LAPORTE COUNTY PLAN COMMISSION

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

ANNEMARIE POLAN
Building Commissioner

LA PORTE COUNTY PLAN COMMISSION MINUTES
July 26th, 2016

MEMBERS PRESENT:	Anthony Hendricks	Jim Pressel
	Glen Minich	Rita Beaty Kelly
	Mike Bohacek	Matthew Bernacchi
	Gene Matzat	

OTHERS PRESENT: Annemarie Polan, Recording Secretary, William Hedge, Attorney, Dar Pavey, Secretary.

PLEDGE OF ALLEGIANCE

ROLL CALL

Anthony Hendricks asked Dar Pavey for roll call.

APPROVAL OF AGENDA

Anthony Hendricks asked for a motion to approve the agenda as presented. Mike Bohacek made a motion to approve as presented. Matt Bernacchi seconded. All approved. Motion carried 7-0.

APPROVAL OF MINUTES

Anthony Hendricks asked for a motion to approve the meeting minutes as presented. Mike Bohacek made a motion to approve as presented. Jim Pressel seconded. Motion carried 7-0.

Anthony Hendricks said his private firm Charles Hendricks & Associates has done work for D & M Excavating in the past and they have no pecuniary interest and he wants to know if he needs to recuse himself from this meeting.

Attorney Hedge told Mr. Hendricks that he did not.

Anthony Hendricks asked if there is anyone else from the board.

Jim Pressel said that he does work at LaLumiere School and Jay Miller. Mr. Pressel said he doesn't know if that is part of D & M, but a full disclosure is up there and he gets paid from La Lumiere School, not Jay Miller.

William Hedge asked the two attorneys if they have any problem with Jim on the board.

Attorney Keller asked the relationship again.

Jim Pressel said that he has a contracting business and he works at LaLumiere School. Mr. Pressel said he doesn't know if Jay Miller is part of D & M Excavating; I know he's Ryan's dad and Jay is the construction superintendent out there, but he does work for LaLumiere not through Jay Miller.

Attorney Scott Keller (inaudible), but he didn't object.

Mike Bohacek told Anthony Hendricks granted he has done some work for D & M in the past, I'd ask that you surrender the gavel to the Vice Chair.

Anthony Hendricks said no problem and at this point I'll let Matt Bernacchi the Vice Chair of the Plan Commission run the meeting.

Matt Bernacchi asked if he should read the Petition out loud for the record.

Attorney Hedge said go ahead, please.

Matthew Bernacchi said:

Comes now, D & M Excavating, Inc., by Ryan J. Miller, Vice President, ("Petitioner") and by counsel Andrew D. Voeltz of Howes & Howes, LLP, and respectfully petitions the La Porte County Plan Commission for clarification of the expiration date of Building Permit BR-15-0555, applied for on July 16, 2015 and with the listed expiration date of July 15, 2017, or in the alternative, for renewal of Building Permit BR-15-0555, the Permit that was issued by the Plan Commission on or about July 16, 2015 for property located on County Road 400 West, Center Township, La Porte County, Indiana.

Matthew Bernacchi asked if there is any other documentation from D & M Excavating that it would like to present to the board.

Attorney Hedge said he needs to see the legal notice.

Mike Bohacek said that the courthouse security alerted us that they're doing an active shooter simulation in the room next door, so if you hear some noise it's nothing to be concerned about.

Good evening members of the Planning Commission, my name is Andrew Voeltz and I'm an attorney with Howes & Howes here in La Porte, Indiana representing Ryan Miller and D & M Excavating. Pursuant to Mr. Hedge's request, I have the notice that was sent out, as well as the affidavit of adjacent landowners, although I'm not entirely certain that is required by law, we certainly did it as a courtesy to all involved.

Attorney Hedge told attorney Voeltz he would have to agree with him on that.

Attorney Hedge told Andrew to go ahead.

Attorney Voeltz asked if notice is adequate.

Annemarie Polan, Building Commissioner said we will check it.

Attorney Voeltz said members of the commission, I'm going to approach and provide you with a document packet that we will be submitting as Petitioner's Exhibit 1. You will also note that we have a Court Reporter present tonight because he thought that was appropriate considering the gravity of the situation and the need to establish a clear and concise record if there would in fact be an appeal of the board's decision.

Attorney Scott Keller asked Attorney Voeltz if they could have a copy.

Attorney Voeltz said that you will note what's contained in Petitioner's Exhibit 1, is the original building permit that was issued to Ryan Miller and D & M Excavating back on July 16th, 2015. You will note at the top that it has an expiration date of July 15th, 2017. That is pursuant to Article 23 of the La Porte County Joint Zoning Ordinance, that a site improvement permit, or an improvement location permit shall be issued for a period of twenty-four (24) months. There are no ifs, ands or buts involved with the issuance of permit; it shall be issued for twenty-four (24) months. Now, we became aware of this late in the stages, and apparently everyone involved here was operating under the assumption that the permit was in fact good for one (1) year. However, with uncovering this fact that this permit does not expire until 2017, part of their petition tonight is for clarification on the expiration date of this permit being BR-15-0555.

Attorney Voeltz said that it's their belief that the permit on its face has an expiration date of July 15th of 2017. This was issued in July of last year and this was issued by the Building Commissioner as a matter of course pursuant to the Joint Zoning Ordinance. I understand that there are representations that were made at the meeting that occurred on August 25th, 2015, however we're petitioning for clarification of this expiration date as the first part of their petition tonight.

Matthew Bernacchi said that in the minutes they reflect that the board vote upon a one (1) year permit. My question I would most likely want to ask legal, would be the board's vote to supersede what the Master Plan states for a two (2) year permit. I'm not sure if it was an error by the board, or if it was a misunderstanding, but my understanding after going through the minutes that the board did vote for a one (1) year permit, which would typically supersede the Master Plan asking the plan owner to come back and either reapply, or have an extension on the permit.

Attorney Hedge asked Mr. Bernacchi if he has the minutes of July 14th.

Matthew Bernacchi said that he does.

Attorney Hedge said to be honest, there is no precedent one way or the other on a valid argument with both one (1) year, and the statutory two (2) year. You as a board determine the law in this situation.

