

**Burns Harbor Advisory Plan Commission
Minutes of Monday, March 1, 2021**

The Advisory Plan Commission of the Town of Burns Harbor, Porter County, Indiana met in a regular session on Monday, March 1, 2021 in a combination Regular and Zoom Virtual Meeting. The meeting was called to order by Advisory Plan Commission President, Eric Hull at 7:00 pm.

The Pledge of Allegiance to the American Flag was recited.

Roll Call:

Eric Hull	Present
Bernie Poparad.....	Present
Toni Biancardi.....	Present
Jeremy McHargue	Present
Sarah Oudman	Present

Additional Officials Present

Attorney-Michael Brazil
Building Commissioner-Rob Wesley
Global Engineering-Jeanette Hicks
Secretary-Marge Falbo

Also Present

Mark Hartman, Stonetown Capital
Casey Richards, Great Lakes Engineering

Minutes

Oudman makes a motion to approve the minutes of February 1, 2021 as written. McHargue seconded the motion. Motion carried by unanimous vote.

Communication, Bills, Expenditures

None

Report of Officers, Committee, Staff

None

Preliminary Hearing

None

Public Hearing

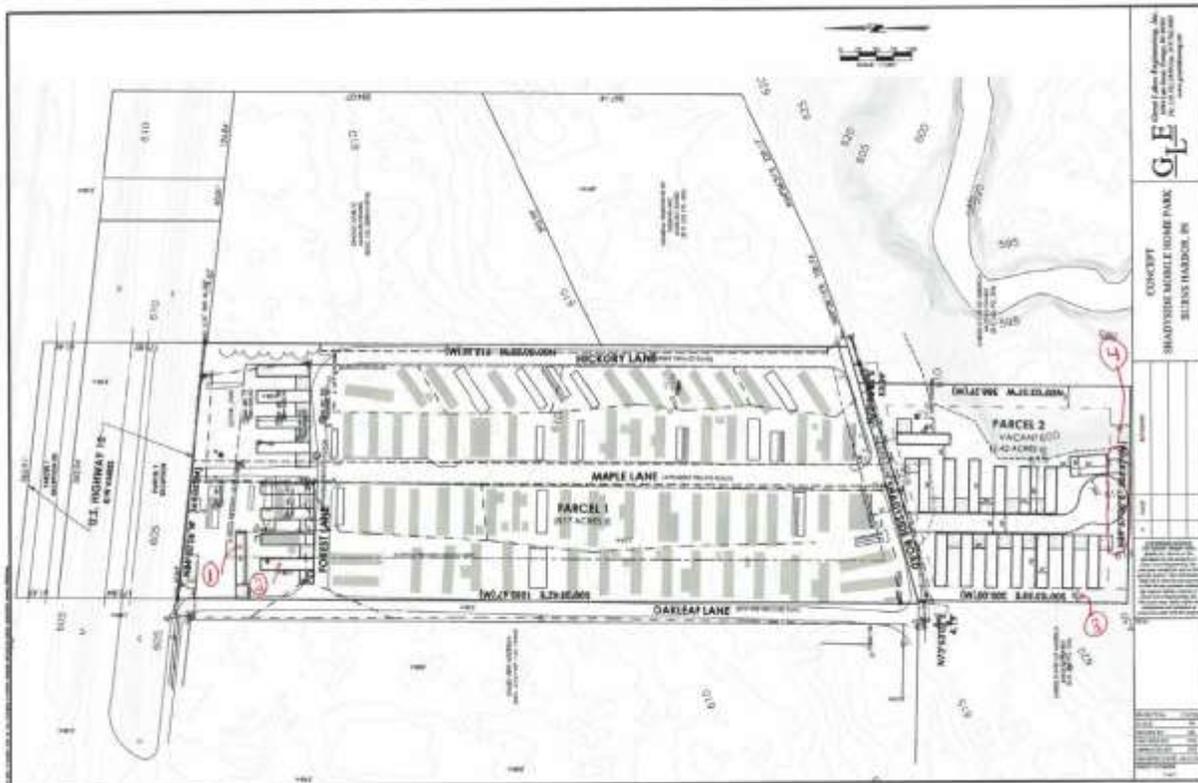
None

Old Business

Mark Hartman

Shadyside Mobile Home Park Expansion

Hartman says I have Casey Richards of Great Lakes Engineering on the Zoom call with me tonight as well. He has been instrumental in getting the plans drawn for us. Basically, what we're really asking for is approval to go in front of the Board of Zoning Appeals. There are three or four particular zoning variances that we will need to work on this project. We need to get IDEM approvals and a building permit with Burns Harbor. We will need several variances to get started with the project. Two of them are off the 60-foot setback off of an abutting



You can see No.1 and No. 2 on the drawing. Both of those homes right now would be non-conforming to zoning. So, we are asking for a 20-foot setback so both of those will be conforming homes. Then on the right-hand side, No. 3 there is a 30-foot setback there on the property line and we're asking that to be reduced to 20. Then No. 4 those are all hard-paved surfaces. There are no permanent structures there. It's all concrete, so I'm not sure if we need a zoning variance for that but I thought I would include it as well.

Hull says in order to get a zoning variance; you need to go to the Board of Zoning Appeals “BZA” and the process for that is to go to the Building Department and make application and then it’s either approved or denied. If it’s denied based upon a reason that you would like to take further, then you can go to the BZA and make your case. They are a ruling body; we are an advisory board. Everything that we do is forwarded to the Town Council to become an order or a legislative rule of law. In order for us to make a variance in an area, we have to change a whole area. Hartman says I have the application filed out and if we are denied by the Building Department then I can go before the BZA is that correct? Hull says yes and Building Commissioner Wesley can deny you on the spot. You already know what the problems are so it is not like you have to go through a process – get it going as quickly as you can so you can get on the agenda for the next BZA meeting. Poparad is the President of the BZA, he’ll be the one that will help guide you