



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

Michael Polan
Building Commissioner

LA PORTE COUNTY PLAN COMMISSION MINUTES January 23rd, 2024

MEMBERS PRESENT: Anthony Hendricks Joe Haney
 Rita Beaty Earl Cunningham
 Harold Parker John Waston
 Deb Vance John Carr
 Jeff Wright

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

PLEDGE OF ALLEGIANCE

Michael Polan asked for approval of the agenda for the January 23rd meeting.

Rita Beaty made a motion to approve the agenda as presented.

John Carr seconded.

All Approved. Motion carries 8-0.

Michael Polan stated moving on to elections. They are going to select a presiding officer and then he will turn over the gavel and they can finish the rest of the elections. That's how we will do this. He will open the floor for nominations for President.

Rita Beaty nominated Anthony Hendricks.

Harold Parker seconded.

Michael Polan asked for any other nominations for President.

Earl Cunningham nominated John Carr

Joe Haney seconded.

Ashley Kazmucha read the roll.

Rita Beaty stated Anthony Hendricks.

Harold Parker stated Anthony Hendricks.

Earl Cunningham stated John Carr.

John Watson stated John Carr.

Deb Vance stated Anthony Hendricks.

Joe Haney stated John Carr.

John Carr stated John Carr.

Anthony Hendricks stated Anthony Hendricks.

Ashley Kazmucha stated it is a split 4 – 4 vote.

Michael Polan stated okay so they do not have a President. Call the roll again. They need to have a presiding officer. They will give someone a chance to change their vote.

Ashley Kazmucha read the roll.

Rita Beaty stated Anthony Hendricks.

Harold Parker stated Anthony Hendricks.

Earl Cunningham stated John Carr.

John Watson stated John Carr.

Deb Vance stated Anthony Hendricks.

Joe Haney stated John Carr.

John Carr stated John Carr.

Anthony Hendricks stated Anthony Hendricks.

Michael Polan stated one (1) more time. They will give the members a chance to change their vote. If they are at a stalemate again for a third time, then they move forward at least for another month with the officers held over from last year.

Attorney Biege stated he believes so.

Michael Polan stated one (1) more time, call the roll.

Ashley Kazmucha read the roll.

Rita Beaty stated Anthony Hendricks.

Harold Park stated Anthony Hendricks.

Earl Cunningham stated John Carr.

John Watson stated John Carr.

Deb Vance stated Anthony Hendricks.

Joe Haney stated John Carr.

John Carr stated John Carr.

Anthony Hendricks stated Anthony Hendricks.

Ashley Kazmucha stated they are going to proceed with last year's President.

Michael Polan stated they can address that later. With the failure to appoint a new President, he will turn it over to last year's President so they can conduct some business this evening. Thank you.

Anthony Hendricks stated they need to hold elections for the Secretary of the Plan Commission, the Plan Commission/Board of Zoning Appeals member, and the Plan Commission legal counsel. Are there nomination from the Board for the Secretary of the Plan Commission.

Rita Beaty stated she nominated Mike Polan.

Joe Haney seconded.

Anthony Hendricks asked for any other nominations. There being none, he asked for the roll to be read.

Ashley Kazmucha read the roll.

Anthony Hendricks stated aye.

Rita Beaty stated aye.

Harold Parker stated aye.

Earl Cunningham stated aye.

John Watson stated aye.

Deb Vance stated aye.

Joe Haney stated aye.

John Carr stated aye.

All Approved. Motion carries 8-0.

Anthony Hendricks asked for nomination from the Board for the legal counsel for the Plan Commission 2024.

Rita Beaty nominated Doug Biege.

Harold Parker seconded.

Anthony Hendricks asked if there are any other nomination for legal counsel for the Plan Commission 2024.

Earl Cunningham nominated Guy DiMartino.

John Carr seconded.

Anthony Hendricks asked for the roll to be read.

Ashley Kazmucha read the roll.

Rita Beaty stated Biege.

Harold Parker stated Biege.

Earl Cunningham stated DiMartino.

John Watson stated DiMartino.

Deb Vance stated Biege.

Joe Haney stated DiMartino.

John Carr stated DiMartino.

Anthony Hendricks stated Biege.

Ashley Kazmucha stated it is a 4 – 4.

Anthony Hendricks asked if there are any other nominations from the Board other than the two (2) presented. Hearing none, they will call the roll again to see if anybody would like to change their minds since they need five (5) votes.

Ashley Kazmucha read the roll.

Rita Beaty stated Biege.

Harold Parker stated Biege.

Earl Cunningham stated DiMartino.

John Watson stated DiMartino.

Deb Vance stated Biege.

Joe Haney stated DiMartino.

John Carr stated DiMartino.

Anthony Hendricks stated Biege.

Ashley Kazmucha stated it's the same 4 – 4.

John Carr asked if they could make another nomination.

Anthony Hendricks stated yes. The Board is open for making more nominations.

John Carr nominated Joe Svetanoff.

John Watson seconded.

Ashley Kazmucha stated there are three (3) nominations on the Board. Please call the roll for either Doug Biege, Guy DiMartino, or Joe Svetanoff.