Mike Bohacek said that he recalls being here at the meeting and he thinks that it was agreed to by the Petitioner that it was going to be reviewed again in a year. Granted that might supersede the code, but he thinks it was agreed to by the board and the petitioner that we were going to review this thing in a year. I know that it's a matter of procedure and a matter of the permit; the date on the permit might have reflected a different date, but I think it was the intent of the board with agreement of the petitioner, through counsel, that we would be looking at this again in about a year. I would hope Attorney Hedge that would be sufficient, or is there ---

Attorney Hedge said it's up to you. Basically if they want to call it the waiver argument made; you heard the situation, you heard the petition, (unintelligible) permit, the requirement of two years might have been waived (unintelligible) the one year permit would be invalid procedure under that theory.

Jim Pressel said that he printed off all the minutes and the actual, or the recommendation that was made did not have a stipulation attached to it as far as one (1) year, or not. The minutes reflect that it was discussed as a one (1) year four (4) acre pond, but I quote from the way that it shows up in his minutes here that he just printed off "Rita Kelly made a motion that we remove the red tag from the job site for Ryan to go ahead and build his pond" and I seconded that. That's the motion that was made. When it was before us on this occasion, the only thing that we were voting on if you read back through the minutes was specific as to are we lifting the red tag or not.

Annemarie Polan, Building Commissioner, said that we do have permits that are good for one (1) year and we have some that are good for two (2) years. In this particular case we spoke about it as it being one (1) year and everything up to that motion it was said one (1) year. Several people made that comment.

Jim Pressel said that he sees where it was in there, but it's not in the motion that was presented.

Annemarie Polan said she's not sure it had to be in the motion.

Mike Bohacek said that he's looking at Mr. Hedge's letters, or actually it looks like one of the remonstrator's attorneys that on several instances we had talked about it being for one (1) year in the minutes. I think we move forward under that expectation and continue on with the discussions over the (unintelligible) project, understanding that the expectation was that it was going to be a one (1) year renewal period at the time of – the date of the permit.

Attorney Voeltz said that he guesses what he would ask for that clarification, or a fact that this is a one (1) year review of a two (2) year permit, or is a one (1) year permit ---

Mike Bohacek said that his opinion would be that it would be a one (1) year review of a two (2) year permit based on the discussions that we had, because everything was basically saying that we were going to --- I'll have to read this page 14 "Mike Bohacek asked attorney Biege if he received an improvement permit that's good for one year, if the board made changes to our zoning ordinance, that would restrict the size of the pond during that year, he would have to reapply for that permit". Something that really says that this is a one year permit is ----

Attorney Voeltz said respectfully again, he goes back to the fact that the permit on its face is good for two (2) years and we're asking for clarification of the expiration date, or if this is in fact a quasi-expiration date where we now need to present evidence that he is complying with terms of the original permit in regards to a construction of a pond on the property.

Jim Pressel said that what he finds real interesting is that our appointed attorney can't direct us one way or another and there is no precedent for the law and you're asking a Plan Commission to do an interpretation of the law that there is no precedent set. My opinion is this needs to be in front of a Judge, not the Plan Commission. Mr. Pressel said that's what he thinks we should do. I don't know how we send it to a Judge, but he thinks it's very unfair that you ask this commission to vote on something that we're not lawyers, we're not Judges, but you're asking us to interpret the law and there is no precedent.

Attorney William Hedge said there is no precedent, you're right.

Attorney Voeltz said that he has conducted extensive research over the Planning Commission decision – advisory Plan Commission decisions under the Indiana Code and he finds no precedent for it either. This is a matter of first impression.

Jim Pressel said that on its face, he takes the way the motion is done and that's the way he's going to look at it, no matter what was discussed. You can go back through it and read and we discussed that if this permit were issued by the State also on page 30, it would be for a five year permit, so did we bring that into the motion.

Attorney Voeltz said just to clarify, the five (5) year permit is an IDEM permit -- a notice of intent permit, it's separate and distinct from the permit that was applied for by Ryan Miller that was issued by the Plan Commission --- it's completely different. Those two periods don't -- well they overlap, but they are not to be looked at concurrently. They need to overlap because you wind up with situations many times in construction projects, or development projects, where a certain amount of work is completed at one time and they need to reapply for something else because it is a different phase of the project, whereas the notice of intent through IDEM and MS4 is a five (5) year permit that would last through multiple building permits if they were applied for.

Jim Pressel said he's just using it as an example. Also, are we to take everything that we discussed that night and interpret that was the spirit of the motion, because that's not what was said in the motion. I go back to again, the only thing that we were doing that evening was to remove the red tag or not.

Attorney Voeltz said if he could clarify, it was to remove a red tag on a building permit that was good for two (2) years.

Mike Bohacek asked attorney Hedge if this was an opinion that has been referred back to the County Commissioners and the Commissioners can take additional action, or is the action of the board tonight binding upon this permit however it's interpreted based on the previous discussions.

Attorney Hedge said he thinks we could (unintelligible) it back to the Commissioners ----

Mike Bohacek said so this permit is getting kicked back to the County Commissioners this Wednesday for final determination as to whether this board determined it was a one (1) year permit, or not a one (1) year permit.

Attorney Hedge said no, he thinks the board has to tell what they thought they presented.

Mike Bohacek said this is a determination by the board today and it's not going back to the County Commissioners, correct.

Attorney Hedge said correct. Attorney Hedge said to take it back, the board would have to vote to do that.

Mike Bohacek said so this board determines if it gets sent back to the County Commissioners for their determination.

Attorney Hedge said he doesn't see why not.

Mike Bohacek said on the validity of a building permit, I don't think we can do that or not as a Commissioner.

Attorney Voeltz said that this is going to establish a very dangerous precedent –

Mike Bohacek said he understands.

Attorney Voeltz (unintelligible) back to the County Commissioners when it had already gone before the ----

Mike Bohacek said it seems like a lot of punting going on back and forth and that doesn't serve the homeowners that are affected, or the property owner who is trying to build just for the simple reason that means any building project punted back and forth for endless board meetings.

Matthew Bernacchi said that it states at the beginning of this letter from Anderson, Agostino & Keller through August 25th, 2015, Mr. Miller came to the Plan Commission meeting regarding the fact that the pond permit was good for one (1) year and he said that's absolutely correct. Mr. Bernacchi asked Mr. Miller if he said that.

Attorney Voeltz said if you're going to refer to a letter that is being entered into on the record, we need the entirety of the document entered into. We can't pick and choose as to what we're going to quote from letters from face book, or anything like that.

Matthew Bernacchi said that if he did state that, then, it goes on and says that legal counsel Doug Biege confirmed at the August 25th meeting that the pond permit was only valid for one year.

Mike Bohacek said those were excerpts of minutes by the remonstrator's attorney, which may or may not reflect the verbatim for the minutes -- excuse me sir, which may or may not reflect the actual meeting minutes.

