities are going to do the same thing as us, what about all the amendments that have been made that they have no idea of. It's kind of ridiculous.

Mitch Bishop asked if she meant additional amendments made by the city.

Annemarie Polan stated yes.

Mitch Bishop stated they are supposed to give those to us.

Annemarie Polan stated she's never seen one (1).

Mitch Bishop stated he will bring it up to them.

Harold Parked stated for Mitch Bishop to put his hard hat on; go get 'em.

Mitch Bishop stated he is trying to stop that by meeting with them and trying to coordinate.

Anthony Hendricks stated thank you.

Anthony Hendricks asked if there is any old business.

Anthony Hendricks asked for any new business.

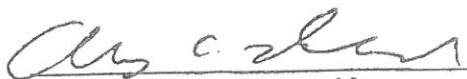
Anthony Hendricks asked for a motion to adjourn.

Rich Mrozinski made a motion to adjourn.

Earl Cunningham seconded.

All approved. Motion carries 9-0.

There being no further business before the Plan Commission, meeting adjourned at 7:22 p.m.


Anthony Hendricks, President


Annemarie Polan, Recording Sec.