



LAPORTE COUNTY PLAN COMMISSION

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Michael Polan
Building Commissioner

LA PORTE COUNTY PLAN COMMISSION MINUTES February 27th, 2024

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

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

PLEDGE OF ALLEGIANCE

Anthony Hendricks asked for approval of the agenda for the February 27th meeting.

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

Deb Vance seconded.

All Approved. Motion carries 9-0.

Anthony Hendricks asked for approval of the meeting minutes for the January 23rd meeting.

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

Rita Beaty seconded.

Anthony Hendricks stated since they now have a full board, they are going to open the floor to elections since they technically haven't done this. Since they don't have anyone yet he would like to make a motion to make Commissioner Joe Haney President of the LaPorte County Plan Commission.

John Watson seconded.

Anthony Hendricks asked for any other nominations for President of the LaPorte County Plan Commission for 2024.

All Approved. Motion carries 9-0.

Anthony Hendricks stated at this point, he will step down as he has a conflict with the petition, but he will still be present in the room.

Jeff Wright takes Anthony Hendricks seat.

Joe Haney asked for any nominations for Vice President of the Plan Commission.

John Carr nominated Harold Parker.

Earl Cunningham seconded.

Joe Haney stated they have a nomination and a second for Harold Parker. Are there any other nominations?

Deb Vance nominated Rita Beaty.

Jeff Wright seconded.

Earl Cunningham asked Attorney Biege why Anthony Hendricks would have a proxy up there to vote for an election of Officers when he doesn't have a conflict on this vote. Does he?

Attorney Biege stated no, he does not.

Anthony Hendricks stated he will second the nomination.

Earl Cunningham stated thank you.

Joe Haney asked for any other nominations. Hearing none, they will close the floor for nominations. If it is the pleasure of the board, they can do this as a vote independently for each or they can do a roll call vote and they can state their preference.

Earl Cunningham stated the roll call is requested.

Joe Haney stated to read the roll.

Ashley Kazmucha read the roll.

Rita Beaty stated Rita Beaty.

Deb Vance stated Rita Beaty.

Harold Parker stated Rita Beaty.

Earl Cunningham stated Harold Parker.

John Carr stated Harold Parker.

John Watson stated Harold Parker.

Joe Haney stated Harold Parker.

Anthony Hendricks stated Rita Beaty.

Eric Pointon stated Harold Parker.

Ashley Kazmucha stated congratulations Harold. He is now the Vice President.

Harold Parker stated thank you.

Joe Haney asked if they need to officially appoint an attorney for the year or does it just roll over.

Attorney Biege stated it rolls over without any motion or nomination otherwise.

Earl Cunningham asked if they voted at the last meeting and the tie 4 – 4 is why it rolled over. Is that correct?

Attorney Biege stated right. They need a two-thirds ($\frac{2}{3}$) majority of the entire commissioner for the decision to carry. It's flukey, but it is statutory.

Earl Cunningham stated they have nine members here this evening, so why wouldn't they vote again.

Attorney Biege stated he didn't say they couldn't.

Joe Haney stated for procedural purposes, they will open the floor for nominations for the Plan Commission attorney for 2024.

Rita Beaty nominated Doug Biege.

Earl Cunningham seconded.

Joe Haney asked for any other nominations. Hearing none, they will close the floor for nominations.

All Approved. Motion carries 9-0.

Joe Haney stated congratulations Mr. Biege.

Attorney Biege stated thank you.

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 septs and wells and is to be constructed in six phases. All roads will be constructed to County specifications.

Rita Beaty made a motion to take the petition off the table.

Deb Vance seconded.

Earl Cunningham stated roll call please.

Askley Kazmucha read the roll.

Rita Beaty stated she is voting yay to un-table.

Ashley Kazmucha stated say yes for un-tabling and no for un-tabling.

Rita Beaty stated yes.

Deb Vance stated yes.

Harold Parker stated yes.

Earl Cunningham stated nay.

John Carr stated nay.

John Watson stated nay.

Joe Haney stated nay.

Jeff Wright stated yes.

Eric Pointon stated yes.

Ashley Kazmucha stated it is un-tabled.

Jeff Wright made a motion to refer the matter back to the Commissioners with no recommendation.

Earl Cunningham seconded.

Joe Haney stated they have a motion and a second to refer this matter to the LaPorte County Board of Commissioners with no recommendation. Is that correct? Okay. Discussion?

Rita Beaty stated that maybe for a few on the Board that are new and maybe even for the public themselves to be able to understand actually what that means so perhaps Doug could elaborate on it.

Attorney Biege stated under the zoning code, this is an advisory Plan Commission so the Plan Commission has three (3) choices: yes, a positive vote; no, a negative vote; or send it to the County Commissioners with no recommendation. At the end of the day, the County Commissioners have the final say so on this petition anyway. Those are the three actions the Board can take. They can also put it back on the table of course, but those are the three (3) final decisions as far as the Plan Commission is concerned on this matter.

Harold Parker asked how long somebody can table something for.

Attorney Biege stated they could put it on the table and it would stay on the table from the subsequent meeting and then the following meeting it has to be addressed again so every third meeting.

Harold Parker stated thank you.

Rita Beaty stated the choice for the Commissioners, they have a choice to be able to refer it back to the Plan Commission again, also. Is that correct?

Attorney Biege stated they can. Usually there's some further instruction or direction from the Commissioners, but they can. He's not sure it has ever happened, but it is possible.

Joe Haney asked if there was any more discussion.

Earl Cunningham stated Mr. Biege made it very clear that this is an advisory board and they don't make the final decision.

Joe Haney stated that is correct.

Harold Parker asked what the motion on the floor is.

Joe Haney stated the current motion on the floor is to send this petition to the LaPorte County Board of Commissioners with no recommendation. Since they did not have public comment earlier, would the Board be willing to entertain any comments if there was anybody from the public that wanted to speak on this. He knows this isn't their remonstrations process, but at the same time, since they didn't have public comment on the agenda, if there were any remonstrators or anything along those lines.

Attorney Biege stated he wanted to advise that they typically do not have public comment on pending petitions because this is kind of like a court proceeding and these matters are sitting in a quasi-judicial capacity so the Petitioners have already presented their side, the remonstrators have

already presented their side, and that part is closed. If they wish to re-open, they can re-open, but they don't take public comment on the Petitions because it's not part of the record in the event of an appeal.

Joe Haney asked if there was anybody out there who would want to speak. Please indicate by raising your hand and then they can take it further.

Earl Cunningham made a motion that they allow public comment.

John Carr seconded.

Jeff Wright stated point of order, don't they have to vote on the motion to send it back first?

Attorney Biege stated they can have Board discussion, but they have a motion pending right now. He doesn't think they can make a motion since they have a pending motion now.

Joe Haney asked if they need a motion to open it up?

Attorney Biege stated they need to dispose of the first motion before they go to the second one.

Joe Haney stated right, do they technically need a motion to just have the public informally come up briefly to state anything new that they might have?

Attorney Biege stated typically, after the motion, no.

Joe Haney asked if there is anything preventing it?

Attorney Biege stated he is not a Robert's Rules expert, but what this Commission has done for a couple decades in which most agencies do, once there is a motion and a second, it is open for Board discussion and questions and then a vote is taken. Comments are closed when a motion is made. So, that is what they have always done.

Harold Parker stated they could withdraw the motion.

Attorney Biege stated yes.

Earl Cunningham asked if it can be amended?

Attorney Biege stated with the second, yes.

Earl Cunningham stated he will withdraw his motion and change his motion to amend the original motion to allow public comment.

Joe Haney asked if that is an amendment to allow public comment before the vote on the initial question.

Earl Cunningham stated correct.

Joe Haney stated thank you; he just wanted to make it clear for the record. Thank you. Any discussion on the motion? Basically, the motion was to amend the original motion so that they take public comment before they vote on the original question which would be to send it to the Commissioners. Basically, they are allowing public comment and then they will have the vote after that. They will have another chance for Board discussion as well so they keep this clean for the record. They will call for the vote at this point.

All Approved. Motion carries 9-0.