Matthew Bernacchi said he understands that. He's just looking at the evidence in front of us right now. I think that we're getting ourselves into a mess and he really feels – I don't know how the board feels, but this needs to go to legal and make a determination. They need to look at the motion---that the motion was made without a stipulation – when you make your motion, you have to stipulate that this permit was good for one year. You can talk about it all you want beforehand, but if it was not made in that motion that this was contingent on a one (1) year permit, he feels like it's probably a two (2) year permit.

Mike Bohacek asked Mr. Pressel to re-read the motion.

Jim Pressel said the motion as it was presented word for word "Rita Beaty Kelly made a motion that we remove the red tag from the job site for Ryan to go ahead and build his pond. Jim Pressel seconded. Anthony Hendricks asked if there was any other discussion and then there was the roll call vote. Motion passes to remove the red tag 5-1.

Jim Pressel said that he goes back. We did not make a determination on anything that had to do with the length of a permit, it was to remove the red tag, or not. Whether we discussed the permit or the length of the permit, I don't feel, but I'm not an attorney, and I guess I'm looking for a legal interpretation – we have three lawyers in the room and they can't tell him there is a precedent, how are we to decide this.

Attorney Voeltz said any referral, or any petition for judicial review on the initial granting of this petition, whether renewal of the red tag, excuse me, the removal of the red tag, must have been filed within thirty (30) days of the decision. It was not and then we're stuck with the last nine (9) months of nonsense that has gone on here because they failed to properly file procedural remedies. So, to allow them to back door their way in into a judicial review on a permit that was already granted is inappropriate.

Jim Pressel said here again, I think you're asking – we're not Judges; we're not attorneys and he's going to stand firm on that one. Mr. Pressel said that he thinks that this is bound and destined for a court case; I don't think it should be handled by the Plan Commission; I don't think that we're up for the challenges and have all that information. Mr. Pressel said that is his thoughts.

Attorney Voeltz said that what we need is clarification on the expiration date of this permit and it goes back to the fact that the permit on its face has an expiration date of 2017. Because if you were to decide today that this needs to be referred to a court of law to make a proper determination, or not at the period of time that can be done, that should have been done nine (9) months ago and it wasn't done.

Matthew Bernacchi said for clarification, there was no vote made on the permit, it was made on removing the red tag. Is that correct?

Jim Pressel said that's the way he's reading this.

Mike Bohacek said but there was a lot of conversation discussing the one (1) year review period.

Matthew Bernacchi said that should have been put in the motion.

Jim Pressel said it also had nothing to do with removing the red tag.

Mike Bohacek said that he believes the remonstrators are represented by counsel, he's assuming we give the remonstrator's counsel a little bit of time—

Attorney Voeltz said he's not done. If you would like me to proceed, I will.

Mike Bohacek said please.

Attorney Voeltz said that there are a time line of events that went on here that needs to be told because it hasn't been told up until now. Everyone has heard one version of events. Attorney Voeltz said that this case has been tried in the court of public opinion from day one. The remonstrators collectively known as "To Save Our Sand Movement", or throughout the rest of the county as the "Sand People" failed to properly perfect their procedural remedy within a period of time authorized by statute. Attorney Voeltz said the improvement location permit was granted to Ryan Miller on July 16th, of 2016 with a two (2) year expiration date. That's pursuant to La Porte County Joint Zoning Ordinance, Article 23 Section 04.

Attorney Voeltz said that in further meetings before the Plan Commission pursuant to the red tag issuance and removal of the red tag, Ryan Miller testified that he was told --- excuse me, he testified to the existence of a one (1) year permit. He was told by county employees from the beginning that it was a one (1) year permit. The attorney for the Plan Commission thought it was a one (1) year permit; the members of the board – the members of the Plan Commission thought it was a one (1) year permit; I thought it was a one (1) year permit. It wasn't until we dug into the matter when we were looking at renewal dates that we determined that in fact it was a two (2) year permit and that was the need for a petition for clarification of the expiration date.

Attorney Voeltz said as you're well aware, the project was red tagged following the Commissioner's Meeting on July 22nd, 2015. Following that meeting, Ryan Miller contacted his office and retained him for representation of this matter. On August 5th of 2015, Mr. Veach and Mr. Meaney crashed a drone on Ryan Miller's property. This was when the property was red tagged and shut down, but there was trespassing occurring on the property. There were calls and complaints to INDOT regarding the 421 project that was run by Ryan Miller and D & M Excavating. Those calls took place on August 11th of 2015, five (5) members of the "Save Our Sand Movement". Those were unsubstantiated and nothing was determined to be in error.

Attorney Voeltz said at the Plan Commission meeting on August 25th, 2015, there was a vote 5-1 to remove the red tag issued on that permit. On or about August 26th, 2015 there was a face book page created called "La Porte Citizens against Unauthorized Sand Mining". From day one this group, either known as that, or known as "Save Our Sand Movement", or known as the "Sand People" have engaged in harassment and innuendo against Ryan Miller from day one and it continues to this day. There was a neighborhood meeting that was held on September 14th, 2015 with media coverage and false representations made concerning the permit that was issued to Ryan Miller. These were designed to inflame the emotions and engage in hyperbole exaggeration with no opportunity to address what was being said.

Attorney Voeltz said that rhetoric on social media continued in September, 2015 talking about over loaded trucks and lies and deception in D & M's profit, when that wasn't even the issue that was going on. The red tag was removed because Ryan Miller was, and is constructing a pond. I received a call from a Jacqueline Thomas regarding representation in September of 2015. She is a member of the "Save Our Sand", a committee member. She called me knowing that I was representing Ryan Miller because she wanted to sue this board. On October 2nd there was a trespassing that occurred on Ryan Miller's property, videotaping and recording members of his crew that were working on the project.

Mike Bohacek asked if there was a police report on the trespassing issue.

Attorney Voeltz said that he has six (6) police reports that were filed.

Attorney Voeltz said that the Statute of Limitations at this point ran for a procedural review, or a judicial review of the determination to remove the red tag. The "Save Our Sand", or "Sand People" did nothing. They did not fulfill the judicial remedy that they were afforded by law. I received a letter from Scott Keller on or about October 16th, of 2015.

Mike Bohacek asked if Scott Keller is the attorney for – who is Scott Keller.

Attorney Voeltz said Mr. Keller is representing apparently Mr. Veach and Mr. Meaney, Mr. & Mrs. Veach and Mr. & Mrs. Meaney who are members of the "Save Our Sand Movement", or the "Sand People".

