



# LAPORTE COUNTY PLAN COMMISSION

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Michael Polan  
Building Commissioner

## LA PORTE COUNTY PLAN COMMISSION MINUTES October 24<sup>th</sup>, 2023

MEMBERS PRESENT: Rita Beaty  
John Carr  
Glen Minich  
Deb Vance  
Joe Haney  
Earl Cunningham  
Harold Parker

OTHERS PRESENT: Doug Biege, Attorney; Michael Polan, Recording Secretary; Ashley Kazmucha, Administrative Coordinator; Mitch Bishop, County Planner

### PLEDGE OF ALLEGIANCE

Rita Beaty asked for approval of the agenda for the October 24<sup>th</sup> meeting.

Harold Parker made a motion to approve the agenda as presented.

Joe Haney seconded.

All Approved. Motion carries 7-0.

Rita Beaty asked for approval of the October 3<sup>rd</sup> meeting minutes.

Joe Haney made a motion to approve the minutes as presented.

Deb Vance seconded.

All Approved. Motion carries 7-0.

Rita Beaty stated there will be public comment for remonstrators that are for or against any of the petitions. At that particular time, they do have a timer set up this evening for three minutes. If there is anyone that would like to speak for a group, they may allow a little bit more time, otherwise they are going to ask that they limit themselves to three (3) minutes. They will stick with the facts; no hypotheticals in here this evening.

### Petitions:

- Petitioner D&M Excavating Inc. represented by counsel Andrew Voeltz of Howes & Howes, LLP** respectfully petition the Plan Commission for a 39 Lot, with 1 outlot, Major Subdivision called "Sable Estates" located immediately south of 3786 N. 400 W., LaPorte, IN. Center Twp. Parcel 46-06-17-200-002.000-042. Exhibits attached hereto.

The subdivision will be developed with private septic and wells and is to be constructed in six phases. All roads will be constructed to County specifications.

Attorney Biege stated notice is adequate.

Andrew Voeltz stated he understands Madam President has stepped up in the role of president tonight because Mr. Hendricks is not present. He would like to greet all of the Board members here tonight, Ashley, Commissioner Polan, Mr. Biege, and Mr. Bishop. They are here for a petition for a major subdivision concerning a thirty-nine (39) lot plan with one (1) outlot. This is a major subdivision called Sable Estates. They have already read the legal description. As far as they go through this, the petition is what it is. It is a petition for a major subdivision. The proposed preliminary layout is attached.

Rita Beaty stated the audience has asked that he speak a little bit louder. Could he put the microphone closer maybe.

Andrew Voeltz stated he has never been asked to speak louder, but okay. The petitioner does submit to the Plan Commission a copy of the primary plat for the proposed subdivision now called Sable Estates, but will be plotted into six (6) separate units meaning that it will be six (6) distinct phases. The proposed subdivision will be served by private septic and wells. Improvements will need to be placed in the subdivision including, but not limited to streets, curbs, gutters, and stormwater conveyances. Appropriate protective covenants and restrictions will control the use of the real estate in this subdivision in which copies of will be furnished to LaPorte County Plan Commission at the time of the public hearing meaning the secondary public hearing. What they are doing here, is following the Major Subdivision Ordinance that has been incorporated by LaPorte County under Article 4. He is sure Mr. Biege can go ahead and walk through everything under Article 4 Subsection 1, 2, 3 Subsection G . . . all of that with regards to what they are looking at here. Notice is adequate and this property is zoned R1B. This is not agricultural. This is not industrial. It is R1B. They have Matt Garritano from Tony Hendricks's office which is the reason why he isn't here because he had to step down to be clear about that. Matt will come up and present to them all of the requirements and the clarifications for what is required under a review for a major subdivision pursuant to the Joint Zoning Ordinance.

Matt Garritano stated he is from Charles Hendricks & Associates Surveying and Engineering located at 512 Lincolnway, LaPorte, IN. Specified earlier, this is an R1B zoning major subdivision named Sable Estates. The key takeaway from this subdivision is most importantly that they are not asking for any variances. They are abiding by all R1B requirements. The main being the lot frontage. The lot size for R1B. This entire plan meets or exceeds those requirements of twenty-four thousand square-foot (24,000<sup>2</sup>) per lot and each lot meets or exceeds that size. Each lot requires a hundred feet (100') of frontage and each lot meets or exceeds that size. What they are trying to do here is be harmonious with the surrounding community in creating more R1B home sites. That is the basic goal. Like Mr. Voeltz stated earlier, wells and septic will be private. The Commission members should have gotten from LaPorte County Health Department that the soil boring reports for each lot were sufficient. He does not know if they got the notification regarding lots twelve (12) and thirteen (13). There were borings done on thirteen (13), but that is the pond lot. There will be no

home on there. Amanda reiterated that also lot twelve (12) had some insufficiencies as far as the existing contouring so she had omitted lot twelve (12) as well. On this plan, most likely twelve (12) will be amalgamated into thirteen (13) or the adjacent lots next to it. It will not be a buildable home site. As far as the road goes, they are going with County specs which is shown on Sheet 1 in the lower right-hand corner of the detail. It will have a sixty-foot (60') right-of-way with twenty-eight feet- foot (28') wide pavement and two-foot (2') flat concrete ribbon curbs. As they go through the petition package, they can see the Phases 1 through 6 and because of the shape of the parent parcel they had to do the lot layout for Sheets 3 and 4 on two (2) separate sheets simply because of the size and shape. There, they can see the vast greatness that is lot thirteen (13); that is the pond lot. Moving forward passed that, because they aren't asking for any variances there aren't really many elements to this petition. It is pretty straight forward. He knows that in the technical advisory meeting there was a consensus of a concern for sight distance. He has some Google Earth photographs of the road if they would like him to present that to the Commission to show them what they are looking at as far as sight distance on the entrance/exit or the parent parcel. If they would like to see that, he can present it to them now if they would like.

Harold Parker asked if it is important to see that.

Rita Beaty stated that would be something that would be appropriate. Yes, please.

*Matt Garritano hands out visuals to the Commission members.*

Matt Garritano stated the main sheet shows about five hundred feet (500').

Harold Parker asked if he had copies or just the one (1) sheet.

Matt Garritano stated no, the overall sheet is, but he has the photos which are the most important part.

Harold Parker stated thank you. They can share.

Matt Garritano stated aside from sight distance which was a concern of the Planner and the County Engineer, they do believe that there is adequate sight distance there. He does not know the date of the Google Earth photo, but if there is any vegetation that creeps into the right-of-way, he is sure the developer and the Highway Department can work together to maintain that adequate sight distance for the entrance/exit. On Sheet 12, all the borings are there. He does not have a copy of that report, but as he stated the Health Department has that report in full. The other item that came up in the secondary technical advisory meeting was the sheet that is not in their packet, but he understands it was distributed by the Building Department for street trees. The code requires them to put one (1) street per lot and then there is also specific code for the pond and that is on that sheet. If they are granted approval for a primary plat, then those will be implemented into the construction plan for approval for the construction plans in the next phase after this. That is pretty much it for R1B major subdivision Sable Estates.