Joe Haney stated at this time they will open the floor up for some brief public comment here especially if they haven't spoken before and they have something to add then that would be great, if not public comment is open briefly to this topic for them right now.

Public Comment:

Steve Holifield stated his address is 6782 E. 100 S., LaPorte, IN. This is not in his area, but from what he has been watching for the last seven to eight (7 – 8) years, according to zoning laws for the County, it shouldn't be there and they keep changing the story what they are doing. It seems to him there is a lot of miscommunication or he would hate to use the word outright lie, but he thinks that's what some of it is. He thinks they should consider that. This is basically a sand operation and it's not supposed to be there. If they want to do something different, they better start coming to the table with some better information. Thank you.

Joe Haney stated thank you.

Randy Veatch stated his address is 4177 W. Schultz Rd., LaPorte, IN. He has lived this for eight (8) years. This all started in 2015. They were all told, many of them in there, were all told that it was going to be a pond and dream home. The pond has a hole in it; the dream home was never built. There is no septic. Nothing has ever been done on this except eight (8) years, well probably about six (6) years because they had him shut down a few times, of hauling sand out. Hauling other materials in; for what? It was just an ongoing dig that just kept happening. Why does it have to happen? It is sand mining. Whether they wash the sand or not is immaterial and find that it is utterly. . . well he won't go there. To even have this thing talked about tonight, he was up here when it got tabled. According to Robert's Rules and it is clearly stated in Robert's Rules, that when something is tabled, it has to be brought off the table that night or at the next meeting otherwise it is null and void. It is gone; it is done. Now they are going one (1) meeting back and it was tabled for three (3) months. Last meeting, where January 23rd is what somebody just said, it was tabled for three (3) months. What did they have the vote for? What did they even talk about at the last meeting for if it was just going to be opened up again? They all agreed to table it and now here they are open again. Mr. Biege, he has been saying this for years; he questions how he can oversee any of this because he had to recuse himself in 2015. Why is he sitting here and giving instructions now?

Joe Haney asked Mr. Veatch to please address the Board directly please.

Randy Veatch stated sorry. Back in 2015, he had to recuse himself. Now, he oversees this and gives instructions on it. If he had to recuse himself in 2015, he should still have to recuse himself today. They are up here so they can have a three (3) stage, no six (6) stage dig. For how long? He has been following the trucks and seeing the job sites that they have been working on and he has been seeing it done in a relatively short time. If he is going to put in a subdivision, what does he have dig out in six (6) stages for? Why doesn't he put a subdivision in like everybody else? What elevations is he going to change to? He has read the plans. Jeff Wright was correct; the plans were very thorough for LaPorte County, not for plans he is used to seeing. They could go into most other plans and they will see how much, just to put in the sewage system in Michigan City for Love's, they can see exactly how much material was going to be hauled out. Exactly how much material was going to be hauled in. They may have to change a little here and there, but they had an idea. For this subdivision, they don't have a clue. It is six (6) stages for how long? Mr. Cunningham brought up at the meeting, how long would he get for each time; two (2) years on each stage? Twelve (12) years? How long do they have to do it? How long do citizens have to do it? He bought his home and there was no mine there. Why does he have to live with a mine directly behind his home? What did he do wrong? Now, LaPorte County offers him thirty percent (30%) off his taxes because he lives next to a sand mine. Within one (1) mile, every one of the people could go out and get the same thirty percent (30%) off. Why do they want to offer that to the citizens of LaPorte? Why can't they just get rid of the sand mine? If the man wants to put in a subdivision, let him put it in. He will go over there and help him shovel the sand, but put in a subdivision. Don't put in a joke. This thing where they are having to put up with the petitioner, himself, his lawyers and all this crap for what? Because he wants to live peacefully. This is the first year his wife didn't have to go out on their back deck and brush sand off of it. It actually stayed clean all year. It's a screened in porch and they couldn't use the thing for six (6) years. They couldn't sit out on their own porch because of the sand. It's not right. It is ludicrous that they are even un-tabling this, that Mr. Biege is overseeing it, and that they tabled it and it is off the table again. How do they justify this stuff. What books are they going by? Why do they keep changing the rules? What is the end rule? What allowed this to be opened? What code? What point within Robert's Rules said this could be brought off the table tonight? He cannot find it. He reads the books very in depth and very thoroughly and he cannot find anywhere in Robert's Rules where it says that this is proper and this is the way it should be done. The proper way is that it is dead. Why are they here? Thank you for letting him speak.

Joe Haney stated thank you Mr. Veatch.

Ryan Miller, Petitioner, stated he wasn't going to get up and speak until Mr. Veatch just made the statements he did. Since they have decided to table them for months on end because of statements such as his and the ex-County attorney Shaw Friedman, he might as well go ahead and take the time to explain to them the actual truth. He will gladly take any one (1) of the Board members or the County Commissioners out to his property. The only County Commissioner here tonight has actually been on his property. He is the only County Commissioner that has ever come out to his actual site and actually walked onto his property. The rest of the County Commissioners that are currently suing him for a violation of a MS4 permit, which there was no violation according to IDEM or according to MS4, but Mr. Veatch can get up and say whatever he wants. He can go to the County Commissioners meetings and say whatever he wants and they want to listen to it. His back porch that he claims is full of sand is almost five hundred feet (500') from where any activity has taken place. Sorry, six hundred and twenty feet (620') from where any activity has taken place on

his property. Mr. Watson is in the trades. Mr. Carr is in the trades. Have they ever seen sand fly six hundred feet (600') through the woods? Mr. Veatch's home that he bought was next to Pavey's sand pit that has been there for thirty (30) plus years. Have you ever seen him up here complaining about that? That is what they have to deal with. He has been tabled for months on the best set of plans that this County has ever seen for a subdivision which multiple of them have said. They are the best plans they have seen for a subdivision beyond detail. He paid for good plans to be done almost to the construction grade because he knew that they would get up and complain and people would listen. So yes, as it was discussed in the last months, he has filed a motion in court to have a judge to make a decision on this because they have decided to not table it and a Board member that is sitting here made a statement and attempted to table it until April; that got shut down by the attorney. Now the judge has recused himself and it will end up getting bounced around in courts because no judge wants to touch what they have started. Thank you for your time.

Joe Haney stated thank you.

Joe Haney stated hearing and seeing nobody in the audience or zoom for public comment they will close public comment and return to the question at hand. Discussion?

Jeff Wright stated he was going to say that the Commission owes the Petitioner some motion on his petition whether is approved or denied, the last several times that he has been here, it has been kind of a half and half situation. So, sending it back to the Commissioners instead of Commissioner Haney having one (1) in nine (9) or eleven-point-one-one percent (11.11%) value to his vote, it goes back to the Commissioners where he has thirty-three percent (33%) value on his vote. He thinks the man is entitled to some kind of movement and to have it sit there and be tabled and not be tabled makes the County and the Commission look bad. It just makes them look bad so either approve it, deny it, or send it back to the Commissioners. It doesn't seem like the Commission wants to deny it so send it back to the Commissioners and let them decide.

Joe Haney stated thank you Sir.

Earl Cunningham stated he would like to modify an old time quote just slightly because it's the Commission with nine (9) of them there now. Some of them haven't been here very long so he would like to rephrase this to "fool us once, shame on you; fool us twice, shame on us."

Rita Beaty stated for the first time this evening though, having heard quite a bit go on with this petition that it is the first time she has actually heard someone say from the audience, "build the subdivision; let's go with the subdivision." So, thank you. She appreciates that.

Earl Cunningham stated he agrees with Commission member Beaty that the vast majority of the neighbors would far prefer the subdivision to a sand mine. He doesn't think there is any question about that. He would be amazed if anybody would come up. The question is, how long will it take to build the subdivision. He asked for a permit to build a pond and a dream home eight (8) years ago and there is no pond and there is no dream home. How much latitude do they give anybody that has already created that situation to build a subdivision with no time constraints. Thank you.