Attorney Voeltz said that this letter stated and there was a letter that went to the Plan Commission in regards to quote "Commercial Business Operations that were taking place on Ryan Miller's property'. It's an incorrect characterization of the project and he bought into the

lies and deception being perpetrated by the members of the "Save Our Sand Movement". It was hyperbole, an exaggeration in what was stated as undisputed facts, or in fact misrepresented facts. There is not mining that is occurring on Ryan Miller's property, he's excavating a pond and he has the wherewithal to do that, and he's afforded that under the zoning ordinance.

Attorney Voeltz said that D & M and Ryan Miller continue to be harassed on facebook with misinformation, his drivers were flipped off, his drivers were followed, and his drivers were videotaped time and time again. About this time complaints started flowing to MS4 and IDEM regarding "fugitive dust" that was occurring at New Porte Landing.

Mike Bohacek asked what fugitive dust is.

Attorney Voeltz said no one knows, but apparently it's still an obscure provision of the code that allows for a complainant to make a complaint about a fugitive dust escaping from the property. Needless to say, that complaint was found to be without merit. On October 21st of 2015 there was a complaint to MSHA which is the mining safety and health administration, a federal agency, and in fact, the federal agency sent an investigator out to Ryan's property to determine what was going on out there because somebody complained somebody said there was mining going on and after that investigation, it was found according to the federal definition of mining and according to MSHA who is the authority on mining, there is no mining going on at all, he was digging a pond and he still is digging a pond.

Attorney Voeltz said that there were constant and consistent calls to the La Porte County Sheriff's Office regarding tarp laws, which there are none in existence in the State of Indiana. Consistent calls regarding overweight trucks, misapplication of ordinance, and posting ordinances on face book that had no relevant position in the discussion that was going on; there was no basis for these reports. Ryan knowing that this was a "hot button" issue, weighed his trucks on November 4th, of 2015 and none of those trucks came in overweight, not one of them, he weighed them on multiple occasions.

Attorney Voeltz said that on or about November 5th, of 2015 there was a letter from Shaw Friedman, who is the attorney for the County Commissioners. This was referencing a letter sent from the remonstrators of the "Sand People of the Save Our Sand Movement" regarding zoning compliance for Ryan Miller and his property. Letters went back and forth between Mr. Friedman, Mr. Keller and Mr. Hedge on or about November 5th and November 6th of 2015. Attorney Voeltz said that he was involved with those letters too because these letters were an attempt to by-pass the statutory provisions for appeal of a determination on a permit. That period of time had passed back in September.

Attorney Voeltz said that there was a request from the Commissioners for the Plan Commission to make a formal ruling for something they already ruled upon. Grossly misleading comments; requests for bonds to be posted; request for fines to be imposed if Ryan Miller doesn't complete what he said from the beginning that he's going to complete; inappropriate behavior. Inflammatory signs were posted along the side of the road in which I'm sure you're aware of,

based upon zero effect, simply meant to inflame; simply meant to vilify and crucify Ryan Miller for what he was trying to do on his property; build a pond; drinking water in jeopardy.

After the County Commissioner's meeting in November, Mr. Veach was seen driving by Ryan Miller's house by his then fiancé, there was a police report filed. On or about November 12th of 2015, ABC 57 was contacted in some way shape, or form and he believes this reporter here tonight was there and they were trespassing on Ryan's property with Mr. Veach. Once again, in an attempt to crucify Ryan Miller in the meeting because they failed to fulfill their procedural (unintelligible). The Commissioners made an unannounced visit to Ryan Miller's property at some point in time describing themselves "as a regulatory agency who doesn't need to call if they're going to come out and visit your property". We're establishing a dangerous dangerous precedent. Ryan has prepared a video and he's offered the video to Mike Yacullo concerning the conditions of the road and that offer was made back on November 18th, 2015.

Mr. Keller again sent another letter to the Plan Commission Special Counsel, Bill Hedge in December of 2015. January 27, 2016, Mr. Veach was seen following trucks dangerously close and taking pictures and video of trucks that were leaving Ryan Miller's property and headed out. On February 8th of 2016 there was another trespass and Ryan's property was stolen in the form of trail cams and there was a police report filed on that. The "Save Our Sand People" are the "Sand People" who have continued to appear at all county meetings.

Mike Bohacek said so far we have two police reports filed. Was there any determination on the police report – were there charges filed –

Attorney Voeltz said that he advised Ryan to file police reports any time there was trespassing, or any damage to his equipment that occurred on his property to establish a record.

Mike Bohacek asked if there were any charges, or an investigation.

Attorney Voeltz said investigation is still on-going.

Attorney Voeltz said that the "Sand People" have continued to make appearances at all county meetings, from the Plan Commission, to the Board of Zoning Appeals, the La Porte County Council and La Porte County Commissioners, and in fact a letter was sent from Shaw Friedman, again, the Commissioner's attorney to Scott Keller advising that the "Save Our Sand Folks" could file a nuisance suit against Ryan Miller. No suit has been filed, because there is a provision in the nuisance statute that allows for recovery of attorney fees for a defendant that successfully defends against nuisance (unintelligible). There has been no violation of ordinance and no violation of the county code.

Attorney Voeltz said that in April of this year, the Plan Commission went through revisions that were to be made with the La Porte County Joint Zoning Ordinance. Opportunity was given for anyone to show up and provide public comment at all those meetings, and no one showed up, no one showed up in front of this board to suggest changes to the code, or revisions to the code. On May 15th of 2016, Ryan started to haul clay in to line the north side of his project.

Attorney Voeltz is up at the bench handing out pictures of the pond to the board. Attorney Voeltz told the board that the pictures that they're looking at are an accurate representation of what that property looks like today. I ask that you review those pictures. You look at those pictures, what do you see, I see a pond, I see a pond that's being lined with clay to hold water.

Attorney Voeltz said that complaints to IDEM and MS4 continued again on June 2nd, of 2016. This was following the Plan Commission meeting on May 24th, of 2016, at which at the end of that meeting there were threats made against the attorney, Doug Biege, to place a bomb underneath his car. There was a confrontation in the hallway that required the Sheriff's Deputies to come out and clear the hallway and this is the reason why those two gentlemen are standing back there right now.

Audience laughing and clapping.

Attorney Voeltz said that this is indicative behavior of this group. Ryan has not reached out to attempt to show his side of the story on this because he has nothing to show, he's building a pond, and whether or not they want to believe it, or whether or not they want to believe their lies and their deception is wrong, because this case has been tried in social media and on social media for far too long.