Ashley Kazmucha read the roll.

Rita Beaty stated Biege.

Harold Parker stated Biege.

Earl Cunningham stated DiMartino.

John Watson stated DiMartino.

Deb Vance stated Biege.

Joe Haney stated DiMartino.

Anthony Hendricks stated Biege.

John Carr stated DiMartino.

Ashley Kazmucha stated so none for Svetanoff.

Anthony Hendricks stated they will proceed, at least for this month, with Doug Biege as legal counsel. The Plan Commission has a seat on the Board of Zoning Appeals. And presently Deb Vance is on the Board of Zoning Appeals. Is that their nomination to the BZA? They would need a motion to make Deb Vance their representative from the Plan Commission to the Board of Zoning Appeals.

Earl Cunningham nominated John Carr as their representative to the BZA. Deb Vance already has a seat. She was appointed by the Commissioners to both Boards.

Joe Haney seconded.

Approved. Motion carries 7-1.

Anthony Hendricks asked if that is all the elected officers they need.

Michael Polan stated they need to select a Vice-President.

Anthony Hendricks stated sorry. Is there a motion for the Vice-President of the Plan Commission 2024.

Joe Haney nominated Deb Vance.

Deb Vance stated she would like to decline.

Earl Cunningham nominated Joe Haney.

John Carr seconded.

Deb Vance nominated Rita Beaty.

Anthony Hendricks seconded.

Anthony Hendricks stated to call the roll.

Ashley Kazmucha read the roll.

Rita Beaty stated Rita.

Harold Parker stated Rita.

Earl Cunningham stated Haney.

Deb Vance stated Rita.

Joe Haney stated Haney.

John Carr stated Haney.

John Watson stated Haney.

Anthony Hendricks stated Rita.

Ashley Kazmucha stated it is a 4 – 4.

Anthony Hendricks asked if anybody would like to change their vote or nominate any one else for Vice-Chairman of the Plan Commission. That person does run the meetings. Hearing none, call the roll one (1) more time please.

Ashley Kazmucha read the roll.

Rita Beaty stated Rita.

Harold Parker stated Rita.

Earl Cunningham stated Haney.

John Watson stated Haney.

Deb Vance stated Rita.

Joe Haney stated Haney.

John Carr stated Haney.

Anthony Hendricks stated Rita.

Ashley Kazmucha stated it is the same.

Anthony Hendricks stated the have a 4 – 4 tie for the month so they will continue on with Rita Beaty as Vice-Chair.

Michael Polan stated he has a question. Who was appointed to take Glen Minich's spot.

John Carr stated John Watson he believes.

Rita Beaty stated John Watson.

Michael Polan stated so are they going to continue forward with two (2) members of the Plan Commission on the BZA.

Anthony Hendricks stated yes.

Michael Polan stated okay. Thank you.

Anthony Hendricks stated no. John Watson would have taken the place of Glen Minich as the BZA member, but John Carr is now their BZA appointee from the Plan Commission.

John Carr stated as far as what he could understand, the appointment is made every year. Is that correct? A member from the Plan Commission to the BZA?

Anthony Hendricks stated yes.

John Carr stated it technically wasn't Glen Minich's appointment.

Anthony Hendricks stated he was appointed last year.

John Carr stated they made it sound like it was.

Anthony Hendricks stated they switch it to somebody since Glen Minich is no longer on the Board. Could Mike please ask Soil Conservation to appoint their member. Maybe Harold Parker could help them a little.

Michael Polan stated yes.

Harold Parker stated they don't have a man or woman over there yet so he doesn't know what they are planning. He contacted Purdue and told them to get busy and get it done, but it seems there is no sauce in the pudding down there. They are not really getting going.

Anthony Hendricks stated this Board is made up by nine (9) members with a five (5) member vote only holding and they need that person here.

Michael Polan stated they need a tie-breaker. The conditions surrounding that appointment are pretty strict which is why that seat has been vacant for so long. The sooner they fill that seat the less they will be deadlocked here on votes.

Anthony Hendricks stated it has to be the Purdue Extension Director and they have to live in the County. Or it could be a Purdue Extension Board member, but they have to live in the County, right? There's only two (2) ways.

Ashley Kazmucha stated it has to be the Ag Educator in that position to be able to vote.

Anthony Hendricks stated yes. For the record, this is the first meeting of the year. As County Surveyor he has the ability to appoint a designee as an alternate in case he has a conflict so he again

is appointing Jeff Wright as his alternate designee for the 2024 calendar year in case he has a conflict. That will move the agenda onto Petition #1 which he has a conflict as the firm he works for represents the Petitioner.

Anthony Hendricks asked for a motion to approve the minutes as presented from November 28, 2023 meeting.

John Carr made a motion to approve the minutes. As far as the minutes go, Tony was not in attendance and it does not say that he was excusing himself for a conflict. He didn't know what the circumstance was.

Anthony Hendricks stated to please revise the minutes to show that he had a conflict of interest and he has to appoint his alternate for that meeting.