Andrew Voeltz stated regarding the primary plat, they are talking about Subsections (a), (b), (c), (d), (e), (f), (g), (h), and (i). Specifically, this Board is charged with approving the application upon

the determination that the application complies with ordinance or approve the application subject to certain modification that would bring the application into compliance. Or deny the application that it does not comply. They would submit here at this point that the application complies with the ordinance. If they then follow up with Subsection (g), the Plan Commission shall determine if the subdivision plat qualifies for primary approval under the standards prescribed by this ordinance, including standards for, which is including, but not limited to: minimum width, depth, and area of lots in the subdivision; public way widths, grades, curves, and the coordination of subdivision public ways with current and planned public ways; the extension of water, sewer, and other municipal services; and allocation of the areas to be used as public ways, parks, schools, public and semi public buildings, home, businesses and utilities. Matt has identified all of those things. He would go so far to say that this is probably the most extensive subdivision application that he has ever seen. It is above and beyond what is required by the ordinance. He understands that there is a whole lot of political stuff that is going on around this as he is looking at materials set aside with Mr. Friedman and he is seeing all of these things that have nothing to do with the application. The application is the application. Whether a remonstrator is going to get up and make some comment about pending litigation or whatever else, then he would be more than happy to come back up and indicate that they are working through that. This, in fact, is what was required by the Stop Work Order; to submit a plan. They have submitted a plan. For anybody to come up and make a comment that this is a guise or a ruse or whatever else is irrelevant and inappropriate. They have an application under Article 4 of the Subdivision Ordinance. They have met the requirements and ask that it be approved.

Rita Beaty asked if there are any questions or comments from the Board at this time before they open up to remonstrators. Hearing nothing, they will open up the floor. Once again, when they do come to the podium, please state your name and your address for the Board. Speak into the microphone. They do have public online this evening for Zoom and they want to make sure everyone can hear everything as indicated previously. Attorney Biege, are there any concerns that they need to discuss prior to remonstrance.

Attorney Biege stated first, he would like to confirm who Mr. Friedman is representing.

Shaw Friedman stated he is representing the Board of County Commissioners.

Attorney Biege stated he wants to make sure they have a clean record. He does not think it is appropriate that the Board of County Commissioners remonstrate because they are the ultimate decision makers. That said, he can go ahead so they have the record, but they are trying to keep it clear for Court of Appeals for later if anything is appealed on either side.

Rita Beaty stated thank you.

**Remonstrators:**

Shaw Friedman stated he is an attorney representing the Board of County Commissioners in the suit currently pending before special Judge Jeffrey Clymer captioned Board of Commissioners v. D&M Construction. He had not expected to be present for this hearing tonight until last Wednesday's statue hearing in court when the attorneys for D&M stood up in court and announced to the judge

that as soon as they received permission from this Board for their proposed subdivision, they intended to file a motion to dissolve the injunction that was granted August 4<sup>th</sup> to allow them to start removing and reselling more sand from this disputed parcel. Once Commission President Gramarossa heard about the court hearing, she directed that he be present tonight. Don't let anyone tell them that this petition and the litigation aren't related. They absolutely are. Furthermore, as they go about reviewing about this petition, don't let anyone tell them that the track record of the petitioner at this parcel isn't relevant to their determinations. In fact, Indiana Code 36-7-4-601 tells them the whole purpose of the Joint Zoning Ordinance is to "promote the public health, safety, comfort, morals, convenience and general welfare." Hard to believe, but he would wager this is the first petitioner ever before this Board that has a petition for subdivision on a parcel pending at the same time, they've sued the County Commissioners in a counter claim seeking money damaged claiming their "investment backed expectations" for this residentially zoned parcel have been harmed. It is the position of the Board of Commissioners in the litigation that there have been a series of misrepresentations and contradictory statements given to County officials over the past eight (8) years regarding this residentially zoned parcel and non-compliance and non-cooperation all of which made its way into the judge's August 4<sup>th</sup> decision which they are going to see tonight. He will give them copies of that as well; he has copied to present for the record. What has turned into a dry excavation pit was supposed to be, as Mr. Minich and Mr. Parker may remember from eight (8) years ago which he will provide minutes of from that Plan Commission meeting where several members, including Ms. Beaty as well, where these folks were in front of them.

*Copies of the minutes are distributed.*

Shaw Friedman stated the August 4<sup>th</sup> order which he will have copies for them for the record as well. What has turned into a dry excavation pit was supposed to be a three-and-a-half (3½) acre pond next to what Ryan Miller said was going to be his "dream home". County officials including this Board acted in reliance on representations that proved false and nothing but a cover to conduct highly lucrative commercial sand removal operations at this site. Let him be perfectly clear, he is not saying that D&M Construction isn't a good local firm or that they don't have a record of performance and community involvement elsewhere in our community, but when it comes to this site and Ryan Miller, it is a tale of two (2) companies. He is not sure whether it's because of personal animosity between Mr. Miller and the neighbors or the sheer value of the CH1 construction sand that is just underneath this parcel, but D&M's actions have resulted in what Mike Polan described in court in front of a judge as unprecedented in our County; four (4) different Stop Work Orders issued over the past eight (8) years. They all know. Just as a bank will rethink giving a loan to someone who hasn't been straightforward, the government won't renew an SBA loan or grant if there has been contradictory information or misleading information given the past, they all have the opportunity. In fact, the duty to inquire how candid this Petitioner has been at this site and whether they have been a good neighbor as well. On both counts, at this site, they have been misleading and misinforming County government and not only non-cooperative, but non-compliant and the evidence they are going to present to them should lead them to only one conclusion. Deny this petition or at the very least table it indefinitely until two (2) things occur. One (1), they dismiss the counter claim they brought against the County government and two (2) they receive not only written commitments that are allowed as they all know per Indiana Code 36-7-4-1015 as to the time tables for the so called six (6) phases of construction, but he would suggest liquidated damages as well if they don't produce. Now, he would like to introduce a couple documents into the record.

They have passed out for them the Plan Commission minutes and he wanted to walk through some of those just briefly; key sections that he wants to point out from that meeting back on August 25<sup>th</sup>, 2015. If they see the quotes, they take an excerpt. One page two (2), Mr. Voeltz stood before them eight (8) years ago and said his client “will provide information and a packet of materials to the Plan Commission that will show, and not to use a legal term of beyond a reasonable doubt” . . .

Rita Beaty stated excuse me, Mr. Friedman. Since he is representing the Commissioners, do they allow a bit more time or where do they go from here?

Attorney Biege stated it’s Shaw Friedman, they have to put a limit on the time somehow.

Shaw Friedman stated he will try to keep it moving, but he appreciates the help with them representing an entity, the Board of Commissioners. He will try to be efficient with his time. Thank you. Again, page two (2), “beyond a reasonable doubt, a shadow of a doubt, said his intention are concerning a property that is zoned R1, being residential and his intentions to construct a home in this property.” Mr. Voeltz then turned it over to Mr. Miller. Page three (3) the representations about the sand, his five (5) year process, he plans to pull multiple permits, he wants to plan and submit a septic permit, and design specification for a septic permit. As they sit here eight (8) years later, there was never a septic permit application or a building permit application submitted to the Building Commissioner. Page four (4), “he hopes to complete it within five (5) years. . . the pond might be half constructed and a second pond and the two (2) tied together.” Mr. Pressel asked a reasonable question when he asked how deep they anticipated the pond going. Mr. Miller stated that was a trick question. That’s not a trick question. How deep did he anticipate it going. Mr. Pressel then pressed at page four (4) as well which was interesting as well. The Board members did their level best to try to get good information from this applicant.

Rita Beaty stated excuse me, Mr. Friedman. She appreciates what he is doing and the fact that he is going through all this, but he did pass it out and they have it highlighted.

Shaw Friedman stated he is not going to go page by page.

Rita Beaty stated thank you.

Shaw Friedman stated he would like to point them to page fifteen (15) that would be his last reference. Attorney Voeltz said, “the issue remains that Mr. Miller is in a unique position to allow him to fulfill one (1) of his dreams if owning a home on a pond and he can build a pond.” That is his last reference.

Earl Cunningham asked what page the last one was.

Shaw Friedman stated page fifteen (15).

Rita Beaty stated thank you.