Attorney Voeltz said that there were complaints made to IDEM after Ryan brought the clay to line the property that it was contaminated, or something coming out of New Porte Landing with radioactive waste unsubstantiated – signed off by IDEM that it was in compliance with Rule 5 in the Notice of Intent; it had been done correctly and there is zero evidence of contamination.

Matthew Bernacchi said that he just feels that this has proceeded through a series of meetings in the last seven and a half years that if there was not a motion made – the motion was made to remove the red tag; there was no stipulation of the one year permit, I know it was discussed in the meeting, but if you don't amend the Master Plan or state that you want to make it a one year permit – the possibility of revisiting it. I'm not an attorney, but to me it seems if you leave that out of the motion, the Building Commission would have to follow the Master Plan which states two years. Matthew said that he really feels that we need legal counsel and legal can submit a determination.

Mike Bohacek said attorney Hedge as the board chair, the board chair controls the agenda, correct.

Attorney Hedge stated correct.

Mike Bohacek said that if the board chair feels that item brought before the board is not worthy of a vote, or if the motion that was made --- we could basically say that this isn't even an agenda item, or does it have to be brought to the board for a vote, because I think that we're all kind of looking at each other trying to figure out the action we're supposed to take. We're sitting here.

Matthew Bernacchi said that if there was not a motion made to amend the Master Plan and state that he had to come back in one years' time, he doesn't see how we can ask that of him. If the motion was just to remove the red tag and there was no amendment to the Master Plan or in the motion stating we want him to come back in one year for review and everything is kosher, we will give him an additional year, but nothing like that was made. Matthew said he feels that the permit is good for two years, but he's not an attorney.

Mike Bohacek to attorney Hedge that we're asking for your legal opinion.

Attorney Hedge says it states it quite clearly that it's good for two years.

Attorney Hedge said the question is what do we vote on.

Mike Bohacek told attorney Hedge that he saw the minutes of the meeting.

Attorney Hedge said that Mr. Bernacchi was pretty much right on.

Attorney Hedge said so the board does know he was asked about an appeal and Annemarie and I talked about it and I pointed out to her that the appeal time had lapsed. That was discussed some time ago.

Glen Minich said don't you think that we need the minutes from the meeting read. We can't make a determination about it.

Jim Pressel said its thirty-four (34) pages. Mr. Pressel said he does have it all.

Attorney Hedge said that he guesses part of him says, you as the board makes the decision.

Attorney Voeltz said he has more; he could go on all night. I don't want to, but this is the situation that we're in and in fact last weekend Ryan Miller's trucks and his equipment at New Porte Landing were vandalized. The windows were shot out and the tires were slashed.

Mike Bohacek said that this is getting beyond the scope of the permit discussion. Let's keep it centered on permit discussion. We understand that this has been a heated issue, and we understand maybe perhaps as adults, we haven't acted appropriately as we should have, but lets keep it germane to this question.

Attorney Voeltz said that a letter was sent from the Building Commissioner to Ryan Miller and himself, he was cc: on the date of June 27th, 2016. That letter was posted on social media by members of the "Save Our Sand Movement" before Ryan and I received it. This political football that's going on has to stop and I'm asking for clarification of the expiration date of the permit, or in the alternative, renewal of a permit, and you have pictures that were sent to me from Mr. Hedge today and sent to Mr. Keller that were taken by the Building Commissioner. She was out on the property and she took pictures of what's going on out there. You see it's a pond, it's not a sand mine, it's never been a sand mine.

Mike Bohacek asked attorney Voeltz how far into this project is he so far.

Attorney Voeltz said that the original permit that was issued to Ryan Miller.

Mike Bohacek said four (4) acres.

Attorney Voeltz said four (4) acres, yes sir.

Mike Bohacek asked how far into the four (4) acres is he.

Attorney Voeltz said his understanding at this point, he's three point one to three point two acres into a four (4) acre permit. It's not been properly surveyed number one, and there is some need for clarification in regards to what is exactly subject to the four (4) acres and how it will be defined --- there are certain lot lines etc. etc. that need to be addressed, but he's three point one or three point two acres into it.

Attorney Voeltz said that if you got a slope here at this angle there are pond building guidelines that provide for what the acreage of the pond would be. Attorney Voeltz said certainly Ryan will be following those guidelines, but until he gets those areas cleared out to where he then makes the cuts and carve it out, and get where it needs to be to make it the property depth.

Mike Bohacek said he's about three quarters of an acre away from completing his project and then the disturbance is over unless he decides to apply for a permit to extend for another four point -- five point nine acres. Essentially that's what we're looking at to allow as a board, regardless of all the discussion about whether it was a one year or a two year, did Mr. Miller continue to comply and show his intent to build a pond; did he dig the hole; did he line it with clay; did he do the things that he was supposed to do to build a pond?

Attorney Voeltz said that he believes that the evidence that has been presented shows that.

Mike Bohacek said that is the question, or is it a two year pond and the board just agrees to lift the red tag and we don't have to do anything. I would like to allow the remonstrator's attorney the chance to speak. If you would allow such an opportunity.

Matthew Bernacchi asked for name and address for the record.

Scott Keller with the Law Firm of Anderson, Agostino, & Keller and he's here to counsel Patrick & Kathleen Meaney and Randall & Debbie Veach. Attorney Keller asked the board if they have a copy of the letter that he had prepared with minutes attached. Attorney Keller said that these are the actual minutes.

Mike Bohacek asked if he has a spare copy.

Jim Pressel said that his doesn't have any minutes attached to it --- it has inserts.

Attorney Keller said that he has copies of the pages from the minutes attached.

Attorney Keller said what you have now is my letter, but then also it has pages of the actual minutes and you'll see the way that I referenced it in the letters, was really the same – it's identical to what the minutes state. Attorney Keller said he wasn't paraphrasing, so my letter covers it and then you have the actual minute copies there. When you read this -- when you go through this, and I don't necessarily want to dwell on this, but it's clear at that meeting you were talking about a one (1) year permit. Mr. Miller said what was requested was a one year permit. Page 14 attorney Biege said that this permit is only good for one year and at the end of the year he's going to have to reapply. Also page 14 Mr. Bohacek said the permit's good for one year. Page 28 attorney Biege says as far as La Porte County is concerned, it's for a year. Page 29 it's a permit for a four (4) acre pond in a period of one year. If you read the rest of these, everyone talked about it being a one year permit. Mr. Minich said it's a good point, but we just okayed a four (4) acre pond for one year. Attorney Keller said that is just what we did.