Ashley Kazmucha stated okay.

John Carr stated and who the alternate was please.

Anthony Hendricks stated yes.

John Carr stated he thinks the previous meeting was the same way.

Anthony Hendricks stated with those changes are there any other additions, changes, corrections, or deletions. Hearing none, all those in favor say aye.

All Approved. Motion carries 8-0.

Anthony Hendricks then handed over the meeting to the Vice-President Rita Beaty to conduct the meeting. Anthony Hendricks is recusing himself due to a conflict with Petition #1 and his alternate, Jeff Wright, will be sitting in his stead.

Rita Beaty stated thank you all for your patience during that time. They will go ahead and get started with the petition on the agenda for this evening.

Petitions:

- 1. 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.

Rita Beaty asked if counsel could brief the Commission on what the protocol is for this evening, please.

Attorney Biege stated this petition was tabled on the October 24th meeting and then remained on the table in the November 28th meeting. Then the question is what do they do next? They have generally followed the Robert's Rule of Order in the Commission; they have for years. He's not sure they were ever completely formally adopted, but they need direction from somewhere. Under Robert's Rules of Order, if it passes two (2) meetings then the table is considered moot. Not the petition, but putting it on the table. So, it automatically comes back up for action by the Plan Commission. That can be whatever action they take. Like he instructed before, they can either approve the petition, deny the petition, the Plan Commission chose to table it and that motion is still available. Does everybody understand? It's a little hard to; Robert's Rules of Order are very difficult to read so it gets a little confusing. Essentially, it is back up automatically and the Commission can do whatever it wants.

Rita Beaty stated at this point do they have Andrew go ahead?

Attorney Biege stated no, everything was closed. Both petitioner and remonstrators procedurally went to the Commission for a vote and all that evidence is now closed. Essentially, she would entertain a motion from the Commission.

Rita Beaty stated alright. With that being said, if someone would like to entertain a motion for this evening's petitioner for the D&M Excavating.

Jeff Wright stated he is not sure what the motion would be.

Rita Beaty stated the motion would be to go ahead and move forward with the Petition that was represented here when Mr. Voeltz from Howes & Howes put the petition in front of them. They are voting whether to move forward with the petition or deny the petition.

Earl Cunningham stated or table. There are three (3) options.

Attorney Biege asked if they would like him to read off the statute again under the code.

Rita Beaty stated they could table it again, correct.

Attorney Biege stated that is a possibility. Just to be clear, he will read the three (3) decisions they can make outside of tabling under the Zoning Code. 1 – Approve the application upon a determination that the application complies with this ordinance. 2 – Approve the application subject to certain modifications that would bring the application into compliance. 3 – Deny the application on the grounds that the application does not comply with the ordinance. Those are the three (3) choices they have and of course and procedural motions are still available. On the ultimate question, that is what the Zoning Code says.

Rita Beaty stated with a new member on the Board this evening she is sure he has a few concerns and questions because of everything that is in front of them, but to be able to check those boxes can he guide them as to whether the petition met all the criteria that they are looking for.

Attorney Biege stated that is the Plan Commission's ultimate decision, but he can say that as a normal course, the Building Commissioner and each Department Head goes through Plat Committee and in Plat Committee the goal is to make everything compliant with the Department Head requirements which are a little more strict than the Zoning Code before it gets to the Plan Commission. Every Department Head has signed off on this from drainage, health and safety, sewers, the whole nine (9) yards. So, that has already been done. After the Plan Commission makes its decision, then it goes to secondary and that is when they get more specific in design, plans, road bonds, and that type of thing.

Earl Cunningham asked if he is aware that one (1) of the seated members right now was involved in a Plat Meeting and has his signature on some paperwork from the Plat Meeting and is in the minutes.

Attorney Biege stated no, he is not aware.

Earl Cunningham stated it would seem to him that that is as big a conflict as Mr. Hendricks in some respect.

Attorney Biege asked in what role did he serve in Plat Committee.

John Carr stated he would encourage him to read the minutes because it is pretty disturbing to be a member of the Plan Commission and read the minutes that he saw from the Plat Committee.

Attorney Biege stated which month and what did they say?

John Carr stated it was probably November he would say. He can't quote it because he isn't one hundred percent (100%) sure, but with technology he is sure that one of these two (2) have it readily accessible.

Attorney Biege stated the question is who was he representing in the Plat Committee meeting.

Michael Polan stated he can step in and answer some of that. He is going to assume that he is referring to Jeff Wright who is the alternate sitting up there today and was present at Plat Committee representing MS4. He required the petitioner to attend two (2) Plat Committee technical review sessions prior to allowing their petition to proceed forward here. Based on questions, deficiencies, incompletions and what not and Jeff Wright was actually part of that. He believes that is what Mr. Carr is referring to.

Attorney Biege stated okay. If he can clarify, the County hired Mr. Wright to look over the MS4 requirements.

Michael Polan stated that is correct.

Attorney Biege stated then he doesn't think there is a conflict of interest because he would not be representing D&M. He would be like every other department head there. He thinks that part of that had to do with MS4 and wasn't completely put together yet at the time.