Shaw Friedman stated there has been four (4) Stop Work Orders. One (1) that was enacted in 2015. Another one (1) in 2019. Then they were back in front of the Board of Zoning Appeals in 2019 on

an appeal from a Stop Work Order. At that point, Annie Polan, their former Building Commissioner, had imposed a Stop Work Order.

*Referenced material is distributed.*

Shaw Friedman stated he has reference from the cross examination of Annie Polan and Mr. Voeltz and he would like to make sure they are presented with it.

Attorney Biege stated if he may, was this testimony in the litigation?

Shaw Friedman stated he quoted the BZA testimony. He will provide him a copy.

Attorney Biege stated alright. He doesn't want to get too far into litigation as it is not the issue here tonight.

Shaw Friedman stated it referenced the BZA testimony too. Mr. Voeltz cross examined Annie Polan and that is why he thinks it is relevant.

Attorney Biege stated in the case, but that case pending is MS4 correct.

Shaw Friedman stated no. She was cross examined at this podium when she testified at the BZA. That is why he is referencing it.

Attorney Biege stated he wants it to be clear it wasn't testimony, they were comments. She was not under oath. He doesn't know what it is, but he's just saying. He wants to make sure the Board is aware and stays clear that this petition has nothing to do with the pending litigation. Okay?

Shaw Friedman stated in respect, they made it part of this litigation when they stood up in front of Judge Clymer and said they wanted a Plan Commission approval so that they could then dissolve the litigation.

Attorney Biege stated he understands his arguments.

Rita Beaty stated again, she appreciates his input, but they are going to do the three (3) minute limit and then move on to the next remonstrator please.

Shaw Friedman asked if he can finish giving them the documents that he needs to give them. One (1) of the Commissioners has been involved in litigation for eight (8) years on this. Four (4) Stop Work Orders. He needs just a couple more minutes to finish giving them the documentation.

Rita Beaty stated he will let the Board make that decision.

*Outbursts from the audience occurred.*

Rita Beaty stated that is not allowed, but thank you.

Earl Cunningham made a motion to allow Mr. Friedman to present the evidence.

Rita Beaty asked if that is okay with everyone.

Glen Minich asked how many minutes will it take.

Shaw Friedman stated five to seven (5 – 7).

Rita Beaty stated he's got six (6). Thank you.

Shaw Friedman stated fair enough. They have presented evidence of the non-compliance. Ms. Polan makes a reasonable request in 2018 asking when the pond will be completed. Mr. Voeltz then responded to their Building Commissioner saying with all due respect, he will not tell her. Frankly folks, that is not what they expect out of your petitioners. They expect a level of participation and consistency. He also has copies of the Rule 5 Notice. The reasons given for this have varied over time. He will also provide them copies. . .

Andrew Voeltz stated he is going to object at this point as to relevance to the petition that is on the table before this Board. It's dragging up cases, shoes, testimony, and throwing him under the bus quite frankly for comments that he made back in 2015, 2016, 2017. They are here for a petition that was filed in 2023. None of this has any relevance whatsoever.

Shaw Friedman stated they are all held to the representations they make on behalf of their clients. This isn't another client; this is D&M appearing before this Board. What he provided was a copy of the inquiry that was made of Ms. Polan. They also have excerpts of the questioning that took place here where Mr. Voeltz in fact inquired of Annie Polan. He asked if there were "any pre-requisite for someone who states they're going to build a home, that they follow through." "When there is something this controversial you should stick to your word." Those are the words of Annie Polan. "How is what someone does with their own property controversial," stated Mr. Voeltz. Ms. Polan stated, "He brought it up, he's the one who said that he was going to have his dream home there. That's not something anybody else said." Mr. Voeltz stated, "when the pond basin is complete, wouldn't it be reasonable to conclude that a dream home could be following?" Ms. Polan stated, "You would have thought by now." In terms of the pond basin itself, he would like to provide copies of the court findings.

*Findings are distributed.*

Shaw Friedman stated he thinks it is important for this Board to see what has now gone in front of a judge; evidence of non-compliance and non-cooperation. What he is giving them is a two (2) page excerpt and a full copy of the special findings of Judge Clymer that were issued August 4<sup>th</sup>. What is shown on the board are Findings of Fact of where that has been non-compliance by this particular Petitioner. He would suggest them with all due respect, that this Board consider that as well. He would also ask, with all due respect, that they take a look at probably the most compelling exhibit of all, which is fairly recent. They were in front of a Plat Committee meeting just two (2) months ago in August, which they all should have those Plat Committee meeting minutes. They have Plat Committee meeting minutes that were designed to review the subdivision. He wants to give special



credit to Mr. Vicari, the new MS4 Coordinator, who did an exception job with his review and critique. He has already turned down their initial petition for an MS4 permit for the subdivision. In the course of a half an hour, the story changed. Initially, Mr. Miller and his consultant stated it was a dry pond and it was not holding any water. They still have to apply some clay to the southeast portion. That's what they told Annie Polan five (5) years ago in the letter he provided to them. Then, they changed later on as they got pressure from some of the folks in the Plat Committee. Later on in the meeting, page fifteen (15) there is a reference that it is not a dry retention pond anymore, it is going to be a pond that holds water. Which is it? Folks, he would submit that none of this holds water. None of this holds water. They look at the contradictions made in front of their very Plat Committee which met in August of 2023 and they were asking good questions. Mr. Polan was asking questions. Mr. Vicari was asking questions. They couldn't even stick to a story. It's either a dry retention pond or it is a pond that is holding water. If they look at the very Plat Committee minutes and that in itself gives them basis to deny this petition. Again, thank you Madam Chair for allowing him additional time, but the Board of Commissioners felt it was important to get all of this information in front of the Board.

Joe Haney asked Mr. Friedman as the Board of Commissioners is currently an adverse party to D&M and he knows the litigation word has been thrown out, would it be appropriate for him to recuse himself simply because if there is a challenge, however the Board is going to go, does he understand where he is going with this?

Shaw Friedman stated sure.

Attorney Biege stated legal questions should be addressed to him, not the remonstrator.

Joe Haney stated he is here at the direction the President representing the Commissioners in here so hopefully they can agree with wherever that should go.

Attorney Biege stated he doesn't think he is disqualified. They are going to be making the decision later anyway.

Shaw Friedman stated there has always been a member of the County Commission serving on the Plan Commission so no. Again, there is no financial interest or nothing that would force a recusal.

Joe Haney stated thank you.

Rita Beaty stated before they move on to more public remonstrators, keep in mind that they are here for the decision for the petition in front of them. They are not going to be rehashing any comments. Any comments are welcome, but please keep in mind for everyone that comes up to please state their name and address. Try to keep to new comments.

Pat Meaney stated his address is 4078 W. Schultz Rd., LaPorte, IN. He hopes he doesn't take as long as Mr. Friedman, but maybe they will grant him a moment or two (2).

Rita Beaty stated he will have three (3) minutes.

Pat Meaney stated he is not going to argue what was present eight (8) years ago though he can understand why Mr. Friedman might. He is here tonight with a little two (2) page statement. He thinks it sticks to the violations he agrees happened in Article 4 which is what the primary plat is all about. He will stay on subject with that. He has some belief in this that the petition that it should be denied or at the very least tabled. It should be sent back for administrative review until the following application comes into compliance with this ordinance. He believes there is violations of this ordinance that occur in the following Sections; Section 04.02 (b) and Section 04.03 (b). He will probably say this wrong and get yelled out, but when he read the two (2) administrative review processes that were involved in the Plat Committee, one (1) of these was an application for administrative review that went to Mike Polan. It was supposed to be like a primary review where the subdivider would give the information to Polan and then Polan would review it tell the subdivider how to tighten it up. Then there is the second administrative technical review. Under that technical review, there are a bunch of Department Heads that need to be incorporated into it. Some are going to say it is up to the enforcement agency whether or not he wants to include them, but he believes that because of this petitioner that they should take extra time to make all of the thing in the petition factual. According to this section, the surveyor was required to sit in on this review. The Surveyor, having designed this subdivision, he believes at the very least, the County should have hired a certified licensed professional engineer to review the work of the County Surveyor who developed this idea with Mr. Matt here. He believes if they had done that then they would give this Commission all of the peace of mind they are going to need to sit back and say they have covered their bases.