Joe Haney stated he appreciates Mr. Cunningham's point. The last conference he attended, there were several break out sessions and they were torn between choosing a few, but one (1) of the ones he chose was on Plan Commission Planning and JZO and Mr. Biege seemed correct when he said that they are ultimately going to have to make some sort of decision either vote it up or down, send it on or not, and give a final answer because state code is pretty clear on that. They can't sit on it indefinitely.

Rita Beaty stated piggybacking on what Mr. Cunningham said, correct her if she is wrong, but they do have stipulations and maybe not at this position because at this position they are either approving, denying, or moving it with no answer to the Commissioners, but at the next step, if it was to go to the next step, is when they would actually put those stipulations on for the guarantee of the permits and the time frames and things like that because they do have that in the ordinance that say they have this particular amount of time. Correct?

Attorney Biege stated yes. They absolutely can impose conditions on timing, on the phases, etc.

Earl Cunningham stated the Commission can do the same correct?

Attorney Biege stated yes. Both entities can.

Earl Cunningham stated thank you.

Rita Beaty stated it is not an infinite system. They actually can put time frames and constraints on it.

Earl Cunningham stated she and him were here when they didn't do that the first time, correct.

Rita Beaty stated thank you.

Joe Haney stated thank you. So, the board members are clear Mr. Biege, can he walk them and the public through if this was to get sent to the Commissioners tonight with no recommendation, what they can do with it and then from there what the steps would be assuming it starts getting approved down the line.

Attorney Biege stated if the Commission makes a decision tonight, then he will certify that decision to the County Commissioners and then that goes to the County Commissioners Secretary. The County Commissioners can then put that on their calendar and have a public hearing or whatever they wish to do. If they were to approve the plan, they could impose conditions or without conditions it would then go to construction drawings. So, the second step, it goes back to Plat Committee, but it is much more specific in Plat Committee. That is when the person applying for the subdivision gets the specific engineering. Everything is preliminary that is out there right now, but that is when they start to set time tables on phases and they come back with a much more specific plan and they come back here again. When they come back here for final plat approval, again, the Plan Commission can put conditions on it if they should so wish. They can reject it. They can even send it back to Plat Committee with instruction. This phase, they have seen the drawings, but there is a lot more blanks to fill in on the next phase if it is approved. If it is denied by the

County Commissioners then there is a time period they have to wait to reapply. He doesn't remember it off the top of his head, but he thinks it is a year before they can reapply.

Joe Haney stated it is one (1) year.

Attorney Biege stated again, the next phase is much more specific than what they have tonight.

Earl Cunningham asked Attorney Biege if the Commission put a restriction on it that no sand leave the property.

Attorney Biege stated they could. He believes practically, he is not sure how that works from an excavation standpoint, but when he says conditions, he thinks they can do it on the second phase after the construction plans are made. He thinks at this phase, he's not sure there is enough information to determine what excavation, grading, and moving of soil needs to happen, but the Commission and the County Commissioners will have that at the second phase.

Earl Cunningham stated thank you.

Joe Haney stated thank you, Mr. Biege. He thinks from his own perspective at this point, he doesn't think anybody is opposed to a subdivision, they just want to make sure it is done appropriately and respecting the rights of everyone involved.

Attorney Biege stated the code leaves it pretty wide open for both the Plan Commission and the County Commissioners to impose those restrictions to ensure and alleviate the concerns of the Plan Commission members.

John Watson asked if there could be a motion made with it left open of some sort of time table to accomplish it whether it be in phases or in total. If it got moved forward with a recommendation that there be a time table adopted to this? Is that possible?

Rita Beaty stated probably not tonight. That is the next meeting.

Attorney Biege stated the zoning code does not preclude it. It gives them the three (3) choices and it says you can approve on conditions, but there is no mention of conditions on if they sent this forward with no recommendation. He is not sure it makes sense to do it with no recommendation with conditions; that would be a yes with conditions. Does that answer the question?

John Watson stated yes.

Michael Polan stated he would like to add and this could be for the public who is coming into this midstream, they are in a preliminary plat phase. There is preliminary plat and secondary plat. There are protocols for each one (1) for the preliminary and the secondary. The Joint Zoning Ordinance is available online for anyone in the public to check it out. More specifically, they have a Subdivision Control Ordinance that controls matters just like this. It is pretty detailed including technical things and protocol for the Plan Commission, the Petitioner, and the Commissioners. This does include

leeway for the governing body to impose a subdivision improvement agreement. That could be worked out between the parties. That is a possibility.

Mitch Bishop, County Planner, stated that the subdivision improvement agreement can include grading and what is taken off site and what is not taken off site. That can all be a part of that.

Joe Haney stated those would all be done in the subsequent phases.

Mitch Bishop stated it would have to get through preliminary plat.

Joe Haney stated he understands. Thank you. That's good information. Does anybody else have any other questions before they call for the question. Hearing none, let's call for the vote. Does everybody remember what the motion was? The motion was for the Plan Commission to forward the petition on to the LaPorte County Commissioners with no recommendation. We had a motion and a second. All those in favor?

Members say aye.

Joe Haney stated opposed.

Members say nay.

Ashley Kazmucha asked to do a roll call vote.

Joe Haney stated yes, if she would like.

Ashley Kazmucha read the roll.

Rita Beaty stated nay.

Deb Vance stated nay.

Harold Parker stated aye.

Earl Cunningham stated aye.

John Carr stated aye.

John Watson stated aye.

Joe Haney stated aye.

Jeff Wright stated aye.

Eric Pointon stated aye.

Approved. Motion carries 7-2.

Ashley Kazmucha stated it will go the Commissioners with no recommendation.

Joe Haney asked for any additional old business other than what is on the agenda.

New Business:

1. BESS Correspondence

Joe Haney stated first is the Bess Correspondence or the storage units for the high-capacity battery storage.

Attorney Biege stated he thinks he explained the battery inspections and regulations are all under the jurisdiction of the Department of Homeland Security now. He read the statute and right now LaPorte County Code does not have any zoning designations for BESS facilities. That was a decision they made consciously because his understanding, and trust him on electricity it is pretty limited, but the BESS battery storage facilities they want to locate them near electrical transfer facilities. So, it's not really practical to put a zoning designation on them, but the new code section does not restrict the County from doing something on zoning for the BESS facilities. Mike and he have discussed it and they think there should be some kind of restriction and the way they handled the last battery facility at zoning board was they made it a special exception. So, in other words, it's pretty much allowed in every zoning area, but under a special exception the BZA at least looks to make sure the location is appropriate. They do not have that in their zoning code yet just because this is all so new. Since DHS took it over, that's really, as he sees it, the only area where the County has a lot of say so on where the location is. They have a request from the solar people. Right now, they are going to see a solar petition within the next sixty (60) days filed in front of the BZA just for the solar, but they are also designing two (2) BESS facilities to come down the line later. The Building Commissioner doesn't have any direction or authority. They have asked them to sign basically a letter saying they are not going to make any requirements. He thinks it is irresponsible not to have any requirements. His recommendation and request of the Plan Commission would be directing the Building Commissioner in designating BESS facilities, which won't be in the zoning code so this will be a standalone motion, which would still be enforceable, but make BESS facilities a Special Exception to be reviewed by the Board of Zoning Appeals. That way they have some mechanism to get that request in front of some County authority to make sure the placement is appropriate. He doesn't think they should go any farther than that because they don't have any requirements on zoning on electrical transfer facilities because the infrastructure and design for the electrical infrastructure and this is kind of the same thing. Does that make sense?

Joe Haney stated he thinks it is an excellent idea to make sure they all go before the BZA. Do they have any discussion on that or would anyone like to make a motion?

Earl Cunningham asked if they have sufficient guidelines from Homeland Security to help him do that.

Attorney Biege stated not really. The Indiana Legislature passed the statute directing the Department of Homeland Security to adopt certain regulations with regard to construction, inspections, et cetera, but he hasn't seen anything about location. He thinks that is on us.