Michael Polan stated it was in a transition period.

Attorney Biege stated he doesn't think there is a conflict because he was not representing D&M.

Earl Cunningham stated like Mr. Carr, he would express publicly that he has some serious concerns about statements that were made in the Plat Committee meeting minutes. Again, he doesn't have the minutes with him, but he thinks that sooner or later it will come out.

Rita Beaty stated thank you. Would any of the members like to make a motion regarding the Petitioner's petition that is in front of them this evening. They have the three (3) options that their counsel has advised them that they can do.

John Watson stated he would like to make a motion to table this until they can discuss it further and untangle some of the web.

John Watson made a motion to table 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.

John Carr asked if there is a time frame on that motion?

John Watson stated no.

Attorney Biege stated if he may, the way he is reading the rules, and they can of course vote to suspend the rules he supposed if they wanted to, but the way the rules work, it would automatically come up in three (3) months. He doesn't see anywhere in the rules where they can or cannot set a time period under which they table.

John Carr stated okay. He just stumbled across some minutes and he doesn't know who Paul Vicari is, maybe they can clear that up for him, but he stated, "Jeff Wright gave him a cookbook on how to get it passed in review. It is pretty simple." Those are public minutes.

Jeff Wright stated if he may...

John Carr stated then Paul Vicari went on to say how fun it was. He just thinks that it stinks and he isn't going to have any part of it.

Attorney Biege stated wait a minute, what stinks? Does he understand the process that they go through for Plat Committee? It's always, always been an interactive process between the governmental officials and the developer to make sure that everything is brought into compliance. So, what stinks about that because every department does it in the Plat Committee meeting?

Michael Polan stated he can jump in and add to this. They teach them this in training. When they are a technical person in a compliance capacity, their job is to assist the applicant, petitioner, or

non-compliant party; assist them with achieving compliance. That is what is taught in training and that is the directive.

John Carr stated he has no problem with them working with contractor's or developers to assist them. He thinks that's absolutely what they should do, but as far as making a recipe for a cookbook on how to get things passed, he thinks that shouldn't be in public meeting minutes. It just makes the public mistrust our officials in a public meeting.

Jeff Wright asked if it is his turn? Can he speak?

Rita Beaty stated yes if he would like to.

Jeff Wright stated the MS4 program is one hundred percent (100%) a cookbook. There is nothing about the MS4 program that is not a cookbook. There is a list of sixty (60) items that they go through and they review those in detail and they check the box. They either comply or they don't. He can't think of any other program in the County that is more cookbook than checking a set of MS4 plans. They go through there, they check them. He has the opportunity to go through the plans in detail as a licenses professional engineer. That is what he was asked to do. He holds multiple degrees and he holds multiple licenses in multiple states. He doesn't think the process stinks. He thinks the process is working. He thinks there is a checklist that he went through personally. He wrote the letter of approval of the plans for MS4. That is what the County hired him to do. He went through the plans even beyond that in term of every aspect of every part of every engineer. They do not want a guy like him going through their plans. He went through the plans in detail and there is nothing engineering wrong with the plans that he could find. He can't say it any plainer than that. They went through the grading plans. The grading is spectacular. They went through the drainage plans. He combed through every drop of water through the plan. There is nothing wrong with that plan. Let him finish. He went through the traffic plans. He went through the plans and profiles for the streets; sight distance, stopping sight distances, vertical sight distances. Pick a sight distance; he went through it. They said there were a lot of eyes on this project and they want to make sure it is right. He made sure it is right. Now, there are a whole lot of other things going on beyond just the four (4) corners of the plans. He doesn't have access to that information. The only thing he knows is that he has a set of plans before him, he went through those plans, brought what he would call the "A game" to the plans because that is what he was asked to do, and those plans are spectacular from an engineering point of view. Now, as he looks around the room, he doesn't know everybody there, but he may be the only engineer licensed professional to be able to do that to that level of detail. As far as the conflict goes, Councilman Cunningham is his friend and he has the utmost respect for Earl. They won't find him taking any shots at Earl. Most of the time when he watches Earl he sits in the audience and he listens to what Earl has to say because he knows the game; he knows the ropes, but Earl is not always right. He's just not always right and he thinks in this point he is not right. He will leave it at that.

Michael Polan stated he would like to add that it was Jeff's decision to deny the plan previously or point out deficiencies. Or him and Mr. Vicari together.

Jeff Wright stated he went through the plans and he rejected the plans at least no less than four (4) times. They went through and rounded stuff simply to the nearest fifteen (15) seconds of a degree

simply because they wanted to make sure that every point was covered. So, every point, engineering wise, plat wise and everything associated with the Joint Zoning Ordinance is there.

Michael Polan stated he thinks the dialogue and the questions from the Board members is good for transparency. This is a hot button case. It is a controversial case. It's been years ongoing. It is imperative that we get this right. This kind of open discussion in this public forum, yes there might be some tension, but he thinks overall it is good for the process.

Earl Cunningham stated before we move on, may he ask their attorney a question.

Attorney Biege stated yes.