Rita Beaty stated she hates to interrupt him, but how much longer does he think he will need.

Pat Meaney stated he will need his whole three (3) minutes and he has a page and a half.

Rita Beaty stated he has already had his three (3) minutes.

Pat Meaney stated down in Marion County, they allow twenty (20) minutes for everybody who does this. He would like a few more extra minutes. These guys can stand up here and give a fifteen (15), sixteen (16), twenty (20) minutes presentation and they're going to tell him he only has three (3) minutes. He only has another page.

Rita Beaty stated she understands. That's okay. Please continue.

Pat Meaney stated he would like to know if the Health Department has signed off on this. He would like to know if the MS4 Department has signed off on this. Section 04.03 (h) under the conditions for approval of the petition at this meeting they must meet the following. They must meet under the administrative review and Mr. Voeltz is absolutely right, number four (4) reads provision for drainage design. Has that been done? Has it been submitted? Do they have an okay from MS4 for that? Going forward, the petition runs county to the LaPorte County Land Development Plan in the following way. Their area out there although it is planned urban area, the general objective is to discourage residential development that does not have immediate or near-term conditions for sewer or water. The zoning density that they recommend for that is two to three (2 – 3) acres in many locations. This is what Mr. Miller has designed the subdivision to be. He has designed it to be that heavy density. In the planning for the subdivision, the County has a responsibility not only to look

at his request, but all requests granted by the Plan Commission. Mr. Miller wants thirty-nine (39) lots with the HOA not developed. The lot across the street is a minor subdivision that hasn't been built yet that this Commission approved for three (3) lots and one (1) more on a parent lot. There are also five (5) more lots down the road. Their neighborhood is looking at a total of forty-nine (49) lots getting ready to be developed with no sewer, no water, no nothing. He believes this is way too many. The thing he would like to address now is the Plat Committee meetings of both August and October. He read both of those Plat Committee minutes. In his opinion, it was a dog and pony show to allow Mr. Miller to send his entire petition at the same time to the Plat Committee complete with his lawyer, his developer, and to some Department Heads although all of them were not there, and the enforcement officer. In those two (2) meetings, they gave him guidance on how to fill his crap out and Mr. Miller told them what he agrees and doesn't agree with. Not one (1) neighbor after eight (8) years of b.s. was allowed or invited to that meeting. Why is that? There were a few people that did a really great job in that meeting and he would say there was a comment made by Paul Vicari where he asked if he said something wrong. He thinks we have a nice MS4 Coordinator; a lot better than the last one (1). This is what he would like to see. He is not opposing Mr. Miller's subdivision. He would gladly take it any day of the week over the last eight (8) years of what they faced. He would like to see the lot numbers reduced. He thinks that with fifty (50) lots being built in their neighborhood with no water and sewer and no intention to bring water and sewer to their neighborhood, the density is too much. He disagrees with the numbers that his developer stated for density on this. He thinks what he would like to see is for the County government to appoint a representative that works hand in hand with Mr. Miller, sets up a timeline, sets up a time schedule, and makes sure that he performs to the guarantees that he has made with the six (6) phases in the development in this subdivision. That will guarantee that the project keeps moving forward; a beginning, a middle, and an end. The thing he doesn't want to see is the roads destroyed. Speaking for himself, he would like to see the eight (8) years of industrial sand removal quit. That is about all he has to say and it gave him dry mouth to say it.

Jacqueline Thomas stated her address is 3484 N. 400 W., LaPorte, IN. She appreciates the Commissioner giving the remonstrators time to talk about this potential subdivision. Eight (8) years ago, she and her husband bought their dream home here in LaPorte County. They moved from out of the County, found a nice spot on a couple of acres, and they lived there for about six (6) months before all of this started. She will say she has gotten a crash course in County politics and it has been really interesting and she has learned more about zoning and plumbing and drainage and all of that, but what really doesn't sit right with her as a potential neighbor to this development is that it is her opinion that if they look back at August 29<sup>th</sup> at the Plat Committee, as Shaw Friedman was talking about, on page two (2) of the handout from the August 29<sup>th</sup> meeting, it talks about if the pond is going to hold water versus if it doesn't hold water. Literally twenty (20) minutes in the same meeting it contradicts itself. On page fifteen (15) they will find the contradiction where it holds water or doesn't hold water so she asked the County Commission. She's a parent and if her kid came to her and said they were going out with friends and they will be a certain place and then they came back and said they were going out with different friends, as a parent she would think something doesn't hold up here and something is not working and she is not getting the full story or the truth. What Shaw had to show the Commission through what neighbors had. . . Her neighbors have stacks and stacks of paperwork. Unbelievable amounts of paperwork for this thing where time and time again, D&M Excavating have stood up and said they will do this and they commit to building a pond and a dream home. There's no pond. There's no dream home. What their

neighborhood has been left with is destroyed roads that had to be repaved she believes at the taxpayers' expense. She doesn't want to pay for that. Nobody does. No. They've had accidents with dump trucks out there. It's a circus. She urges the Commission to please, please, please look at what has happened. Like the President said, they are going to talk about non hypotheticals. They are going to talk tonight about facts and what has happened. In the eight (8) years, Mr. Miller has not been a good neighbor at all. She urges this Commission to look at the track record. Look at the documents. It's a mess. Please, please, please do not approve this. Thank you.

Randall Veatch stated his address is 4177 W. Schultz Rd., LaPorte, IN.

*Randall Veatch distributes a handout to the Commission members.*

Randall Veatch stated he will take out a bunch of the niceties he has because of the time restraints they have been put on. Many promises have been made and many promises broken. They were hearing them here tonight. The neighborhood has lived them. He has been very vocal on the noise, pollution, dust, and debris. All of this is very common at construction excavation sites. When the site was first brought to the attention of the neighborhood, they felt the project was being rushed in. When they addressed missing permits and authorizations, they didn't get any answers. They were further amazed to find many things were accomplished over a holiday weekend; that was covering 4<sup>th</sup> of July 2015. They feared then to what is being played today directly behind his house. An industrial sand excavation site that has sold thousands of truck loads of sand, but let's not get ahead of ourselves. One (1) of the first items he started to question was when the road and the size of it going back to the sand area. It was a fifteen-foot (15') high roadway that blocked the natural stormwater during the heavy rain. On the handout he gave them, there are pages that include the rain amount in 2008 and the rain amount in July of 2015 and also a plat layout that shows the actual stormwater run off which is the mainline going in and a red arrow pointing to where his house is. The pond is indicated by the green dot that is the supposed pond that isn't a pond that is a retention area that isn't. They don't know what it is right now. Through all the reports that he has found, he has found four (4) different items mentioned on it. It shows that there is a main vein of water during stormwater runoff that goes to this area. While he is addressing the drainage that goes through his property with the sand pit owner, he was told that a ten-inch (10") drain culvert was a sufficient size to handle the rainfall that would be expected in the area. After he had the discussion, it was decided to appease him that they would put in another twenty-inch (20") sister culvert pipe right next to the one (1) installed. On July 18<sup>th</sup>, on the paper that he handed out, they can see that they go one-point-five-three-inches (1.53") of rain. It was a downpour. Because of the poor calculations for the driveway and the extreme undersized drainage pipe, he ended up with six-foot (6') of water flooding his property. D&M then put in an additional thirty-two-inch (32") drain. That is a sizable mistake to put in an additional thirty-two-inch (32") drain pipe next to the two (2) that were already in place. That cured the blockage flowing onto his property, but did not fix the damage on his. When the rain did back up, it changed the natural flow. The natural had been altered and it had been there for hundreds of years. He has had the property since November 1999. Back in 2008, he has a six-point-seven-three-inch (6.73") rainfall and he didn't have any flooding. Now he gets one-point-five-inches (1.5") of rain and his property floods. The only thing that has changed is what is obviously a fifteen-foot (15') roadway and the restricted flow design. Now his water must run to one (1) central point where prior to this being put in, it had a natural flow everywhere. He believes the County is in the middle of a couple of subdivision stormwater runoff issues right now. For those