Attorney Keller said that he believes that was actually after the vote possibly. He's stating what you voted on, I think that is clarification of exactly what the motion was.

Mike Bohacek said that the motion is pretty specific. Mike said Rita Beaty Kelly made a motion that we remove the red tag from the job site for Ryan to go ahead and build his pond. That was the motion and it was seconded.

Attorney Keller said what was the permit? The permit at that point that we're talking about is a one year permit and four (4) acres.

Mike Bohacek said that he thinks that the permit is the permit, it's a two year permit and I don't know if we can restrict a permit.

Attorney Keller said that he definitely believes that the board has authority ---

Mike Bohacek said but we didn't do it by purpose of motion.

Attorney Keller said if everyone was in agreement at that point in time, I'm not sure it's even necessary.

Mike Bohacek said that it's absolutely necessary that it's stipulated in the motion.

Attorney Keller said that you have a petitioner requesting a one year permit – that is what he requested – that's what you talked about, so all you were doing was removing a red tag on what everyone understood that was a one year permit. If everything else in the permit at that point – I'm not sure it even matters once you make that decision and the board has authority --- you're not bound simply because of the two years, you can put stipulations on special projects that say no more than approval for one year, even though the statute says two (2) years, we're only approving one (1) year. You have the authority to do that.

Mike Bohacek asked Mr. Hedge if our conversation in a meeting and discussion does signify intent and would that supersede a non-specific motion.

Attorney Hedge said (unintelligible) that it indicates intent.

Mike Bohacek said so the discussion will indicate intent, even though the motion doesn't specifically state.

Attorney Hedge said that he understands Mr. Bernacchi's point of view that the application was to remove a red tag and that's when it was done. There is other language in here (unintelligible).

Jim Pressel asked if we're in discussion, or are we going to allow Mr. Keller to go on.

Mike Bohacek said we're going to go on.

Attorney Keller said that they absolutely had the other issue of --- it sounds as if he's very close on the four (4) acre part. Attorney Keller asked if there is going to be any issue with that ---- once he gets to the four (4) acres regardless of the two (2) year issue, they're done and they have to reapply.

Mike Bohacek said that's correct.

Attorney Keller said that they would have to reapply before they could do anything beyond the four (4) acres.

Attorney Keller said just talking generally about the project. We all know that this land is owned by D & M Excavating and he has some documents where he can show you that when they purchased --- they actually closed the purchase of the property one (1) month after they were awarded this subcontract to supply sand to the La Porte Landing project. Reith & Riley was awarded a large contract, which included all the borrowed materials. Our understanding is D & M Excavating was then awarded that subcontract. Attorney Keller said that he has the recorded deed that shows that deal wasn't closed by the Schultz Road property until that contract -- one (1) month until after it was awarded. I understand Mr. Miller saying this is a dream to have his house, but it seems like it was very tied in with getting this contract to be able to sell the sand, but when you add up scheduled values and he has the documents if you'd like them, but the value of the sand for La Porte Landing alone is over one point six million dollars. That's the amount of money that is going to be paid for all the sand that is being dug and delivered to that site out of that Schultz Road property.

Mike Bohacek said that you have to understand that ---

Attorney Keller said he's just telling you the economics of what's going on.

Mike Bohacek said let's keep this germane to the permit and the permit application.

Attorney Keller said he understands, but if you're reconsidering the reissuance of the permit, then I think it's important to talk about it, but if you have already made your decision, I was going to go through the issues that we're talking about as far as what this really is about, because he thinks the economics are important. You're taking Mr. Miller's words that he's going to build a pond and you're taking it without necessarily considering the evidence of how much money is going to be generated from this.

Matthew Bernacchi said that doesn't play a role in the permitting. Anybody who buys property is not necessarily going to build a home or not. If he's in business, what do you want to do ----

All audience speaking at one time.

Glen Minich said one thing he'd like to say is you're skewing this a little bit because you've only talked about the costs – the money, you haven't talked about the costs of moving that dirt.

Matthew Bernacchi said that doesn't play a role in the permit. Matthew said what this board needs to decide is what the motion was and the motion was to remove the red tag. There was nothing said, or stipulated on the length, other than the discussion and I feel that if nothing was made in the motion to stipulate that it was a one (1) year permit, they need revisit it and follow the master plan.

Mike Bohacek said that he thinks a big part of this discussion because he was here for the meeting, was --- I spoke to Mr. Veach and Mr. Meaney and some of the folks here, and I believe even you counselor were concerned if Mr. Miller is constructing a pond and is he doing the things that construct a pond; is he lining it . Is he lining it with clay; is he doing those types of things so it can hold water and be a pond, not be a sand pit and it appears that is what he's doing unless ---

Attorney Keller asked the board what they're going to do when there is no pond and they've made a bunch of money digging sand and they walk away from it leaving a hole. I requested in writing to the board several times and he's never gotten an answer. I said why don't you put D & M Excavating on notice if they don't actually construct a pond and build this house there, look at the pond they will be fined, because at that point you've allowed them to use the loop hole of getting a permit to build a pond to just excavate sand, which you could never do sand mine on that property; it could never be permitted and you wouldn't have authority to even allow excavation on that property. The only way to do it is to say we're building a pond. If that's true, I think the board should say fine, but you have to understand if you don't build a pond on this property you will be fined because you will have violated the zoning ordinance for a number of years and you could fine them up to $2,500.00 a day, or by violating zoning by simply just removing the sand and then walking away saying it didn't work out, we can't get water in this thing. We all know it's going to be very difficult – they're going to have to put some form of pumps in there to put water in this.

Mike Bohacek said he doesn't know that, he's not a hydrologist and I don't believe you are either counselor.

Attorney Keller said that if you go next door, there is another pit that is eighty (80') feet deep. Is there water there?

Mike Bohacek said he's never seen the other pit

Mike Bohacek asked attorney Keller if he has been over there to see the other ---

Attorney Keller said that he has been advised that it's eighty (80') feet deep.

Glen Minich asked attorney Keller if that pit is lined.

Attorney Keller stated no.

Glen Minich said that the plan on this pit is to be lined and that is what they were told.

Mike Bohacek said that he believes that he's lining it with clay.

Attorney Keller said then how is the water going to get in it and how is it going to get maintained.