through. That is the best way for you to go. Biancardi says I would just add that when it is submitted for the building permit that while there are four variances identified here that would need to be reviewed by the Building Commissioner to make sure there aren’t any others and that those are correct. Hartman says I pretty much have the application filled out already and I can get it submitted very quickly. Poparad says you have to submit everything 10 days prior to the next meeting date so you need to get going on it so you can come before the BZA on March 23, 2021. Hartman says I will get it done in the next day or two—absolutely will. Thank you for having us.

Swimming Pool Setbacks

Hull says this one has a couple of gray areas in the Code that people could interpret in different ways and those were brought to our attention. We asked Oudman last month to go through the Town Code to see what she could find, and I believe she found a few different things that we could take action on to straighten things out. Is that correct?

Oudman says, yes, I would say that is correct and while we have got some areas that a little more difficult to understand I would say that overall, our current practice is close to what our Code has already in place. I went through quite a bit of the Code and the definitions and a couple of things I found were the accessory building or use includes swimming pool and that is 15–2–2 Definitions

2. ACCESSORY BUILDING OR USE. It also mentions that the Town of Burns Harbor enforces the Indiana State Code regarding swimming pools. We also have some other things that are in place for accessory buildings. One thing is that accessory building or use includes a swimming pool then the information that’s in our zoning tables that are for each specific zone are referred to. They say that detached accessory buildings are referenced by an asterisk that say go to your zoning explanation page...which basically refers you back to the detached accessory building information in 15–13–6 DETACHED ACCESSORY BUILDING. It says the following and it includes swimming pools “All detached Accessory Buildings shall be behind the Rear Principal Building Line and may be erected within five (5) feet of a side or five feet (5) of a Rear Lot Line so long as it is not within a recorded Easement.”

In order to clarify what we have for swimming pools I felt that there were a few things that we could look at to make it so the people who are looking for what they need can find the information easily and whoever our Building Commissioner or Code Enforcer and the Secretary in that office is can also quickly reference and be able to explain to people what is needed. I would recommend that we add two definitions for a swimming pool not permanently installed as well as a swimming pool permanently installed because our definitions now don't really recognize a trend that happened within the last 15 or so years. A lot of people have extensive landscaping and decks and other pool amenities around there above ground pools. That would help us to have clarity on what we see now in permanently installed above ground pools. I would also say that on our pool permit form that we include all the pools so it's all in one place and put everything into one ordinance.