Anthony Hendricks stated BESS is battery energy storage systems. Harold, Doug, and he talked about this. This is not the only energy storage system that is going to be around and they don't know what is going to come up. So, maybe the motion could be energy storage systems in general terms because it might not be batteries. Who knows what it will be, but he thinks this motion brings it forward to the Commissioners to put the Special Exception to give them some teeth. There is lots of discussion about whether the volunteer fire department could put batteries out. Whether there is a contamination of ground water or drainage ditches or some things. He is hoping Doug says yes that they can make a Special Exception for any energy storage systems that are a commercial system not just batteries.

Attorney Biege stated he totally agrees with Tony. That is a better request than he made.

Michael Polan stated the bottom line is, he didn't feel comfortable signing the letter so they brought it forward to the Board and he is looking for direction from the Board.

Joe Haney stated thank you; he appreciates it. They did not have public comment earlier. Would anybody mind if they entertained short brief public comment period here? Please approach sir.

Christopher Williamson stated his address 4102 S. State Road 104, Walkerton, IN. They have been involved in this for eighteen (18) months. He lives adjacent to the Open Road Renewables BESS system that they are trying to put through. Basically, it went through the BZA in conflict with direction from Jim Pressel. Open Road Renewables told BZA that they were on the short-list with NIPSCO. Jim Pressel showed up with solid knowledge that NIPSCO knew nothing about it. He said to wait and don't get ahead of the state. That was in April of 2022 actually. Sixty (60) days later they went in front of the BZA with a song and dance that they reduced their footprint from forty (40) acres to eleven (11) and they had the gentleman named Cyrus from Texas in house at the meeting and said that he showed up and purchased the land that day and bought it from the Cerney's. He lives adjacent from the Cerney farm; he is exactly right there. Unfortunately, they didn't buy that. It went on and on and nothing occurred. So, the BZA approved Special Exception for eleven (11) acres, not the forty (40).

**Open Road Renewables bought land from Koehn Farms Inc which is not immediately adjacent and while the land totals 32.72 acres the project footprint is only eleven (11) acres. (Parcel 46-12-30-100-016.000-055)*

Christopher Williamson stated Open Road Renewables has three (3) corporations well-structured for bankruptcy to be honest, that's why they do that. His excuse was good financing, but it's not. They finally closed on that property and they tripled their footprint. It's up to forty (40) acres again. Really, they can't do anything with that piece of property because it doesn't even have a Special Exception from the BZA. It was only for eleven (11) acres. Jim Pressel authored Act Number 1173. There are a lot of rules in there. One (1) of them is a thousand feet (1,000') from a one-hundred (100) year flood zone. Well, they make that, but nothing has been determined about wetlands. There

are eleven hundred feet (11,000') from certified wetlands owned by Braun. When the land that they purchased got put into their name, what was a wetland under Cerney's name is no longer a wetland. He doesn't know how that occurred, but it did.

**Army Corps of Engineers, via a letter dated May 4, 2022, determined that after a wetland delineation of the Monroe Power Project location that the property "did not meet the Corps criteria for a wetland and is, therefore, not within Federal Jurisdiction." File No. LRE-2022-00067-146-J22*

Christopher Williamson stated Jim Pressel said they made it bigger to get farther away from the wetlands. That's why they made it bigger, but they are not zoned for Special Exceptions for that parcel so this Commission cannot do anything with anything because they don't have the zoning approval. When they say to eliminate batteries, he thinks that is a huge mistake because that is what makes it dangerous. They have to go through explosion testing. They all have to be in their own little container. When they take that exemption, they should almost put more criteria on it when it is lithium-ion batteries; that's when they should ask for it. He thinks they are missing a real important thing. He would appreciate them actually putting in an ordinance and say location like they heard today. There have been seventy-five (75) fires in BESS operations since 2011 and the typical evacuation area is six (6) miles. That's what it is. They can read about it. That's there; it's the rule. This is less than two (2) miles away from a school. Two (2) miles from a school. Just set an ordinance and keep it five (5) miles away from schools, hospitals, and things of that nature and that will move them to the KOP where there is another substation. Indeed, it has been said that if NIPSCO was truly interested in this, they would upgrade that substation and put it there. Thank you.

Joe Haney stated thank you sir.

Earl Cunningham stated he thinks it is an important time that they recognize that sometimes they allow additional comment that is very valuable. There is information there that all of them need to hear. He wasn't prepared to give that when they were talking about another subject. He appreciates the President being open.

Christopher Williamson stated thank you.

Joe Haney stated yes, absolutely. For the record, this is a little different from how they normally conduct their meetings, but there wasn't public comment listed on the agenda so he will make sure that is at the top of the agenda moving forward for the rest of the year.

Steve Holifield stated his address is 6782 E. 100 S., LaPorte, IN. He has been watching this battery facility and its projections done, stop, and now it is back on. He guesses now they are bringing it forward again. He is the Township Board Member President for Lincoln Township. They discussed this and he discussed this with Jim Pressel when he was developing this House Bill 1173 last year. What are they, the fire department, supposed to do with all of this? They are allowed to offer them training and that's about it. What they found out on their own when he spoke with other fire departments, including bigger fire departments than the volunteer ones, full time fire departments, and lithium-ion batteries, if they set on fire, they are to be picked up off the ground by a crane, set and submersed one hundred percent (100%) under water. The pictures he saw, they can watch them

burn underwater. They burn under water. They burn until they go out and sometimes, they have to add more water to them. He doesn't know of any volunteer fire department. . . Pleasant Township would be involved in this too because it's actually in Pleasant Township. Lincoln Township would be the first responders that would come there for mutual aid. None of them have the capacity to lift that. He believes they are forty-five hundred pounds (4,500 lbs.) or more. That is substantial. They aren't just going to grab a neighbor's loader tractor, pick it up, and set it in there. So, they need to make sure the ordinances cover this as well and any of the new-fangled green energy deals that keep coming forward. They need to protect the environment. They need to protect the citizens and the ground for the future generations. This is just north of KOP. Wetlands back there which flow directly towards the Kankakee River. He thinks they should make sure they strengthen the ordinances for any kind of energy deal coming in here to protect the future. Thank you.

Earl Cunningham stated he thinks they should allow Mr. Hendricks because his comment did not say to exclude. He was trying to be more inclusive, correct?

Anthony Hendricks stated yes. They have talked about this. Believe him, the public has done amazing research on this.

Joe Haney asked Anthony Hendricks if he would like to swap out with his alternates.

Anthony Hendricks stated no, it's fine. They can vote. They don't know what energy storage systems are coming. They know they have batteries. They could go to capacitors. They could go to nuclear. There are so many energy storage systems that are coming on very strong and very fast that they cannot keep up. At a minimum, he thinks this Commission could get the LaPorte County Commissioners to make it a Special Exception where they have some sort of reigns on this thing or any energy storage system. He is glad the public has researched this; they have been amazing. He has researched this too. If they throw these things in water or they have it in a containment system where they pour water on it and encapsulate it in water because they don't want fire department personnel by these things, they are chemical fires. They can't even get close to them. They don't ever want to be anywhere near them. He wanted to make sure that they as a Commission move forward for any energy storage system, they want to make sure that they focus on commercial and industrial because there are energy storage systems that are people's residences right now; they want to make sure that they can still have energy storage systems whether they be batteries, a Ford F-150 car they can park and run their house off of. These are commercial and industrial operation that they need a Special Exception to give Mike and Doug some teeth and through the Commissioners, whether it is an ordinance or whatever it is, they can go above and beyond the ordinance that Jim Pressel put together which is good. They have concerns in their area especially wetlands, setbacks, chemical fires, volunteer fire departments, but if they say battery energy storage systems, their attorneys are fantastic. They have the best attorneys they can buy and they will clip on that and they will say these aren't really batteries and they will find a way to wedge around it. If they say any energy storage systems then they encapsulate them in everything they want to do and they have some control in their County about what happens.

Earl Cunningham stated thank you.

Harold Parker asked if they have any paper written. They are talking about all this. Are they writing an ordinance?