Glen Minich said that he went to the site and he looked at this site before this meeting. If Ryan Miller was going to do nothing more --- and that is what he had to prove us a year ago when this thing was red tagged that his intent was to build a pond. If he was going to build a sand pit he should have walked into the property one-hundred feet to a hundred yards and dug a pit just like the one that is to the north of it. That's not what he did. He went nearly a quarter of mile into this property, built a road and built it in an area where the runoff from the property is going to fill a pond. He is in construction and he knows what he's doing.

Attorney Keller asked if the board is prepared to issue fines if it doesn't get done.

Mike Bohacek said after the fact. He's doing the things he said he was going to do.

Attorney Keller said what if there is ultimately no pond; what if there is no water in this pond. What if it never happens, are you prepared to issue fines for basically allowing them to violate the zoning simply by saying we're building a pond and it didn't work out, now we have a hole in the ground.

Jim Pressel said put the fines aside, so really what you're asking us to do tonight is to make a determination if the permit is good and if the permit is not good, whichever, but on one hand you're wanting us to fine him for not finishing the pond, and on the other hand, you're saying don't finish the pond, the permit is expired. Where are we at --- should we put the dirt back in the pond. Is that the goal? Jim said he doesn't know what the goal is here.

Attorney Keller said that his point is, if you're going to allow this to be completed, just keep in mind that if they don't complete it, there should be ramifications, and you need to think about that --- this is a special situation, this is a regular guy wanting a little one acre pond and he

already has a house there, we all know those get approved. This is a little bit different. You have an excavation company making a very large hole ----

Mike Bohacek said if he was going to dig a four (4) acre pond, I couldn't do that myself; Glen, you're a farmer, could you dig a four (4) acre pond?

Glen Minich said the majority of people hire somebody to do it and they expect the costs to be offset by the removal of the sand. This is no different than that; it's the same situation.

Attorney Keller said he understands that, but normally there is a house there.

Mike Bohacek said before the pond. Mike said it depends on the lot.

Attorney Keller said the point is, he thinks the board needs to consider that under these special circumstances and this situation with all the hardship that has been put on the neighborhood, and he hasn't got into the issue of the costs that La Porte County has been paying to fix Schultz Road. It's my understanding and he has the paper work and you've already spent almost $8,000.00 making repairs to a road caused by their trucks, which is coming from tax payer's money. I can show you the paper work.

Matthew Bernacchi said that we're still venturing away --- we're thinking about slapping fines to somebody that's been doing exactly what he said he would do to this point. We need to find out if this permit is valid.

Attorney Keller said he's not asking to fine them now. You need to be prepared that two (2) years from now if there is no pond and there is a hole. They should come back and consider fines at that point for allowing somebody to violate the zoning ordinance by using a loop hole, it says on building a pond. You need to think about that.

Matthew Bernacchi said if the permit is valid, you can't just say well now we're going to do this, or we're going to change that.

Attorney Keller said if he never constructs a pond then it wasn't a valid ---

Matthew Bernacchi said that he's constructing a pond; he's putting clay in there and he dug and he's three quarters of the way through. If there is no water and not enough runoff, I'm sure he understands he can put a well in there. Matthew said it's no different than the ponds on Boyd Boulevard.

Attorney Keller said that all he's saying is the board needs to keep an open mind for that possibility to avoid this loop hole. Anytime anyone else is going to come before you who wants to get sand and just say I'm digging a pond and then you can let them go for five years and there will no ramifications ----

Mike Bohacek said that you're saying one permit is good for five years – you are mixing some things up.

Attorney Keller said okay, let's make it one year. Somebody comes in ---

Mike Bohacek said that the permit was good for two years.

Jim Pressel said it can go in as a motion.

Attorney Keller said the point of it is you have a loop hole and he did make recommendations to the county on your zoning ordinance and he did send a detailed letter of recommendations how to close that loop hole. If you allow this and you don't have ramifications if it's not done, anyone can avoid a sand mine – digging sand – whatever they want to do, all they have to do is come in and get a pond permit?

Mike Bohacek said as a matter of business for today's agenda, is the permit good, or is the permit not good, and if it's only good for a year, are we going to extend to allow him to finish the last two thirds of an acre. That's the discussion point. I appreciate your comments and your recommendations, and we will certainly bring those forward, but I think as a point of business, that's the question before the board, is the permit something we need to review. If it needs to be reviewed and extended beyond the year, that's our position and we need to discuss that, or is it a permit that we revoke. Mike said we're kind of getting off the track here with a whole bunch of other arguments.

Matthew Bernacchi asked if there are any other questions by this board.

Mike Bohacek said he guesses the question would be counselor, is the motion for no action and allow him to continue based on the application of his building permit and the issuance of his permit, or does this board need to do something else.

Attorney Hedge said fair question. He thinks to clarify things, it would be helpful to have a look at the original permit with a two year permit and we don't do anything if that is the way you're going to go.

Mike Bohacek said that we would need a motion to say that this is a two year permit and Mr. Miller is in compliance to complete his construction activities. Is that what you're saying?

Attorney Hedge said yes sir.

Jim Pressel asked attorney Keller to come up one more time because he has a question. So ultimately what makes your client happy, what's the outcome that they're really interested in tonight?

Attorney Keller said that the mining activity obviously would stop, but at this point, if they're that close --- if all he's going to build is a four acre pond and it's not going to get bigger, that's a little bit different issue, but originally they talked about a nine acre pond.

Mike Bohacek said its four acres sir.

Attorney Keller said he knows, but originally said in the (unintelligible) meeting, I saw that there was discussion that ultimately they would want to be nine acres.

Mike Bohacek said that would be a different discussion and a different application, but this is for a four acre pond.

Attorney Keller said maybe we could get a commitment right now from Mr. Miller that it's not going to go beyond four --- he's not going to come in here and request to make it bigger.

Mike Bohacek said he can request all he wants, that is his right as a property owner. It doesn't mean that this board is ---

Attorney Keller said Mr. Pressel asked me what is it we want and it's a much smaller issue if it's four acres and that if he's going to finish it; he's going to line it; he's going to fill it with water, great. It's a different issue if he's going to come back and say well, I'm not going to put water in this, I want to make it another four acres --- I want to make it eight – I want to make it nine acres, then we're right back to where we were. If they want to go on the record ---

Jim Pressel said ultimately we know because of the ordinance that it can be no bigger than four acres. It's four acres and the ordinance is specific to two years regardless of what we reflected in the minutes because that wasn't in the motion. Jim asked attorney Keller if his client is going to be happy if we just went up to the four acres and then it's done. Is that what I'm hearing – is that what I'm understanding?