McHargue says my first question is are you saying a swimming pool is considered a detached accessory building in the Town of Burns Harbor. It's one thing if all things apply to it but does it mean this Town says if you have a pool that's an accessory building.

Hull says I said the same thing. I think it is because swimming pools – there were not that many of them maybe just a couple. So, we filled in the blanks as we went and now with the explosion of residents that have come in the past couple of years, we have new houses and new pools. So, we need to clear up the Code. The State defines an above ground pool as a temporary structure. In order for it to be permanent it has to be on concrete or dug in the ground.

McHargue says I'm fine with that. But if you're talking about a detached accessory building in the State of Indiana if it exceeds 720 square feet it has to have a foundation. My pool doesn't have a foundation and exceeds that square footage so that's why it can't be considered a detached accessory building. It won't meet building code when it comes to your considering it a structure. That was my only problem with it.

Oudman says in 15-2-2 Definitions 2. ACCESSORY BUILDING OR USE, it says

- A subordinate Building located on the same lot with an existing main Building, or a subordinate Use of land, either of which is incidental to the main Building or to the Principal Use of the land. Accessory Buildings for residential Uses are limited to a total of one thousand eight hundred (1,800) square feet for each residence, including attached garages.

But toward the very end it says--

“Swimming pools, if private and being incidental to Use by the Owner and guests.”

This may not be how we want to approach it.

McHargue says there are several parts in this chapter that have major flaws if I am reading this right. We have to start talking about detached accessory buildings.

So, 15-13-6 A says--

“All detached Accessory Building shall be behind the Rear Principal Building Line (that’s descriptive and then it says) and *may* be erected within five (5) feet (so I can put my pool on my line because it says I *may* erect it within 5 feet?) (I think there should be a “not” there because right now it’s not prohibiting anything) of a side or five feet (5) of a Rear Lot Line so long as it is not within a recorded Easement.”

Hull says I agree, and it’s not fully defined enough and like Oudman says as to what we want or what it needs to be.

We had an issue where we had a question about a fence with a pool and the pool owner has a hard cover top that goes on it. There is an ordinance by the State that says they do not need a fence in the yard because of this hard cover. This isn’t in our Code anywhere because nobody has ever had one. If someone did have one nobody has ever had a question about it. We need to have more definitions to make sure we’re not crossing over anywhere.

McHargue says I agree. The only other question I have is if the rear of my property has a 10-foot easement and I want to put my pool 10-feet off the rear of my property line so I’m not on any easement and; if we’re able to use that easement what liability does the Town have when we run a backhoe back there and the ground swells and ruins their pool because it’s not on the easement but it’s on the edge of it. My question is are we going to allow them to put their pool right up next to the easement or not. Or are we going to at least cover ourselves by notifying the homeowner that it may be an issue. Because, we can keep our equipment on our easement but that doesn’t mean it’s not going to affect the ground next to it especially when it’s dug out and it’s a swimming pool. Structurally that ground may not be able to support the equipment we go into if there’s a pool right next to it. That’s my only concern.

Hull says if an above ground pool is a temporary structure (temporary being taken down and reassembled in a reasonable period of time without a whole lot of expense). I think that if someone builds a pool and it sits upon the easement, I don’t believe we should be permitted. But if they are close to that easement they need to know, if we have to come through, it needs to come down and it’s at their expense.

McHargue says how much of their backyard are we going to say that they can never do anything on. If they build let’s say within 5 feet of the easement, they’re assuming risk if we come through on the easement and there’s damage that occurs. As long as they’re ok with that or they want to remove it prior to that then I think that’s fine. But letting them build up to the easement and then us assuming risk is a problem.

Biancardi says my thought on this is where the State has a particular rule often times, we reference that in our Code that those are the rules that should be followed. I wonder if we don’t do the same here and then we really focus on placement and setbacks and those types of things.