Attorney Biege stated no, that's his point; they're not because the State took that away from them which he doesn't think that is a bad idea. For example, with the one (1) facility that the BZA did pass, they have like twelve (12) conditions on there where they are paying for our engineers and the engineer is going to approve it, et cetera, et cetera. DHS said nope. The legislature said no it's on DHS. So, that statute supersedes anything they do, but what they can do is get in front of a board of authority, the BZA would be the proper entity, to take a look at it. Tony's point is excellent. He thinks of a battery storage facility and now he knows what they are. The first time he thought about he envisioned a big Duracell sticking out of the ground so he learned about them, but they don't know what is coming. He wants something in place so someone in the County has the power and authority to look at it before it goes through and they don't have the jurisdiction or authority to stop it or put conditions on it.

Harold Parker stated they are talking about it. How do they get there?

Attorney Biege stated for right now, make it a Special Exception because he can't draft an ordinance about something that does not yet exist. So, the best they can do for now is make a Special Exception before it goes up in the County, it will go in front of the BZA. As for safety inspection and wetland limits, that is on DHS with the battery storage facilities. If and when they get new technology, and Tony's point is excellent, if they say any energy storage system, that will cover them for stuff that doesn't exist yet.

Harold Parker asked Tony to put something forth as he has all the words. Does he have any direction or how to put stuff forth. He is looking for how to do this.

Anthony Hendricks stated he thinks Doug is right. If a motion to the Commissioners for a Special Exception to any energy storage systems, the Commissioners can adopt that and then that goes to the BZA for Special Exceptions beyond the State's rule that they can put their expectations for what any energy storage system comes about whether it be batteries, capacitors, etc.

Harold Parker asked if he can hook that? How can he hook that? Is that good enough?

Rita Beaty stated he is trying to make a motion.

Anthony Hendricks stated he will want to make a motion to forward a Special Exception for any energy storage system to the Commissioners.

Rita Beaty seconded.

William Benjamin stated his address 7267 E. Chicago Rd., New Carlisle, IN. They are discussing all these different variations if they could table it, but what about a moratorium until they do more fact finding and get experience so they can find out more about it. They are saying they don't know if it will be batteries or nuclear, but why don't they put a moratorium on everything until they can research it better.

Attorney Biege stated on the battery systems, the State has already passed a statute so they cannot supersede State statute. So, on the battery facilities they are kind of stuck, but if they make a motion and say any storage system, then if it is a Special Exception, then it has to go the him, the Building Commissioner, and the BZA.

William Benjamin stated he understands. He is not trying to run all over everyone's rights, but this is a lot. They shouldn't have to make a decision in fifteen (15) minutes about what they are going to do that will affect them down the road for a long period of time.

Joe Haney stated if he may, the biggest issue they have right now on the storage systems as Doug said initially is that the State has taken most of the authority, virtually all of the authority, away from Counties, Cities, and municipalities in regards to these battery storage systems. What Doug and Tony have proposed her is basically about the only way that they can have any say or control over these storage systems.

William Benjamin stated Mike Ekovich has perfect examples of Kosciusko and Dekalb County in Indiana where they had really strict ordinances that they drafted that he handed out last week when they attended the Commissioner's meeting.

Joe Haney stated there are a few different moving parts here. There are the BESS systems which is separate from solar. They do have a lot more control over solar panels, but this is just the battery storage systems themselves and the State legislatures has taken away the County's ability. . .

William Benjamin stated they kind of go hand in hand, don't they. The battery storage is not any good without the solar panels.

Joe Haney stated they have some battery storage facilities around that just sit next to adjacent transformer lines and tie into those just to try and help stabilize the grid, but when it comes to what they can do in the County, same thing in the cities, when it comes specifically just to the BESS, not the solar, but the battery systems, there is very little if anything the County can do because the State legislature has just recently taken all that power away from the County. They are stuck now as a County. Making the Special Exemption for the BZA is probably about the only way he believes they can try and put some sort of guard rail so they at least have something as opposed to being one hundred percent (100%) the State with them just left swinging in the wind. That's where the disconnect is with the batteries versus the solar. They are under Homeland Security now and it is what it is unfortunately.

Attorney Biege stated to add, they do have a Solar Ordinance in place. They have had that for a couple years. They have amended it once since then. That's already been in place, but the State has decided these differently. He doesn't understand the grid, but the grid has certain locations and so it is an area issue on power supply rather than the Counties. That's probably the number one (1) reason why the State took it away. Number two (2) it is very, very technical. They don't have the engineers in the County to do it.

William Benjamin stated right, that's why he is saying they need more time to consider all the options.

Attorney Biege stated on the BESS systems they are stuck. The State already passed the law and they can't supersede it. On the solar, they have had that in place a couple years. They took a look at a lot of solar ordinances when they drafted it. The County controls the solar in the County. The State controls the batteries. What he is trying to do is get some stop gap measure for the County so they can at least look at it before they go in to make sure they are in an appropriate place to go.

William Benjamin stated absolutely. That is all he is asking for.

Anthony Hendricks stated the audience is awesome on when they do research. There is something called Google Scholar. If they ever go Google Scholar, they can research any court case in the United States or Indiana. Doug could probably help him out here, but Porter County has presently removed their solar ordinance and they have nothing. If they do that, they open their flood gates for everything. Now, if he reads Google Scholar and court cases in the State of Indiana and the United States of America, they can't just say no. They can't just put a moratorium and just say flat no. That will never happen. Those people have attorneys that are amazing people and they will eat the County alive in cost and time and probably win. Just to say no, he hates to say it, is not an option.

Attorney Biege stated he would like to add to that. He is not advocating for either side or any energy system. The Constitution says they have a right to their property. If they were to say they couldn't build anything he thinks the court would say that is an unconstitutional taking. So, in zoning, they can limit the use and the areas those uses occur, but they can't tell somebody flat out they can't do something on their property at all anywhere in the County.

Joe Haney stated please approach the microphone and also generally, be brief, but go ahead as they normally only have one comment per person.

Christopher Williamson stated this will be very brief. He doesn't Google anything. He has Jim Pressel's authored Act 1173 clearly stated that their Commission has the ability and the right to write an ordinance that will not stop them from doing it, but telling them where they can do it. It clearly states that. That's all he is asking them to do. Take it away from the wetlands. Take it away from his property. Put it in Kingsbury Industrial Park where there is already a substation. If NIPSCO wants it, they will be more than happy to do it. They have that ability. They voted for them. Please do this for the community.

Joe Haney stated here tonight, his general thoughts are that they should do what has been motioned and seconded here tonight to get that rolling and then perhaps work with Doug over the upcoming few weeks to see if there is anything else they can do and what kind of leeway they have in the statute here that Mr. Williamson mentioned about. Maybe there could be some other locational boundaries they can set up and distances.

Randy Veatch stated his address is 4177 W. Schultz Rd., LaPorte, IN. He is up here mostly on the BESS buildings and the regulation behind them. The first time he dove into helping a company, Oorja Protonics, he helped develop a cabinet for storing batteries. That was in 2008. They got FM

approval, UL approval, and Canadian approval. From about 2008, after that everything tanked; it went nowhere. After that, the last couple of years, his company has been trying to develop a BESS building. They are right now making cabinets for reclaiming batteries. They put a label on it. That's what they do. It's a metal building they put a label on it. It does nothing. There has to be more than that. The last couple of weeks he has been looking more into the BESS building and he has been having some correspondence with Mr. Polan on this. He went through the House Enrolled Act 1173. Yes, it does say that they are supposed to follow NFPA 855 the 2023 Edition. Yes, the State did take this away from the County and gave it to Homeland Security. He has letters with him from Homeland Security that says that they have now issued this over to sub-committees and that for review of the adoption of new building codes, fire codes, and electric codes. There is a little sub-caption of five (5) on there. The most recent versions of these codes were adopted was the 2012 Building Code and Fire Code and the 2008 Electric Code. He thinks they already supersede that already with their LaPorte County codes. The storage practices on how to store these things, one (1) thing that puzzled him the other day he heard, which he isn't sure where it comes from, was that they are throwing twenty thousand (20,000) gallons of water next to this thing to put out the fire that can't be put out. He stated this earlier, if they take a teaspoon and they throw it on a battery fire and you have a teaspoon of hazardous waste. If they take twenty thousand (20,000) gallons of water and dump it on a battery then they have twenty thousand (20,000) gallons of hazardous waste. He thinks LaPorte County has every right to say they don't want this by a wetland or by a river. Where is the water going to go? The fire department is then going to be told to come out there and dump more water on it. The twenty thousand (20,000) gallons is to get the fire department enough time to get there. What happens to that water? He doesn't know why they can't say no, that they don't want it there. His company has teamed up with Purdue University today; they joined up with their engineering department to try to come up with ways to properly store these batteries. They were willing to join them because they are working with the government and finding a way for the drone batteries, which cost two hundred and fifty thousand dollars (\$250,000), and no way to store them. They are trying to develop a cabinet to go in a submarine. When the batteries blow up in a submarine, that's a bad day for those people that are in the submarine when it's under the water. These BESS batteries which are a hundred (100) megawatt at the smallest. The batteries when they are putting the buildings in in Europe, they require them to put in fire suppression systems that are with nitrogen that actually takes all the oxygen out of the air. The fire suppression system he believes costs about three quarters of a million dollars (\$750,000). They are telling them they want to come up here and use twenty thousand (20,000) gallons of water instead. That's a pretty cheap offset. He thinks there might be something to look in on with that. Thank you for your time.