Attorney Keller said his clients said yeah.

Anthony Hendricks said that this board hires Annmarie, our Building Commissioner, and she does permits on all sorts of things and this is a two year permit and he understands that there were conversations in that meeting, but there was no motion – there was no vote; the motion was made to remove the red tag and if we at this point start looking at pulling permits that we entrust our Building Commissioner to follow the rules of the Joint Ordinance. He has two years and he's almost done. He's shown us some photographs and multiple sources doing what he said he was going to do. Personally, I don't know if the board needs to do anything just like the last meeting we talked about some things and we took in the discussion and left it at that.

Glen Minich said that he's with Tony on this. Whether we act like it's a two year permit even though I think our counsel told us it was going to be a one year permit and we were going to re-permit. Glen said the only difference there is whether he needs to do a second permit for $200.00. Is that correct? Glen said he personally still believes he's building a pond and I don't see why he doesn't finish the project that he started. I think that's the best for the site – it's the best for the neighborhood — it's the best for the whole thing.

Mike Bohacek said that we aren't dealing with a fly by night contractor here. It's a company and it's been in La Porte County for a very long time.

Attorney Keller asked if we could have him go on the record and say that four acres and it's done. You're basing your decision based on –

Glen Minich said we're saying this pond is four acres and it needs to be completed. That's what we're saying, yes.

Mike Bohacek said your client has agreed that –

Attorney Keller said at this point that four acres is going to be fully lined and filled with water before anything else happens.

Matthew Bernacchi said he doesn't think the next board, or whoever is on this board would agree upon giving him another four or five acres if the first part was not completed.

Attorney Keller said that is what he's trying to make sure that you understand that this will be lined and there will be water in it before he could ever get another permit to expand it, or build another one.

Mike Bohacek said that he doesn't think this board can regulate.

All parties speaking at the same time.

Attorney Keller said let's put it on the record that is what you're going to do. They can go finish it, line it and fill it with water and we're good for right now.

Mike Bohacek said a pond by our code is under ten acres, correct?

Anthony Hendricks said no.

Jim Pressel said that ten acres is a lake by the State.

Mike Bohacek said anything under ten is considered a pond.

Jim Pressel said correct. Jim said he has the permit in his hand it says for four acres. Jim said his opinion being how we're forced into acting as legal counsel or judges, the only thing we can do in his opinion is to vote on the four acre pond and is that permit valid for two years per our zoning ordinance. Jim said he doesn't see how we can do anything different even if we stipulate that this would not preclude him from coming to get another permit under a different board. Jim asked what if he splits the property, there are a lot of what ifs and we could play this all night long. Ultimately it's about a four acre pond.

Attorney Keller said he understands that. We have a permit for a four acre pond and he just wants to clarify that once they get to their four acres, line it, and fill it with water that's a requirement. If they don't do that, then he thinks that there could be ramifications ----

Mike Bohacek said if he wants to expand his pond by a quarter of an acre, it's going to be pretty tough to do it if it's under water.

Attorney Keller said that is the point that he's trying to get, because the board is indicating you're willing to finish his four acre pond and his clients have indicated that is fine, lets finish it, but then we don't want to come back here without him not finishing it and saying well, we actually want to make it bigger and we're right back to where we were.

Jim Pressel said he doesn't know because he's not an attorney. This would complete this permit. I don't know that we can tell a land owner that because you put a shed on your property you can't ever come back and put another shed on your property. You can't extend that and he doesn't believe we can do that. I think you would have to get a permit and go through the process and he would agree with that.

Attorney Keller said he would agree with that after this pond is finished and in operation.

Mike Bohacek said that he believes that we need to have a motion to – we need to make a decision to take any action, or no action.

Jim Pressel said that the only action that is on our agenda unless we're going step outside of the room how the organization works here, the only thing that we can vote on is was the permit good for two years, or not. That's what we're being asked to do.

Matthew Bernacchi said it's not necessarily a vote, it's a clarification. If this board feels that the permit is good for two years there is no action needed.

Glen Minich said and if we feel it's not good for two years then he needs to pay for a second permit for the exact same thing that he did and finish his pond. Is that true?

Attorney Hedge told Glen he's not sure if he's following him, what are you saying.

Glen Minich said what he's saying is if we say the permit was good for one year to dig this pond, and we said that we would extend it if he was doing everything he said he was going to do, and he's doing it properly, which at this point we feel he is, then all he has to do is get a one year permit extension to finish his project.

Attorney Hedge said that's correct, if that's what you decide.

Annemarie Polan, Building Commissioner, said whatever you want to do, the decision is yours and if the decision is appealed, it's appealed, but there might not even be a decision based on what Matt said just following the letter of the law.

Matthew Bernacchi said that he just feels that there was no motion stipulating that it was a one year permit. You were doing what it states in the master plan and this board should have put some type of motion giving it a one year permit and come back in a year. I feels that he's doing everything he stated he would and we can't force him to come up here, he does have

legal representation and I don't know what he plans on doing to expand, if that's it. I'm sure with all the heartache and hearing all of the things that have been said negatively, he probably really doesn't want to keep digging out there, but I don't know. This is just a clarification like Glen said, he's proved to us that he's doing what he said he would do so there is nothing really the board can do other than make a decision if this permit is still good. Personally I feel it is because there was no motion made that we stipulated anything else.

Matthew Bernacchi asked if there are any questions.

Rita Beaty Kelly said so if we go from here that we're advising that there is nothing we need to do because we believe the two year permit, as it stated on the permit to just say no action and move on.

Glen Minich said that is probably the best way because like Tony said, we can't reissue --- there is no such thing as a one year permit. By taking no action, we say he continues digging his pond and finishes it.

Attorney Hedge said he agrees.

Matthew Bernacchi asked if there is a motion.

Hearing none no action was taken.

Matthew Bernacchi asked for old business.

Matthew Bernacchi asked for new business.

Attorney Hedge said before you conclude for the record he did review the notice and the notice to the adjoining neighbors, proper notice was served.

Matthew Bernacchi asked Annemarie if she can forward the information that the attorney, or "Save the Sand" recommendations so they can review them for the master plan.

Annemarie Polan stated yes.

Matthew Bernaccchi asked if there is a motion to adjourn.

Mike Bohacek said so moved.

All approved. Motion carried 7-0.

There being no further business before the Plan Commission this evening, meeting adjourned at 7:20 p.m.

ANTHONY HENDRICKS, President

ANNEMARIE POLAN, Rec. Secretary