who are coming into it well after the fact, so far on this one (1) there is only one (1) affected resident which is him. By putting in the subdivision, they will have additional water flows going into that pond. He has heard some calculations and some numbers that don't show it is going to add up too well. He hopes they all do their due diligence on the one-hundred and fifty-one (151) acres that show up on this property that it drains into this pond because it all does flow next to his house. Next, they are moving to the July 26<sup>th</sup>, 2016 Plan Commission meeting. They were meeting to see if the pond permit was for one (1) year or two (2). The longevity doesn't matter because it didn't happen anyway. Then there is where the neighbor found out about their property rights were possessed and turned into word salads by legal representative.

Rita Beaty asked Mr. Veatch if he is wrapping it up.

Randall Veatch stated yes, he is. The legal counsel thought he should name them something derogatory. Next, they all became "sand people," no longer normal citizens. Not the property owners that had bought their residential properties wanting to live in harmony of an industrial free neighborhood; an environment that they pay for with tax dollars. They were called out for complaining about things they didn't want: the sights and smells that come with an industrial excavation site: waking up at five (5) a.m. on some days to the bangs of trucks; the constant cleaning of sand if they made a mistake of leaving the window open to their home; the cleaning of the dust fan full of sand if they had to brush out their outside porch; tailgate slamming; the smell of diesel fumes; the noises of bulldozers and excavators operating at the industrial level needed to supply all CHC sand needed for multiple commercial grade construction sites located throughout LaPorte County. Not all trucks came back empty. Materials were hauled in and put where? What was the material? It should all be documented; they were following MS4 guidelines according to the property owner.

Rita Beaty stated excuse me Mr. Veatch, they are discussing the agenda for this evening for the petition.

Randall Veatch stated yes, he understands and he is getting to that right now.

Attorney Biege stated he is over on time. Point of order.

Randall Veatch asked if he can have somebody's minutes from the audience.

Rita Beaty stated they are not going to allow that, but Mr. Cunningham would like to speak.

Earl Cunningham stated Madam President, he hasn't heard Mr. Veatch repeat himself so he would make a motion to extend.

John Carr seconded.

All Approved. Motion carries 7-0.

Randall Veatch stated thank you very much. Maybe if he slows down, he won't stutter so much and have to repeat himself. Materials that were hauled and put where? What was the material? It should

all be documented following the MS4 guidelines. For full disclosure, if this property is subdivided, will it show up on any of the deeds of what materials got hauled in there, where it was dumped? If not, why won't it show up? The property was used as a borrow pit for over four (4) years after the pond was said to be completed. Then they changed it to contouring and tree removal for a couple more years with soil moving in and out of the property. Let's jump to present day. This property is presently in court under litigation for doing just what he talked about. The property owner has not been able to remove or sell CHC sand for months now. The fact that the judge has moved the next court date out to the summer of 2024; is that why they need a new name for the digs? He was going through the plan technical review for Sable Estates. It was a very pleasant review. Everything was not rubber stamped like it was for the last eight (8) years. He would like to commend Paul Vicari for following true MS4 guidelines. He has many errors on the submitted paperwork. Most of those were always present on past paperwork and were turned in marked as adequate. He noticed many more that have not been pointed out. Paperwork of this nature being turned in for a major subdivision should not have any contestable errors. As a professional courtesy, he is not going to point out the ones that he has seen and they are glaring. He was also reading through a couple of the months of the Plat Committee meeting minutes. One (1) glaring omission is that there isn't anyone from the neighborhood that can offer any input. They are the ones that have endured multiple years of an intrusive business that disrupted their daily lives. He would think that after eight (8) years, the hole in the ground would be able to be called something, not four (4) things. The report says pond, stormwater runoff area, retention pond, and dry-bottom retention pond. All four (4) have different meanings and different rules that apply. The comments are made that they were going to have to have this through the plan no matter what and there will still be deficiencies. Then why present it? There are marching orders to move forward. There are certain deadlines that are out there and other factors. As in what? They are late in the construction season at this point. That is why they need to be on the agenda for the October meeting. Late for what? Why the sudden rush for a borrow pit, oops, a pond. No wait, they are going to call it a subdivision now. He can see many more details of land contouring happening on this property. Many elevations are showing up. One (1) detail not seen in the current plans are what the current elevation is. He could see where he is going to dig down five (5), ten (10), fifteen feet (15') from what? Twenty feet (20') up? How long are they going to dig? He took a drive by the D&M plant this morning known as plant one (1) because the area behind his house is called plant two (2). He was looking for the sand mound that they had stockpiled up before the closing of the excavation site earlier this year. They used to be able to see it from Patriot Park, 300 N, and from the Speedway parking lot; now it cannot be seen. Is that the hurry and the need now for the subdivision and the right to dig more sand? Or is there another contract that needs to be fulfilled? They all know that's what happened last time. How many years does each phase get? Right now, are they going to go back to digging for every day for another three (3), four (4), six (6) years? There is no time frame listed on any paperwork. Is the County working together in unity to let all the legal matters get settled in this case? After eight (8) years and over a quarter of a million dollars (\$250,000) being spent to shut down the industrial excavating business, now they hurry and give them new digging options that may or may not pan out for the County plan? If this cannot be tabled until a time that all legal avenues are cleared up, at least table it until some benchmark places are put in so they don't just revert back to what they had; a never-ending project that is just a bunch of lies. Thank you very much for your time.

Rita Beaty stated thank you. Any other remonstrators for or against the petition? Seeing and hearing none, would Mr. Voeltz like to address the Board.

Matt Garritano stated he is going to try to touch on the items that he can that are pertinent to Charles Hendricks and Associates and the petition. The most recent, although it came from the last remonstrator, there is a time gate for this process. For the first phase, once approved, the construction plans are approved and there is two (2) years for the applicant to build Phase 1. If it is not done in those first two (2) years, he would have to start this process all over again. The MS4 permit for the site is good for five (5) years once approved. There are time gates pertinent to this petition application. It is not never-ending.

Earl Cunningham asked if the Building Commissioner has the authority to extend that from two (2) years to three (3) years at his discretion.

Matt Garritano stated he cannot personally speak on that.

Earl Cunningham asked Michael Polan if he has that authority.

Michael Polan stated he believes he does, yes.

Attorney Biege stated they have passed them in the past where the Commission has put a deadline by which they must construct and gave the Building Commissioner authority to extend for another period of time if requested. They can make those as requirements in their decision.

Earl Cunningham stated he wants to make sure he gets that straight. Phase 1 could go three (3) years.

Matt Garritano stated no, two (2) years is the rule he believes.

Earl Cunningham stated plus a year from the Building Commissioner.

Matt Garritano stated he can't state what they may do.

Earl Cunningham stated Doug said that they have done that in the past so he thinks the precedent has been set. Then they have a year to ask for permission to move into Phase 2, correct? They have a year to then request to start Phase 2 so that could be four (4) years out. Then do they have two (2) or three (3) years to do Phase 2?