Joe Haney stated thank you Mr. Veatch.

Joe Haney stated they have a motion on the floor. He doesn't see anymore public comment so they are going to move on. Again, they will have all the public comment at the beginning of the next meeting so they can keep things streamlined. The motion stands and they have a second. Does anybody need a refresher on the motion? The motion was to recommend the County Commissioners that they pass an ordinance requiring a Special Exemption go before the BZA for any energy storage system.

Attorney Biege stated he would keep it simple and make a recommendation to the County Commissioners that a Special Exception. . . He is trying to shortcut it here because he doesn't want

to amend the County Zoning Code yet because it takes a while. They have to do notices, public hearings, and all that. He thinks they should do all that, but he wants to get something in place temporarily until they can do that. He would just make a motion at the Plan Commission level to instruct the Building Commissioner to handle any ESS facilities as a Special Exception. That's how they did it on the last request, but they didn't have authority from the Plan Commission at the time because they didn't know what to do with it. Then he will draft an amendment to the Zoning Code and present it to the Plan Commission and do it properly and take it to the Commissioners. He is just concerned they don't have anything in the meantime.

Joe Haney stated he agrees.

Harold Parker stated that is the motion.

Harold Parker made a motion to instruct the Building Commissioner to handle any ESS facility as a Special Exception.

Rita Beaty seconded.

All Approved. Motion carries 9-0.

2. Solar Discussion

Joe Haney stated he knows they have talked a little about solar here, but is there anything in addition to say. They had a fantastic meeting a couple days ago where RWE Solar came up and presented some stuff on Bluestem. They had some very good lively debate between everybody and heard some really good points. If anybody hasn't seen that he would recommend they go back and view it on ALCO or it's on YouTube as well. Watch that meeting and see all the questions and things that came up. Some of it they are still looking into.

Earl Cunningham stated they would be remiss if they did not compliment the public for their discipline during that meeting. Nobody raised their voice much. It was respectful on both sides. He was very proud of their constituents at that time.

Joe Haney stated it was. It was fantastic. Every chair in the meeting room was filled and it was standing room only all around the room. Everyone comported themselves with utmost maturity. It was fantastic. Even before he was a commissioner and a few meetings where there was wall to wall people and it was definitely one (1) of the most pleasant experiences. He would say everybody really got a chance to express themselves.

Anthony Hendricks stated he thinks it was an awesome workshop. Very good. He asked Darlene Hale and he believe Commissioner Haney and Mike Polan have found out that the County can put up a website so there are many ways the public can get ahold of the Plan Commission or the Commissioners or any elected officials. Email is great. The public did an awesome job researching. Harold, Doug, and most of the Plan Commission members have been working closely about solar and what is happening with things that are coming up. He has worked very closely with Starke, Pulaski, Marshall, Porter, Lake, and St. Joe and knowing what is going on and they have big solar

farms out there. What were the pitfalls that they ran into because they have already been through this. They know what can happen with solar. They have been working on this for about a year and a half; they have an amendment, they haven't forwarded completely yet to the Commissioners yet for review, but he hopes that the public keeps helping them. What he hopes happens is the workshops are great, a lot of people can't attend those though. They are always welcome to email any of them especially the Commissioners or himself or Mike, anything they pull up, anything they research, or anything that might help them in a pitfall, any regulation. Again, they can't say no completely. They can't make the regulations so onerous that they are impossible. He used the example that if a police officer pulls him over in Porter County and he is doing sixty-five (65) in a fifty-five (55), Porter County can't say they don't like me so they want a ten-thousand-dollar (\$10,000) fine. The court will never, ever hold that up. So, they can't say no solar. They can't say solar has to be five (5) miles away from everything. They have to have something that is fair and equitable. So, the public has done a great job with the research out there. People have seen these solar farms. They have talked about glare, setbacks, the engineering study that is in their new proposal; they will pay the County to hire an engineer to do it. That's nice. They will find out what the setbacks are. The solar company is talking about even bigger setbacks; that was nice. Green screens. They have talked about a lot of things like chemicals, distance from waterways, setbacks from roads, setbacks from properties, and a number of other things. He hopes and encourages the public to email them those things and they can put them on the website and start working through them on a website so they can all enjoy what they have researched and they can find the pitfalls and figure out what they want the amendment to completely entail because they are coming and they are coming really fast. They have to move quicker which is what they thought a year and a half to two (2) years ago. They have to start moving before they get here. They know what happened in Jasper-Pulaski. That's what started with him. He saw that huge development. He read all the sites that people were for or against. He has talked to the Starke County Plan Commission members, the Starke County Surveyor, Pulaski County people. He has talked to the owners. What were the pitfalls in their contracts? He has solar at his house. He knows the contracts are horrible. He knows they have attorneys that are awesome. They will eat them alive if they don't make the rules bulletproof. The only way to do that is to gather like the workshop. People came up with stuff that was awesome. They really did some research, gave them some parameters that they need to put into law. They are coming whether they like it or not. Now, like Mr. Haney's comment that they have legal rights for their property too. How much are they going to infringe on this? Is it their neighbor and maybe they don't like it? He doesn't know. They went round and round the first Solar Ordinance and they looked at a lot of stuff and Doug did a lot of research. Again, like the energy storage systems, there is a differentiation between a personal small one on their residential property or a commercial industrial operation. He doesn't know where that heads, but they have to move faster than not, now. Things are coming. They know what is going on in New Carlisle and what is going on in South County.

John Carr asked when he talks about moving fast, what is he referring to?

Anthony Hendricks stated two (2) or three (3) months.

John Carr stated no, what changes is he referring to?

Anthony Hendricks stated on their Solar Ordinance.

John Carr stated right, like what?

Anthony Hendricks stated like in their Solar Ordinance they were talking about how they get engineering to pay for engineering.

John Carr stated he recalls going through the Solar Ordinance, he doesn't know how many years they went through it and they took their time and went through other Counties and they took their time and they went through it. Harold was part of it, he was, Tony was. Now, all of a sudden, he is telling them that they need to move quick and they have to change stuff.

Anthony Hendricks stated there is more they need to do like escrow accounts, insurance accounts. How do they make sure they are going to get to use all that.

John Carr stated they talked about all that.

Anthony Hendricks stated they didn't put specifics in yet.

Attorney Biege stated on those, for example on that issue alone, he doesn't want to get any more specific. He is working on the Decommissioning Plan Agreement for the proposed solar now. He doesn't want to box them into any specific funding mechanism. He wants to give Mike some discretion and the County Commissioners some discretion on how they put together the funding mechanism for decommissioning because they haven't done this before. Just like they are talking about on the ESS facilities, he wants to get some leeway so if something comes up that they don't foresee, they can still handle it and they don't have themselves boxed in. To echo his comments though, they are open. As the lawyer, he doesn't care whether they are in support of it or against it, he is asking them to help him get the stuff drafted. He thinks they have a solid Solar Ordinance, but it can be improved. They have a laundry list of things that they have discussed.