Earl Cunningham asked if there is anything he should be telling them that he hasn't told them yet tonight.

Attorney Biege stated a lawsuit was filed.

Earl Cunningham stated thank you.

Attorney Biege stated by D&M to overturn the Plan Commission's decision to table this matter the first week of December. Their response is due by the end of the week and they will be filing a response.

John Carr asked if that was going to be brought up or were any of the members of the Plan Commission be made aware?

Attorney Biege stated yes. They haven't had a meeting since it was filed.

John Carr stated they do have email and they do get communication. They get agendas.

Attorney Biege stated he does not communicate with the Plan Commission members outside of the meetings.

John Carr stated that's fine, if he doesn't feel it's necessary to inform the Plan Commission members that there's a lawsuit been filed. He understands completely.

Attorney Biege asked if he can talk now? He made his loaded statement; it's his turn. It would be inappropriate for him to communicate with Plan Commission members outside of a public meeting so that is where he chooses to communicate. They did not have a meeting in December. There is no liability on the part of the County. They are simply trying to overturn the Commission's decision to table this. So, there is no intrigue. There is no mystery. Nobody is hiding anything. Normal course of business.

John Carr stated thanks Doug. He doesn't know how long he has been the Plan Commission attorney, but he thinks things get stale after awhile and he thinks there is a common theme here with

himself, maybe Harold Parker, Rita, Tony Hendricks; they're pretty stale if you look at their history on the Board.

Attorney Biege asked how he can tell; he barely showed up last year.

Rita Beaty stated excuse me. They are going to call this at peace at the moment.

John Carr stated he doesn't bill like Doug does.

Rita Beaty stated John, there are definitely things that are being discussed out here in public that do not need to be. Their dirty laundry; this is no place for their dirty laundry. She is sorry to the public that is there that has to listen to this. John brought up something that he would have liked to have answered; it was answered. We appreciate that, but at this point she would like to. . .

Earl Cunningham stated this is a political body, correct?

Rita Beaty stated this is a political body. They are appointed by Commissioners. There are people that are here that are on this Commission that are appointed because of their positions with the County. They have to be here. There are people that are on here that are appointed by Commissioners. Yes, there are some of them that have been around the bush a few times on the Commission and they appreciate the honesty that does go on here. They do try to keep everything above board in discussion and unfortunately, she is sorry this evening is one (1) of the first evenings that she can say she is actually ashamed of how things have been this evening.

Earl Cunningham asked Rita if she would agree that any political body, the appearance of impropriety would bring some contempt with the communities, their voters, and taxpayers.

Rita Beaty stated she believes their taxpayers are sitting here for a reason and listening to them for a reason whether they are on Zoom or whether they are sitting out there in the audience. She for one (1), sat out there for years in the audience and that is how she was asked to be put on this Board because of the fact that she was interested in what was going on with our County and she was happy with what she was seeing that they asked her to join them and she was happy to oblige to that. Therefore, as far as things that come out, that shouldn't be brought out here, maybe they need to keep them to themselves, but there are things that Mr. Carr has brought up tonight that she is ashamed that their Board would actually bring those things up. Mr. Cunningham, she can understand where he is coming from that he feels things need to be put out in public, but there are certain things that should not be put out in public and if they have a problem with someone then maybe that should be taken up with that particular person.

John Carr stated their attorney just said they communicate in a public format.

Rita Beaty stated they do communicate in a public forum.

Earl Cunningham stated if Doug said he wouldn't communicate with them, did he communicate it with Tony?

Rita Beaty stated he communicated the things that they need to know. . .

Earl Cunningham stated they had a lawsuit filing in the first week of December. Did she know about it before forty-eight (48) hours ago?

Rita Beaty stated she did not know about it until just now when they brought it up because of the fact that they have not had a meeting and if it doesn't have anything to do with what they have this evening. If they remember, the last few meetings they had, there were things that were brought up that they had this total discussion and she doesn't know if Mr. Carr happened to be there or not because as they discussed he did miss a few meetings, but there was. . .

Earl Cunningham asked if John Carr missed any more meetings in the last two (2) months than Mr. Hendricks.

John Carr stated three (3) in a row.

Earl Cunningham stated okay.

Rita Beaty stated Tony had to recuse himself.

Earl Cunningham stated he doesn't have to recuse himself from the meeting. He recuses himself from the vote.

Rita Beaty stated from the petition.

Earl Cunningham stated exactly. The problem with that is here is the appearance from the community. By coming in and being here for the presidential election tonight and then leaving the meeting, he gets to let his appointee vote on something he couldn't have vote on himself. That doesn't stink? That doesn't pass the diaper test.

Rita Beaty stated he feels that with his presence here, what he told her. . .

John Carr stated so she and Tony talk in between the meetings.

Rita Beaty stated just before this evening. She asked if he was going to stay and he said his presence was not needed here because it looks bad because. . .

Earl Cunningham stated because when he leaves then he gets a vote indirectly. His appointment gets to vote for him when he knows he couldn't vote himself.

Rita Beaty stated her question then is to the counsel that is what the County Surveyor can do for the Plan Commission.