Matt Garritano stated it is his understanding that the construction plans are done all at once. So, all six (6) phases, the construction plans for the subdivision, regardless if he is just doing one (1) phase of all six (6) phases, that has to be approved. As far as the time gate, whether it be one (1) plus an additional one (1), that would be between the Building Commissioner and the applicant. He can't state as to what that is going to be. Is that going to be for all phases; he doesn't know. He can't tell them.

Earl Cunningham stated the reason he asked that question is doing the math, based on what he read in the Plat Committee it could look like twenty (20) years potentially.

Matt Garritano stated not necessarily considering the whole subdivision is still under the guise of the MS4 plan once it is approved for the whole site which is bound by five (5) years. So, it's not twenty (20), it's five (5). If he doesn't finish in five (5), then another MS4 plan has to be approved.

Attorney Biege stated he can shorten the discussion. The Commission can set whatever deadlines it wants. Or the Commission can instruct the petition to provide a timeline with the construction plans because they will have to come back again before they can start building with the final plans. So, they have a lot of discretion there on how quickly they want anything finished, built, or completed.

Earl Cunningham stated thank you.

Matt Garritano stated the MS4 plan application has been reviewed once and sent back to MS4. It is under second review. That process is ongoing. He believes MS4 has a time limit as to when they are going to get those back to them. That is the process. That is how it is set up. They submit the plan, MS4 reviews it just like the technical advisory board. The next thing, most importantly that he wants to speak on, are the multiple comments on whether the pond will be dry or wet. The pond will be dry. That was his personal mistake. He made that in the first meeting. The specificity to that comment as to why Mr. Vicari was worried about is because he was worried about the level of water in the pond and the water being too low. He didn't want the water too low for invasive wetland weeds to choke the pond out to limit its capacity. It wasn't a matter of too much water, it was a matter of not enough water. The pond level that people may be concerned about will be specified in the construction plans when they are presented to the County Engineer for approval who is a licensed professional engineer. That is the next step. They have to get through this phase of the primary plat approval to get to that phase to present the construction plans. The next comment that he can speak on was density. It sounded like remonstrators wanted to reduce the number of sites. R1B as they can see on the first sheet is rated at one-point-eight (1.8) dwellings per acre. They are one-point-zero-two (1.02). They have already reduced it per the requirement in R1B so they have taken that into consideration with this application. The next comment that he can speak on was water and sewer. They can see on Sheet 10; they brought that up. Eight thousand nine hundred and forty-seven feet (8,947') plus or minus to the neared sewer line with an approximate cost of one-point-eight-three-million-dollars (\$1,830,000), but it doesn't matter because the City of LaPorte will not allow them to tap in to sewer and water without annexation. So, it doesn't matter; there is nothing that they can do there as far as planning. Other than that, the technical advisory meeting discussion, questions and concerns in the technical advisory meeting is why they have those meetings; they shouldn't be cause for stopping or denying a permit application he wouldn't think. That is why they have them. That is why they have them with all the different technical people from each department to go over their comments and concerns. They did that. All of the other items, unfortunately he does not feel he can comment on.

Earl Cunningham asked about the depth of the pond and some of the materials from the Plat Committee meetings. He sees thirty-feet (30') deep possibly at one (1) end. Is that fairly accurate?

Matt Garritano states yes, it is amoeba shaped and not perfectly circular.

Earl Cunningham stated it is approximately thirty-feet (30') deep.



Matt Garritano stated at the breadth while looking at a contour of about 820 to about 796 and that's about twenty-four feet (24') on the long sloping south side of the pond, but it is not like that all the way around.

Earl Cunningham asked if he has any idea how deep they have to go to get water there?

Matt Garritano stated he doesn't have any boring samples for the soil as far as that. They didn't have access to the sol reports and he doesn't believe he did borings at the bottom of the ponds.

Earl Cunningham asked if they checked with any of the neighbors on how deep they had to go to get their wells.

Matt Garritano stated no. Any other questions?

Harold Parker asked if Matt is okay with them.

Matt Garritano stated yes.

Harold Parker stated don't give them that look again.

Matt Garritano stated what look.

Harold Parker stated that look. He has seen it before. Wells are important in any subdivision. He should have known how deep the wells are in that area.

Matt Garritano stated he thought his comments was how deep is the pond. Was that the comment?

Earl Cunningham stated the last comment was how deep are the neighbors' wells.

Matt Garritano stated he doesn't know the depth of every adjacent neighbor's well.

Attorney Biege stated he wants to clear two (2) things up for the Commission and the public. Plat Committee meetings are an indirect process. They are trying to identify issues and address those issues. How many times did they meet with Love's? It had to be about twenty (20). So, that is where they work through this. It is not an adversary process and it is not testimony, first of all. It is interactive and they have as many meetings as they think are necessary to make sure that everything is addressed before it comes to the Commission. Second point, which there may have been some confusion, but the County did hire a certified engineer, Jeff Wright, to review this because Hendricks was not going to be there and they knew that. Jeff wore a coat and everything tonight. Just so the public knows, they did hire somebody to make sure they were there and they had somebody to review. Those are his only comments. He did runoff the page that was relevant from the Subdivision Control Ordinance that indicates the factors on which they decide this.

Rita Beaty stated they do need to point out that this is just a primary plat. They will need to come back.

Attorney Biege stated right, when they come back, they will come back with the construction plans and it will be much more specific. This also still has to go to County Commissioners after this meeting.

Glen Minich asked if they are just making a recommendation to approve.

Rita Beaty stated yes. At this point, the Board needs to decide if they have any other concerns or questions that they would like to address to the attorney or Matt again. Or their County Counsel. Otherwise, they will hear from Mr. Voeltz at this time. Are there any questions or anything else that they need to address prior?

Glen Minich stated he has one (1) question because this thing has all been bounded around this borrow pit, this sand pit. In the construction of this Phase of 1 and 2, how many loads of fill dirt are planned to leave this property?

Andrew Voeltz stated they can't answer that question here at this point because they are still working through construction plans. Again, quite frankly, and he apologizes for bringing this back up again, but there are certain items that are in front of the Commission that are to be determined on and all the documents presented by Shaw Friedman is irrelevant. It is completely irrelevant. This is a submission for a major subdivision the likes of which has not been seen in LaPorte County for ten (10) years. This is to provide homes. Specifically, for the new battery plant and whatever else they will have skilled workers coming into the area that are looking for places to live and they don't exist in LaPorte County. They don't exist in New Carlisle. They don't exist in west St. Joe County. They don't exist. This is a high-end subdivision. Whether or not they believe anything that any of the other remonstrators have said or the fact that the previous County attorney got up there and advocated on behalf of the Commissioners is irrelevant. They have seven (7) items that they have to consider in order to give a favorable ruling to this. That's it. It's administrative function. He is not saying that they won't come back after they get a favorable ruling with construction plans, et cetera, et cetera, that are more detailed even though they don't need to be more detailed even though they don't need to be more detailed because this is the most detailed major subdivision petition that Matt has ever submitted in his twenty (20) years of practice. They are not playing around here. They are doing the things they need to and quite frankly, to drag the County back into it when they are doing exactly what the County wanted them to do. They have submitted a plan and now they are being told they can't go through with the plan. It makes no sense. That being said and all of that aside, they have a petition in front of them and it is based upon only the petition with the certain elements under Article 4 that need to be met. They believe that they have been met and they would ask that the petition be granted. Thank you.