John Carr stated he would like to see the laundry list. They have talked about a lot of things during the solar discussion and then for Tony to come up and say they need to act fast and they need to make changes and then he hears about the decommissioning and stuff so he would like to know all the changes they are talking about.

Anthony Hendricks stated they talked about glare.

Attorney Biege stated he hasn't sent a final. He has been taking notes in our discussions over the last year or so. He can send those. He doesn't think it is enough to do the amendment because he kind of foresees that they will have more in the near future and obviously they don't want to be amending an ordinance every six (6) months.

John Carr stated right.

Attorney Biege stated he can send him what they have so far. He doesn't think any of it is crucial; they have the basic stuff they need, but it can always be improved upon.

Anthony Hendricks stated he thinks the website will gain them more education than they could ever with the people out there doing the research and they will lead them to the laundry list of things that they pull up. As long as they document the website, email them, call them, or write them a letter of what they think and they can put it on the website and everyone can view it then they have a common place to look for a list of things they need to hit. This is happening whether they like it or not. Porter County, he has talked to them before Mike Novotney left, and he wanted LaPorte County's website and our laundry list that they came up with because they are looking at the same thing. Pulaski and Starke are looking at the same thing.

John Carr stated it's already there in Pulaski and Starke and there are numerous farms being built on.

Anthony Hendricks stated yea, they have like thirteen square (13²) miles of solar.

Attorney Biege stated good example, it died when the wind mills came around, he doesn't know how many years ago.

John Carr stated they are still there.

Attorney Biege stated well, but when they first started, they had nothing in place. He had no indication it was on the horizon. He isn't responsible for it, but on the other hand they try to stay ahead of the curve, but they were not ready for the wind. Now, the project died for the most part, the large one (1), but they didn't have anything in place at the time. So, they want to avoid that now and, in the future, when they have new technology coming down the pipe.

John Carr asked if they have a windmill in the County.

Attorney Biege stated he doesn't think so. They were talking about a large project in South County and they didn't have anything in place.

John Carr stated he remembers it was rumored to come to LaCrosse.

Attorney Biege stated yes so that dies and that was several years ago, but he doesn't want to be in that position again when they can be as far ahead of this as they can.

John Carr stated he agrees.

Joe Haney stated he appreciates that. Any more discussion from the Board on solar here?

Harold Parker stated he would like to say a couple things to the people out in the crowd. He knows Mike Ekovich has done a lot of work out in the field. Thank you for getting people going on all this stuff. It is helpful to have the people. They have to have people out there telling them what's happening. Mike Ekovich has done a fine job of doing this. He thanks him for that.

John Carr stated he would like to echo what Harold said. It's good that everybody is collaborating and coming together and understanding solar and everything that is coming about. It is educational for sure.

Joe Haney stated just briefly taking over as President of this meeting, but going forward he will try to make sure that all the Board members are looped in as far as Open Door Laws will allow that are looped in enough via email to make sure that they are all getting as much information as they can. That way they are all kind of on the same page when they come to the meetings. The same page as far as the amount of information that is out there and what is actually being worked on rather than not. Again, they will make sure they comply with all the Open Door Law stuff, but at least getting some of the information like the list that they were talking about earlier, Mr. Carr, make sure that is something they all get their eyes on and help to have some ideas so when they come here to the meeting, they can look through everything ahead of time and make sure they are dotting all their "i's" and crossing their "t's" or coming up with things, for example from the public who reach out to anybody individually to make sure they are getting this right.

Mitch Bishop, County Planner, stated one (1) quick bit of information too. As they know, they will be updating their twenty (20) years Comprehensive Plan. Usually, when they do ordinance updates and recommendation, a lot of times land use and ordinances specifically they come out of their twenty (20) year plan. That plan will take about a year, but he doesn't want to get into a bunch of little small changes here and there. He thinks it is a better plan to actually look at the County as a whole. The Comprehensive Plan will take recommendations on future development, future growth areas, make recommendations on specific land uses and where they should and shouldn't be. Those recommendations carry on to zoning changes, which is a plan that usually takes a year. As they know, he received a grant and he will be going before the Council next month he believes for the matching funds. Just recently, they scored those. In fact, two (2) members of this Board, there is a three (3) member Scoring Committee and it is a rotating basis, one (1) councilman, one (1) commissioner, himself, and the engineer. It was Earl and Commissioner Haney were two (2) of the three (3). Just today, they recommended a winning firm, Antero Group, the principal is out of Michigan City, his office is out of Chicago and Denver as well, but that have done many in the past. Their current Comprehensive Plan was adopted in he believes 2009 and the recommendations to the Zoning Ordinance were adopted in 2016. So, these are the Comprehensive Plans to be updated. They call it a twenty (20) year Comprehensive Plan. It is a policy plan so it is looking at a twenty-thousand-foot (20,000') level and usually they are updated every ten to fifteen (10 – 15) years so it is due. He would like to say that even with the BESS and the solar, these are issues that potentially come out of the Plan and recommendations on where they should be sited in their County. That's all.

Joe Haney stated thank you Mr. Bishop. Anyone else from the Board.

Rita Beaty stated she was just involved in a Robert's Rules of Order meeting training session not too long ago. She knows it wouldn't just be for the Plan Commission, but maybe if they could get a group like the Zoning Board and maybe Commissioners, she isn't sure who all would be interested in it, but if they could bring the gentleman for this, she thinks it would be really nice for everybody to have one (1) lesson on Robert's Rules of Order. Like Doug said, it is a pain in the rear trying to read the book. To have everything highlighted and pinpointed would be nice.

John Carr made a motion directing Rita Beaty to reach out to them to have them come to their meeting to teach them.

Harold Parker seconded.

Earl Cunningham stated that seems like a great idea and it seems to him that if they could ask to video tape that then that they could share it with all County employees as needed.

Rita Beaty stated unfortunately, he is copyrighted and he will not allow his class to be taped. She asked that because she was going to bring it forth, but she was not allowed to.

John Carr stated one (1) of them would just bring their cell phone.

Earl Cunningham asked if he is willing to do a morning session and an afternoon session so more people could attend.

Rita Beaty stated absolutely. She is sure she could talk to him and see what his schedule is like.

Earl Cunningham stated thank you.

Rita Beaty stated thank you.

Harold Parker asked how long it took.

Rita Beaty stated it was a two (2) hour class.

All Approved. Motion carries 9-0.

Joe Haney asked for any other new business.

John Carr made a motion to adjourn.

Somebody from the audience asked about the solar Discussion agenda item.

Joe Haney stated they did just discuss solar. They did BESS and then they did Solar. He does believe he asked if anybody else had any additional questions.

Harold Parker asked if they are critiquing that meeting that met with the public. They said they are drafting ideas from it. Are they critiquing it or will there be a second report to the government on that. He is talking about the open forum meeting and nothing has had consequences from it.

John Carr stated they talked about the amendments.

Attorney Biege stated two (2) things. One (1), that meeting was a workshop specific to that solar project. They expect there is going to be a petition going in front of the BZA in March or April he

believes. It was recommended by him that way the public could get the information on the project before the request came to the BZA.

Harold Parker stated he just wanted to know what he was doing with any information he gleaned from the meeting. He doesn't know. He is asking what he is going to do after the meeting. They have meetings all the time. Did they gain from it? Is there anything they can put on paper?

Attorney Biege stated he gained from general knowledge. He assumes if the Plan Commission members want to make amendments to the current Solar Ordinance as a result of the meeting, he is welcome to entertain those changes. He hasn't gotten any yet.

Michael Polan stated he would add that another thing that came out of it was the Commissioners, after they graciously hosted the workshop for the public, the developer, and the regulatory personnel, they are also hosting that information in a centralized place. Instead of some of the regulatory people that already have full plates answering the same question over and over and over again for a thousand (1,000) people, boom, the information is coming in and going out. It will be hosted in a central location which he believes is on the Commissioners website. They can keep adding to that as information comes in and they can direct people to that. They have YouTube links and recordings of the workshop for people that weren't there, didn't attend, or didn't see it so they can get that information to them. He will conclude that he will not usually recommend legislative action. He is the enforcement official and he doesn't think that the person that enforces the law should make the law that they enforce. There will be some exceptions to that and this will be one (1) of them because it is such a hot button issue with so much public interest. He thinks it would be prudent for this Commission to consider a percentage limit, which Harold and he discussed, on solar on their Ag land. Whether that be County wide or specific to a project, that would be up to the Commission. He is not going to make it a habit of recommending legislative action, but he is making an exception in this case. That's his comment.