Attorney Biege stated yes. The statute is clear. The County Surveyor is the only one (1) that can do that.

Earl Cunningham stated he understands that. Let him ask him a question. If they had six (6) petitions on the agenda tonight, does he think it's fair to the other five (5) people that the president walks out of the meeting because he has to abstain from one (1) vote or should he be here running the meeting.

Attorney Biege stated he is here to give legal advice not what should happen. Let him put it this way though; legally, the alternate votes where he has a conflict of interest.

Earl Cunningham stated exactly.

Jeff Wright stated the alternate votes based on what he has physically seen, physically reviewed, and knows to be the accurate truth as far as engineering goes. That's it. Tony doesn't have anything to say about whether how he votes. He looks at the plan. He is facts and data. Period.

Joe Haney stated he has a question for their attorney. Mr. Biege, he understands what he said earlier that he doesn't communicate with the Boards as a whole outside of public meetings. Did he inform the Plan Commission President or Vice-President? Who did he inform when the lawsuit came through?

Attorney Biege stated the Building Commissioner is served with the lawsuit so when it comes to litigation, he works with the Building Commissioner. He doesn't remember whether or not he sent it to Tony or not. At the time, when a lawsuit first comes in, he always gets an extension on the time to answer. He knew they would have a meeting because technically there is not an answer due; it's kind of complicated the statute, but he is going to file a motion to dismiss. He is not disclosing litigation strategy. It will be filed tomorrow or Friday when it's done. Their due date was Friday so he knew they would have a Plan Commission meeting before any response of pleading was due. The lawsuit is a matter of public record or he can send it to any Plan Commission members. He thinks some members may be trying to make something out of nothing because the County gets sued, the Plan Commission. They get BZA challenges on occasion. This is the first Plan Commission challenge that they've had since he has been doing the work and that's got to be near twenty (20) years. So, there is no intent to deceive or hide anything. That doesn't even make sense. The theory doesn't even make sense. They had a meeting tonight. He is telling them that they are going to file a motion to dismiss and he thinks he can get it knocked out. If anybody wants to see a copy of the complaint, he has it. There is no liability on the part of the County. They are simply trying to reverse the Plan Commission's decision. There are two (2) components to their argument. One (1), that the Plan Commission tabling this indefinitely is the same thing as a final decision and the law is clear that they don't go to court until there is a final decision so they will argue there is not. The second part of it was the County Commissioners jaded the process in remonstrating when they are the ultimate decision makers and they are asking the court to appoint special judges or dispensation to take the decision out of the County Commissioners' hands. The first part of it they will handle whether or not they can even file it. He doesn't know if they will get to the second part or not.

Joe Haney stated he is not trying to cast dispersion; he is just trying to figure out how he handled this as it came in. That's all. Who specifically was named in the suit? Was it the Plan Commission and the Building Commissioner? Does he recall?

Attorney Biege stated he thinks it was just the Plan Commission. Normally, it's just the Plan Commission. Sometimes, defendants will name, as he has done County defense work in the past, sometimes they will name the County Commissioners and then individual department heads, but it is really irrelevant unless that department head went outside of their employment description or did something outside of their job description. That's a different topic completely. So, it doesn't matter too much on who was named. The Plan Commission was named and they are ultimately responsible for the defense of the case.

Joe Haney stated moving forward, it would be his recommendation that if the Plan Commission does get served with any suits that they don't have to discuss it outside of a public meeting, but he believes they should all be notified.

Attorney Biege stated that's not a problem. He's just done it like the Board of Zoning Appeals. They have had maybe six (6) appeals over the last ten (10) years or so none of which have gone anywhere. He has gotten them all shut down. It's no problem to send a copy to the Plan Commission. It's all public record so there is nothing to hide. He preferred to tell the Board in a public meeting so they can ask him questions and they can interact so they don't have everyone speaking amongst themselves and coming up with all these ludicrous theories that aren't even close to the truth.

Joe Haney stated he is just trying to find the path forward because as their attorney, he would be responding on their behalf and of course he would want to get direction from them. Obviously, they would defer to his legal advice and direction, usually, but they would at least as the client have to direct him to either dismiss or whatever because he works for them. He doesn't know how appropriate it is to be taking steps without informing them because then they don't have informed consent. They are not giving any consent to him to file anything because nobody had directed him to file anything. Kind of like on the Board of Commissioners, when something comes in, they look at it and usually figure out where it is to go and unfortunately there was an incident last year where not all the Board of Commissioners knew what was going on until after a judgment was rendered. His concern is that right now, they will have a repeat of what happened last year where members of the Plan Commission, like members of the Board of Commissioners, are totally cut out and not even realize that there is a lawsuit going on.

Attorney Biege stated that is not accurate Mr. Haney. Not at all. Not even close.

Joe Haney stated yes, it is.

Attorney Biege stated that issue he handled and he followed the same procedure the County has handled for years as established when they changed insurance carriers.

Joe Haney stated he wasn't even aware of it until. . .