Rita Beaty stated thank you. At this point, the subdivision review and approval procedures that they have been alluding to this evening that their County attorney did give to all of them on the Board to redirect them to the fact that the Plan Commission shall determine if the subdivision plat qualifies primary approval under the standards prescribed by the ordinance. They have heard it a couple times and it has been reiterated and that is what their position is here for this evening. It is for them to give a favorable recommendation or a non-favorable recommendation for the petition that is before them. As they have heard, this will bring jobs and tax revenue so there are some benefits to the subdivisions being brought into LaPorte County. To reiterate for everybody's comments to help

with the fact that yes, this is the primary plat, but they will see a secondary plat hearing that will come before them before anything can move forward. With that being said, are there any other comments from the Board or questions either for our legal or for Mike this evening before any other discussion occurs.

Harold Parker stated this is quite a quandary for them to have legal teams come in from something else other than what they are doing for planning. He understands both requirements, but as she said all they can do is accept the subdivision it being okay at the time and Doug stated it meets all legal stuff right now, correct.

Attorney Biege stated it has met the Plat Committee requirements so that is their decision to make. Mr. Friedman spoke. Again, he doesn't think it is relevant and that issue will probably be addressed again someday, but he has his record. Now they have to decide if they are going to let it go forward to the Commissioners or not.

*Shaw Friedman makes comments from the audience.*

Attorney Biege stated they can impose conditions.

Rita Beaty asked if that would be this evening or at the secondary return.

Attorney Biege stated the type of conditions they would impose on the primary would be things that they want to be in the construction plans or restrictions that they want designed into the construction plans. Wells for example or required information for the next step. Timelines; they could instruct them to give them specific timelines or on the construction plans they want timelines within a certain period of time. Things like that.

Harold Parker asked if they have developed anything else they want from them? They have batted around a lot of things.

Attorney Biege stated the Plat Committee works with the petitioner to get it worked up to where all the requirements are met by the County at least on the initial plat, but that is where they stop because any conditions should come from the Plan Commission.

*Shaw Friedman makes comments from the audience.*

Attorney Biege stated Shaw, point of order please. He is trying to keep the record clean. If he is going to be out of order then get on the microphone so they have a record.

Rita Beaty stated come to the microphone and state your name please.

Shaw Friedman stated he is the attorney for the Board of Commissioners. He made clear that they have full authority within the statute to table this until the conditions are in order.

Attorney Biege stated he takes issue with him giving his client advice and Shaw interrupting him. He is instructing his client. He is now instructing his clients.

Shaw Friedman stated he just told him to come to the podium.

Attorney Biege stated yes, go to the podium so somebody can hear that he is out of order basically.

Shaw Friedman stated he represents the Board of County Commissioners.

Attorney Biege stated he has already remonstrated.

Shaw Friedman stated Mr. Voeltz had an opportunity to respond to Doug and he is simply responding, asking, and providing what their attorney asked him to do.

Attorney Biege stated that is not their process here. That is not our process. Comments are closed. They are asking questions to legal. Please sit down. Thank you. This is not a Commissioners' meeting. Thank you.

Rita Beaty stated thank you. They have been advised by their legal counsel this evening for the Board and if he would like to reiterate that for them for what they are allowed to do as far as the conditions and things like that.

Attorney Biege stated they can make any conditions they want. There is really not a restriction on those conditions.

Earl Cunningham asked if he can make a motion to table.

Attorney Biege stated yes.

Earl Cunningham made a motion to table Petitioner D&M Excavating Inc. represented by counsel Andrew Voeltz of Howes & Howes, LLP for a 39 Lot, with 1 outlot, Major Subdivision called "Sable Estates" located immediately south of 3786 N. 400 W., LaPorte, IN. Center Twp. Parcel 46-06-17-200-002.000-042.

John Carr seconded.

Attorney Biege asked for him to repeat the motion because he thinks they spoke over each other.

Earl Cunningham made a motion to table Petitioner D&M Excavating Inc. represented by counsel Andrew Voeltz of Howes & Howes, LLP for a 39 Lot, with 1 outlot, Major Subdivision called "Sable Estates" located immediately south of 3786 N. 400 W., LaPorte, IN. Center Twp. Parcel 46-06-17-200-002.000-042.

John Carr seconded.

Rita Beaty asked if there is any discussion regarding the tabling of the petition for D&M Excavating.

Harold Parker asked what they are going to require for them to be un-tabled. What is their time desired element set here that they are going to want to go over it if they are going to be tabling it.

Attorney Biege stated they can set a workshop in the meantime if they want.

Rita Beaty stated that is her question. The reasoning for tabling is what are they going to do in the meantime before they come back next month, or two (2) months, or whenever it is that they need to come back.

Glen Minich stated that is the whole problem here. The area is designated to have homes on it. It is less dense than the adjoining subdivisions which are continuous to it to the west. He doesn't understand.

Rita Beaty stated her concern is if they are tabling it, but they have been over the fact that they can do conditions and they are here this evening only to look at determining if the subdivision qualifies for the primary approval.

Attorney Biege stated Mitch Bishop just reminded him, thank you Mitch, that there is another document that will come about at some point and that will be before they can come before them in the second phase and that would be a Subdivision Construction Agreement. So, any conditions that they would set forth at this stage, which he knows they are on discussion with voting on the table, but he wants to make sure they are comfortable with the procedure and conditions would be design conditions more than anything. Or conditions on what they would want in a construction agreement. That is basically a contract between the developer and LaPorte County saying they are going to do this, this, and this and LaPorte County would say okay that they would require them to do this, this, and this. Those are usually a little more specific and that is why they come in between primary plat and secondary plat.

Rita Beaty stated if they were to address the conditions this evening, they could at least include those in before they came back for the secondary.

Attorney Biege stated right, but if they want to have another workshop to discuss what the conditions would be then they can certainly table it tonight and then set it for a workshop on another night.

Harold Parker stated the only thing he sees out of all this is the water. There is trouble in the State already with Lebanon starting to develop, but not have enough water. They haven't told us what the well levels are or if there is adequate water for all these houses to have individual water. They already have trouble north of town with the water problem. The only problem he sees with the whole thing is the water because it is a sand mine. Where is the water?

Rita Beaty stated her question then would be with the water, they are at the primary, before they could even move further passed the secondary, they would need that information for them to be able to approve that. Is that correct?

Attorney Biege stated he doesn't believe they have ever done it, but he thinks they can put conditions on the table and tell them you want to see this, this, and this before they take it off the table.

Rita Beaty stated they can't build if they don't have that.

Earl Cunningham stated there is a motion on the floor with a second.

Rita Beaty asked for any further discussion on the motion. All those in favor to table petitioner D&M Excavating. Do they table it for a month or do they table it until they are ready to proceed?

Attorney Biege stated they can table it for a period of time or they can table it indefinitely or they can table it on conditions meaning it is tabled until they see one (1), two (2), three (3), four (4), five (5). That would have to be an amendment to the motion.

Rita Beaty asked Earl if he would like to amend the motion.

John Carr asked in order to bring it back up, what would have to happen.

Attorney Biege stated simply a motion by one (1) of the members and a second of course.

Rita Beaty stated to amend the motion.

John Carr stated no, to bring the petition back once it is tabled.

Attorney Biege stated once it is tabled, they just need a motion, a second, and a vote to bring it back.

Rita Beaty stated there is a motion on the table and a second to table the petition.

*Andrew Voeltz approached the podium.*

Harold Parker stated they have words of wisdom coming up.

John Carr stated can they proceed to vote, Harold. Call the question.

Attorney Biege stated same thing with Shaw. Comments and petitions are closed. It is Board discussion.

Andrew Voeltz stated he is seeking clarification.

Attorney Biege stated they haven't voted yet.

Earl Cunningham stated to call for the vote.

Attorney Biege stated they have to vote.

Rita Beaty stated thank you. Please have a seat Mr. Voeltz. Please read the roll call for vote on the table for the petition.

Ashley Kazmucha read the roll.

Rita Beaty stated aye.

John Carr stated table.

Joe Haney stated aye.

Earl Cunningham stated aye.