Harold Parker asked if they understood what he just said. It is something they can go look and keep going on it.

Steve Holifield stated as long as they realize that when they talk about one percent (1%), that's only one (1) project. Right now, they have tracked over five-thousand (5,000) acres in the County not just twenty-six hundred (2,600). They're not saying they don't have the right to do this on their property, but they do not have the right to infringe on your neighbor's property and how they can use their property at the same time either. Harold should know, livestock farms and the rigmarole they go through to put livestock in. They are regulated by IDEM. There is no regulating agency. He spent half a day at the State House. There is no regulating entity over solar.

Earl Cunningham stated for clarification, he is not saying that the existing solar project that was the source of the workshop is up to five-thousand (5,000) acres. He is talking about other companies that are already soliciting.

Steve Holifield stated talking to other ones, there are at least two (2) other projects, two (2) other companies that are soliciting right now. One (1) of them for all hopes and matters pretty ironically is a farm management company trying to take ground out of production. Again, they have the right

to do what they want with their land, but they do not have the right to try and infringe on the other people.

Earl Cunningham stated for clarification. Bluestem said one percent (1%) of the County's acreage and that is the only one (1) they have.

Steve Holifield stated it is just the twenty-six hundred (2,600) acres right now. That is the only one (1) that has come forward he believes. He has a landlord that has been asked about one (1) from another company.

Earl Cunningham stated there are other farmers that are being asked about windmills. They are still talking to them about windmills on some of them.

Steve Holifield stated they are. They have to watch these because all of a sudden, if it blooms up from twenty-six hundred (2,600) to five thousand (5,000) acres, that is quite a substantial increase.

John Carr asked what his position is on windmills.

Steve Holifield stated he is not so sure they are the gung-ho either. There is an election here in November. All this green energy stuff has a tendency to possibly disappear off the table if there are no more grants, no more tax breaks, and stuff like that. These things have a tendency to change by administrations.

John Carr stated Steve Holifield is looking for some tighter regulations on solar.

Steve Holifield stated tighter regulations on any of this stuff, yes. He can present info. Kosciusko County put a moratorium. DeKalb County has fifteen-hundred-foot (1,500') setback. Marshall County is in a mess right now talking with people over there. This is happening awful, awful fast. One (1) more thing, for a point of order, if they could somehow. . . Their meetings are. . . He reads the back of the newspapers. That is the first thing he turns to for legal sections. Can they possibly ask them to put this on a page with all the meetings? It used to happen years ago. One (1) specific spot in the paper. Even tell Stan Maddux or Dennis Sadel at the radio station, how about once a day, announce what meetings are going on. It would help the public know more. He thinks it would get more people. They passed the word around themselves after Ms. Gramarossa announced the meeting. Mike Ekovich and he are on a website or Facebook page and that's how it got so many people around because they knew about it. He thinks they would have a lot more people here now. A friend of theirs noticed, somehow, he was looking on the agenda, boom, there has been solar added to an amended. They are watching very, very carefully. Quite frankly, he doesn't trust any of the companies that come from out of State and out of the Country and all of a sudden, they are wanting to take their State and Federal tax dollars and use it against them.

**The agendas are posted two weeks prior to the meeting on the County website. Plan meetings are the third Tuesday of every month pending if petitions have been filed except for the month of December where there is no meeting. Board of Zoning Appeals meetings are the second Tuesday of every month. The amended agenda regarding this meeting only had a single change which was the*

removal of one (1) petition due to notice issues. Solar Discussion was listed on the original and revised agenda.

John Carr stated he brings up a good point, thank you.

Joe Haney stated for this evening, he didn't set this agenda as he wasn't President before today, but it was Solar Discussion which was mostly just for them to discuss as a Board here what they had seen at the workshop.

Emily McDuff stated she is with RWE Clean Energy. She just wanted to thank them for taking time to think about the subject thoroughly. She wanted to clarify that they are regulated by the Federal Energy Regulatory Commission; NERC, as well. (*North American Electric Reliability Corporation*) They can't just willy-nilly add a solar energy facility to the grid. There are a lot of electrical regulations in place and it is a five to seven (5 – 7) year review process at the State and Federal level. Thank you.

Earl Cunningham asked how many years they are into on this project.

Emily McDuff stated she is the developer on the Bluestem Project.

Earl Cunningham asked how many years is Bluestem in on the existing project in LaPorte County.

Emily McDuff stated four (4) years. They submitted in 2020 and they anticipate by the end of this year they should be done with their review process for the first phase of the project. Then it will take another year for phase two (2).

Earl Cunningham stated thank you.

Attorney Biege stated if he may Mr. President, he wanted to remind the Plan Commission and this is why they do not put Public Comment on the agenda. They are not here to talk about the solar project until there is a petition before the BZA. They have to maintain records of the Plan Commission. He is not talking about internal records; he is talking about record before the court. They cannot inter-mingle these petitions and subjects between the different committees. It is not allowed. The discussion is great as it goes to the Solar Ordinance and amendments to the Solar Ordinance. That workshop has nothing to do with the Plan Commission. He is really happy that people went when they were interested, but that was specific to their project. The reason he wants to remind them, the same thing on opening things back up for public comment, both parties have a due process right and right to notice just like Holifield said on the meeting notices. He agrees with him. He has tried to get them to do that for a couple other Boards and they won't do it, but both sides need notice if they are going to discuss an issue that is before the Board. He highly recommends they do not put Public Comment on this agenda. If they want to put Public Comment for input on ordinance drafting, that's one (1) thing. If it is petition specific, they can't just open it up and close it willy-nilly because notice needs to go out first. Whatever decision would be made is going to be set aside. He wants to remind everybody they are more structured than the Board of Commissioners or the County Council; they can listen to anything and it doesn't really matter. Here, it is different. If it is concerning a petition, they can't talk about it because the court is never going to get. . . Now,

they aren't making a decision on the solar project, so it's okay, but he wants to remind them on how this works and so the public understands why there is no Public Comment section in both BZA and Plan Commission.

Joe Haney stated they will take a look at that and anything that is put on, make it specific and ordinance related to make sure they don't do anything petition wise which obviously there is no Petitions on this here tonight.


Attorney Biege stated it is easier to get off-subject on hot bed issues, but he is concerned that a member could come there, speak against a project, or that the Petitioner is not here or available, thinking they are on the record and making a difference and here, they're not. They need to do that at BZA.

Joe Haney stated thank you.

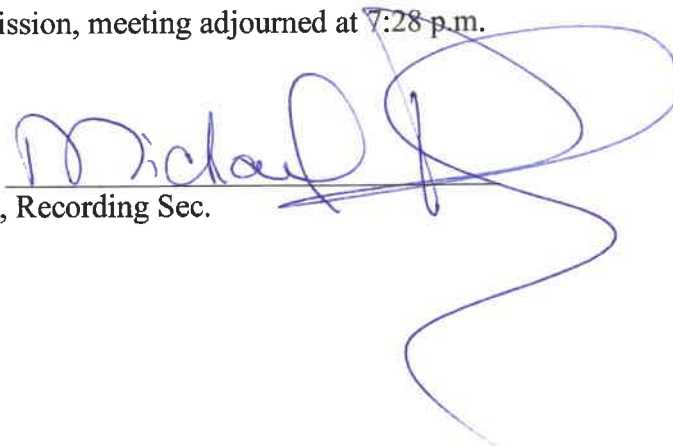
John Carr made a motion to adjourn.

Harold Parker seconded.

There being no further business before the Plan Commission, meeting adjourned at 7:28 p.m.



Joe Haney, President



Michael Polan, Recording Sec.