Attorney Biege stated if they are going to change the rule, they need to notify the people working for them and not after the fact.

Joe Haney asked how he would even think to know that he went behind his back and done something when he didn't know.

Attorney Biege stated nobody went behind his back.

Joe Haney stated sure, he did. Judge Alevizo's stamped an order before he even knew any of it had happened.

Attorney Biege stated the President of the Commission approved it and signed it.

Joe Haney stated on her own.

Attorney Biege stated because the Commissioners don't communicate. He has nothing to do with that. That's how they agreed to settle small claims to try and save on expenses. He wouldn't know about the stop sign collisions or the mailboxes that the insurance carrier handles. It's the same thing.

Joe Haney stated they sign off on them though.

Attorney Biege stated okay.

Joe Haney stated he just saw one (1) today; a hundred and fourteen dollars (\$114).

Attorney Biege stated he's not going to do what he would like to do in the Commissioners' Office. By the way, the County has wrongfully not paid him for that work that he did. The president approved it and that's the end of it. Him trying to change the rules after the fact, just like this, whenever a complaint comes in against either the BZA or the Plan Commission he enters an appearance to protect the County until such time as they decide how to move forward. If they would like him to wait on the motion to dismiss, he will until after they have an executive session.

Joe Haney stated he thinks under new business they could probably authorize him to move forward with a motion to dismiss.

Attorney Biege stated okay. It has already come out, but they don't discuss litigation in an open meeting.

Joe Haney stated usually, no, but a motion. . .

Attorney Biege stated they normally set this for an executive session so decide which one (1) they want, but he handles things as they have, as has worked very well for a long time. If they want to change the process, tell him and he is more than willing to do it, but don't complain about it after the fact and intimate that he is off on his own. The County has to be protected. The Plan Commission has to be protected.

John Carr stated point of order. Point of order. Rita, will she run the meeting or is she going to let the attorney run it. He thought they had a petition on the table, but he would just like to get home to have dinner and see his kids.

Joe Haney stated he believes they have an existing motion to table.

Rita Beaty stated yes, they have a motion on the table.

Joe Haney seconded.

Rita Beaty stated and a second. But she would like to address Mr. Carr that she really doesn't appreciate being demeaned. They have went through this before with him demeaning her character and they are not going to do that again this evening. She would appreciate moving forward. They have a motion and a second on the table. Is there anymore discussion on the petition that is before them this evening. With no further discussion, please take a roll call on the motion to table.

Ashley Kazmucha read the roll.

Rita Beaty stated aye.

Joe Haney stated aye.

Jeff Wright stated the motion to table is for how long?

Rita Beaty stated for up to three (3) months.

Attorney Biege stated technically the motion is indefinitely, but if they're going to follow Robert's Rules of Order then it will come back up in three (3) months.

Jeff Wright stated aye.

John Watson stated aye.

John Carr stated aye.

Harold Parker stated nay.

Earl Cunningham stated aye.

Deb Vance stated nay.

Approved. Motion carries 6-2.

Ashley Kazmucha stated that is 6 – 2 tabled.

Rita Beaty stated okay. Thank you for your time.

Rita Beaty asked for any old business.

John Carr stated he has something to bring up. He would like to apologize for Rita for thinking that he demeaned her in the past and that they have talked about it. He doesn't recall that ever happening, but if he did then he would like to apologize for that.

Rita Beaty stated thank you, John. She does have some old business. She received a phone call this evening as she was pulling in. This gentleman had some information that he would like to bring. Mr. Parker had talked to him about it and he sent him a document that he is requesting some amendments to the Solar Ordinance. It was suggested that maybe she try to read the text message from him and enlighten everyone on it this evening. *"Solar projects should have a minimum distance of a half mile from wetlands, rivers, streams, tributaries to avoid immediate damage to water quality and possible contamination ecological disasters. 2 – Solar fields should only be allowed to use woven wire fence no taller than five-foot (5') to allow movement of wildlife. 3 – Industrial scale of solar plants should not be placed on A1 Agriculture and RA rule area use should be rezoned to commercial or industrial. The land owner is to be held liable for any clean or decommissioning involved with the solar program with no financial help from the County. Finally, allow the neighbors that live next to the said location of a solar project in community be heard. If all oppose it then that opposition should be expected."* She will forward that to the counsel, Mike, and Mitch so that way they can forward it to anybody else that is involved with looking at that Solar Ordinance also.

Michael Polan stated he could add that Harold Parker and he had a conversation. Just to clarify, he does not communicate with the Board about Petitions, but when it comes to new ordinances and other business that is not a bias on petitions then that is different. So, Harold had noticed something that was going on in another county and brought it up so they could see how their solar is affecting them and get ahead of it here. The gist of it was considering a limitation as to say a percentage of coverage on a field or whatnot. He thinks that they should entertain discussions until they are absolutely happy and satisfied with their ordinance and that they are sure that they have it covered in this county when they can see what is happening in other counties with it.

Rita Beaty stated exactly. Thank you.

Rita Beaty asked for any new business.