Glen Minich stated nay.

Deb Vance state aye.

Harold Parker stated nay.

Ashley Kazmucha stated the aye's have it. Tables.

Approved. Motion carries 5-2.

Ashley Kazmucha stated can we take a moment for everybody to get into the hallway please.

Rita Beaty stated they are going to pause for a moment please and could someone please shut the door.

- 2. Petitioner LaPorte US 20 BTS Retail, LLC and Nicholas Parrilli represented by AR Engineering** respectfully petition the Plan Commission to rezone from R4 to B2 the property located 1621 W. Springville Rd., LaPorte, IN. Springfield Twp. Parcels 46-06-02-327-001.000-062 & 46-06-02-327-002.000-062. Exhibits attached hereto.

Attorney Biege stated notice is adequate.

Tom Cowen stated he is with Zarembo Group out of Cleveland, OH. He represents the petitioner. They have a tag name for this property; it's LaPorte US 20 BTS Retail, LLC. All of their projects get that same tag on them and that is the difference between the company name of Zarembo and LaPorte US 20, the petitioner. It is good to be here tonight. He greatly appreciates how LaPorte County handles these meetings. They have been here many times before the Plan Commission and the County Commissioners. It is well handled, on point, and he appreciates that.

Rita Beaty stated thank you.

Tom Cowen stated it is an exciting night, but what they are here for very briefly is for a rezoning of point-four-eight-three (.483) acres of property that abuts a portion of another property that was rezoned two (2) years ago. That property was one-point-five-six-three (1.563) acres. That was done in late 2020 and made official in January of 2021. Their intent back in 2021 was to build a Dollar General on the property. That is still their intent. The original acreage was needed for a ten thousand six hundred and forty square foot (10,640<sup>2</sup>) retail store. That deal ended up transpiring mostly because the Indiana Department of Transportation has a major project on US 20. Everyone is aware of that and it was a couple years down the road so their client Dollar General wanted to pause the development. The good news is that they now want to come back to the site, but they want to build a bigger store which is better for the market. Their plan now is to build a twelve thousand four hundred and eighty square-foot (12,480<sup>2</sup>) DG Market store. The Market tag that goes with that means they are going to be adding a lot more fresh food which a lot of people have said they live in a food desert, can they get Dollar General to give them fresh food. They have heard that message and that is what they want to put there now. It's a good thing that things were paused for a couple of years. Now that they can come back to this, assuming that they can get the rezoning approved tonight, they can build a bigger and better store. With him tonight is Whitney Pizzala, she is the Chief Engineer with AR Engineering. She has all the technical information and can answer questions about the site development itself, what they intend to do, how deep the wells are.

*Plan Commission members erupt in laughter.*

Tim Cowen stated he will let Whitney speak for a couple minutes on what they intend so they can share the current information. They are delighted to have the larger store format that they can bring to town.

Whitney Pizzala stated she is with AR Engineering located 5725 Venture Park Dr., Kalamazoo, MI. They are the civil engineer on the project as Tom mentioned. They have been on this since the beginning back in 2020. She doesn't know if they have the site plan in front of them, but she brought extra copies in case.

Rita Beaty stated they do.

Whitney Pizzala stated it is similar to the last time; it's just a bigger store which adds a little more parking as well. Also, with that, they are asking for that rezone of that sliver of land because it is a bigger store.

Earl Cunningham asked what the previous store size is.

Whitney Pizzala stated ten thousand and six hundred and forty square feet (10,640<sup>2</sup>).

Harold Parker asked how much it will be now.

Whitney Pizzala stated twelve thousand four hundred and eighty square feet (12,480<sup>2</sup>).

Tom Cowen stated he just remember that what happened was they were so far along that they had ordered the building and put on the site and then they changed the format to the ten thousand and



six hundred and forty square feet (10,640<sup>2</sup>). The building was already bought and paid for and the deal went on pause. So, they came back to the site, picked up the building and took it to an Ohio location that they built at that smaller store size so they didn't lose money on buying that building. It was a happy ending for the Ohio site. Now, they are going to have one (1) here. When he said ten thousand six hundred and forty square feet (10,640<sup>2</sup>) he was wrong.

Harold Parker stated that's okay.

Whitney Pizzala stated getting back to their site plan, when they did this last time, they were almost essentially through all their permits before they were put on hold. They had things from the well and from the State. They still plan to connect to the Sewer District so that is still the plan to have public sewer for this store. They have had numerous conversations with INDOT on access so now with the road project they will be able to have full access there because they are widening for a center left turn lane through US 20 and they will have a right turn decel lane into the site. They were really interested in this project just because of US 20 and how much it serves. It is a pretty typical layout. They will have delivery trucks which they will usually see them on the highway, the big Dollar General trucks, which deliver typically about once a week during store hours. Then they have intermediate smaller box trucks for the fresh foods, breads, or soda and stuff like that throughout the week. They would come during opening hours. If there is anything specific with the site plan, she can try to address now she will. This is their first step and once they get through Commissioner's approval they will go into full designs.

Harold Parker stated she plans on doing a good job, correct.

Whitney Pizzala stated yes.

Tom Cowen stated Whitney is in charge of the really hard part.

John Carr stated he would assume they are going to send this out for bid to local contractors.

Tom Cowen stated that is what they do. They usually have a general contractor that gets all the subs as local as it can be done. There will be a bidding process that will come up.

No remonstrators present.

Harold Parker asked if they have to approve the change in zoning first.

Attorney Biege stated that is the only thing they have to address is the change from R4 to B2.

Harold Parker made a motion for a favorable recommendation for Petitioner LaPorte US 20 BTS Retail, LLC and Nicholas Parrilli represented by AR Engineering to rezone from R4 to B2 the property located 1621 W. Springville Rd., LaPorte, IN. Springfield Twp.

John Carr seconded.

All Approve. Motion carries 7-0.

Rita Beaty asked for any old business.

Attorney Biege stated since they had their last Plan Commission meeting, there has been another meeting with regard to fire inspections, safety, possible business licensing. He has been asked to do some drafting which is very uninteresting reading, but he has some suggestions for the changes to the zoning code. Dave Amber sent him some helpful emails, but if the Commission is okay with it, then he wants to wait to bring that back until he is done drafting the other ordinances because some of them may have some influence on the zoning code depending on how they want to try to accomplish some of these goals.

Rita Beaty stated that's a good idea. Do it all at once.

Deb Vance agreed.

Attorney Biege stated it will be a little while because Randy Novak gave him the fire code and the book was very thick. He has quite a bit to review.

Harold Parker asked if he needs a motion.

Attorney Biege stated no. He is just keeping them advised and making sure nobody has any objections.

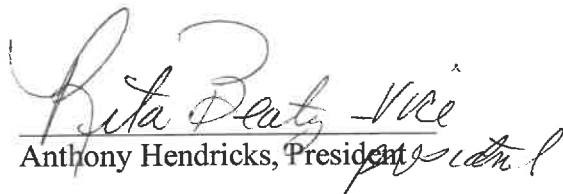
Rita Beaty stated Randy should have given him the condensed version.

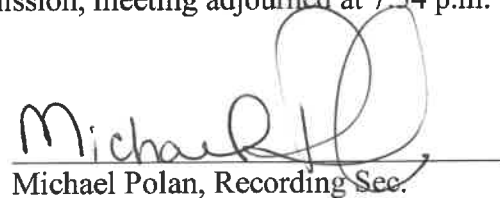
Rita Beaty asked for any new business.

John Carr made a motion to adjourn.

Earl Cunningham seconded.

There being no further business before the Plan Commission, meeting adjourned at 7:34 p.m.

  
Rita Beaty, Vice President  
Anthony Hendricks, President

  
Michael Polan, Recording Sec.