Mitch Bishop stated he has an item under new business. Probably six (6) months ago he stated that they really need to update their twenty (20) year Comprehensive Policy Plan that was last done in 2009. He said he would be searching for a grant. The good news is that he has received funding and he has written RFQ and firms will be scored the twelfth (12th) of February. The project and they should have a new Comprehensive Plan meeting he is hoping by May of this year with the new firm. That process usually takes about a year to eighteen (18) months, hopefully closer to a year, but there are a lot of public meetings which he knows Rita was on the Board at the time in 2009 when they conducted those. They were in Michigan City, LaPorte, down in the southern communities in LaCrosse. They were pretty much all over the place. This is the twenty thousand-foot (20,000') level policy plan of how they want to grow and develop in LaPorte County so it is real important. It should be an exciting time like the last one (1). It was a very exciting time and a lot of people got involved. A lot of the meetings they had a hundred (100) people in the audience and they probably had five (5) or six (6) different meetings. It is a twenty (20) year plan. It is supposed to be updated

every ten to fifteen (10 – 15) years. It was last adopted in 2009 so it is due. A lot of the recommendations that come out of the Comp Plan will be used to update their Zoning Ordinance so it might go hand in hand with the updates they are talking about now with the solar farms as well.

Rita Beaty stated thank you, Mitch.

Attorney Biege stated this is on battery storage facilities. If they remember, they went forward with the solar, but they were going to hold off on the battery because they spoke with Mr. Pressel and he was talking about the State Legislature possibly taking action. They didn't want to create rules that conflicted with the State rules. So, the State Legislature has empowered he thinks the Department of Homeland Security, a department within the State of Indiana, to create rules for inspection, construction, and specifications for the battery facilities. As they know, they have one (1) in LaPorte County that has been approved, but with a bunch of conditions. As soon as that agency gets their rules and regs in place then he thinks LaPorte County is fine to rely on the State set of rules rather than create their own. He doesn't think they are done drafting the rules yet.

Michael Polan asked if he read a draft in which whatever they passes supersedes their local authority anyway and takes jurisdiction away from them.

Attorney Biege stated he thinks it will anyway. Just so they know, it is out of their hands and in the hands of the State now which is fine because it is a very technical inspection process.

Rita Beaty asked for any other new business.

Joe Haney stated obviously they don't want to discuss strategy in a public meeting, but they should get whatever information that would be lacking or set up an executive session to deal with the discourse.

Earl Cunningham made a motion to allow their attorney to file a motion to dismiss without consulting with anybody. They always want a motion to dismiss. That is standard; he doesn't think it is anything they have to discuss. They can put it in writing they are granting him authority to do that without consideration.

Joe Haney stated if that is his motion to direct him to dismiss then he would second that.

Earl Cunningham stated they will give their attorney a written policy that this Boards authorizes him to motion to dismiss in any case fillings against the Board.

Joe Haney seconded.

All Approved. Motion carries 8-0.

Rita Beaty asked for any other new business.

Michael Polan stated they were going to bring up the lawsuit under new business. Just to clarify, he received notice of that. He could have notified the Plan Commission. He got ahold of the attorney

right away; he was aware of it. He said he would take care of it, discuss it at the meeting, and go from there. That is how that happened. Listening to the discussion tonight, he would reiterate that this is a good healthy discussion. It is taking place in a public forum; it is transparent. This is what they want to see especially on hot button issues, but just letting them know how that worked out with the lawsuit. He will make sure that the Plan Commission is notified of anything like that.

Earl Cunningham stated the problem is hindsight is always 20/20 vision. He respects the job he is doing, but he is sure he was not the only one (1) asked about it and couldn't answer the question. If people in the public already know about it before any of them know about it, it reflects badly on all of them he thinks. Rita said she didn't know about it until tonight. Somebody knew about it three (3) or four (4) weeks ago and was asking questions and he couldn't answer the questions.

Michael Polan stated he thinks that is a good point and he is glad they brought it up for discussion.

Earl Cunningham stated thank you.

Jeff Wright asked if there is ever a case where a motion to dismiss would not be in their best interest.

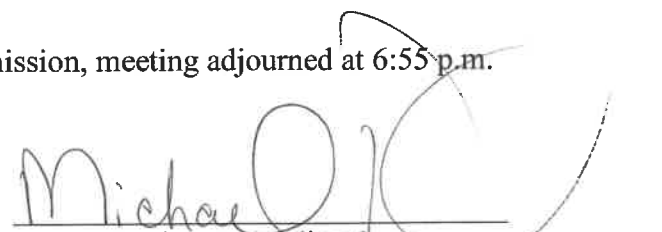
Attorney Biege stated that is a pretty broad question. If there is a motion that is not in the Plan Commission's best interest then he isn't going to make it. So, they have along the way motions to dismiss, motions for summary judgment, all of which are available, it just depends on the case. He thinks this case is blatantly premature so it is the appropriate motion to make right now.

Joe Haney made a motion to adjourn.

Earl Cunningham seconded.

There being no further business before the Plan Commission, meeting adjourned at 6:55 p.m.


Anthony Hendricks, President


Michael Polan, Recording Sec.