Oudman says that was one of the things that I had considered because in our Code we actually say that we use the State Swimming Pool Code. I would make sure to reference it, but we should also reference the date of it so that people know which one it is we expect them to be using. I did find different definitions for temporary above ground pools...Hull says so if you have an above ground pool and you leave it up year-round it is not a temporary structure. Oudman says it depends which definition you want to use. Right now, we do not define it. One of the things I did note as I looked through various communities' pool guidelines and permits is almost nobody will allow someone to have a pool in a recorded easement. I think it would be wise for us to try to follow that because some easements are utilities easements. If they have an emergency, they aren't going to ask people to take down a pool, shed or anything else. They will just bring in their backhoe and move it. I would suggest we say they cannot put it in their recorded easement at all. Hull says I would agree.

Global Engineer Hicks says if you have a 4 or 5-foot pool right on the edge of the easement...it is just the weight right up against the edge of the easement...it would put the liability like McHargue was saying on the utility to use a trench box to keep it from caving in. I think that's one of those gray areas, but how much do you tell someone they can't use? What if it was a shed? At this moment I don't know what the exact answer is. Hull says that's some homework for you. Global Engineer Hicks says yes, and I agree with McHargue about the confusion of the within 5 foot. It's either not within 5 foot or no closer than 5 foot. Whichever route you go I agree that portion needs to be clarified. Hull says can you for next month see if there are some common cases where anyone has run up against pools and easements...sheds and easements and maybe we can find out if we need to add something in the Code that if you get so close to an easement you hereby need to know that the liability is on you. Global Engineer Hicks says yes. Hull says how many residences are subject to the easement that cuts into their yard. It is ten lots in the entire Town...there are some people that have a half acre so 5 feet off their backyard is going to make problem for them, but other people have a small yard. Swimming pool setbacks are determined by district and that's why we get into some conflict there. Oudman says one of the things that I noticed as I looked through the different definitions within our Town Code is that it seems like some of the confusion may come because we as people sometimes grab the wrong term when we're speaking about something. For instance, the information about the 5 feet is actually I believe referencing your setback. The thing on the easement is that it cannot be on any of those easements, whether for utility or drainage. If you have a large building setback in your yard, say 20 feet and there is no easement in your backyard, what I believe that the Ordinance was trying to do was give you more use of your backyard for things like placement of a shed or a temporary swimming pool. So that is I think one of the issues that is recognized by District and it is one of those areas that I found myself making sure I was thinking of the right term when I went through each part was very important. If you do not have an easement in your backyard, it is whole different situation than if you do, so I think Hull is right, it is important to know which places have these actual easements in a backyard. Hull says we also want to be careful of PUDs in Town. They probably don't have variances for them because the Code is gray. We need to

take a look at that as well. Oudman says I agree with that. I know there is one in the Village as far as a utility easement that cuts into a backyard. Hull says are there any referenced items in any of the PUDs of how the pool relates, that's what I'm curious about. Oudman says not in the Village. Hull says it would be worth taking a look at the others.

Building Commissioner Wesley says it's a never-ending battle on the temporary pools especially. They pop-up overnight and we have no idea that they're there. Hull says if I come in today and apply for a pool, what are you going to look at. Building Commissioner Wesley says it's no different than any other building permit. They have to submit a plat survey with where they are going to place the pool drawn on it. We take into consideration the easements and explain to them at the time that they are discouraged from putting anything on an easement whether it's a shed, a pool or anything like that. The only difference is if it were a temporary pool permit. That would be something that could be put together in five minutes and fill up with a garden hose. That's a temporary pool. Our temporary pool ordinance states anything over 24 inches in depth is considered a temporary pool. Oudman says the State also has a definition for above-ground, partially in-ground, e ground, wading pools and a few other things, but I believe the part about the temporary or non-temporary is left up to the individual jurisdictions. Hull says the next question...I got my permit for my pool and went and put my pool in, does anyone come and check it? Building Commissioner Wesley says the above-ground pools, no. There is no inspection on an above-ground pool. The in-ground pools there is a grounding and bonding inspection that has to take place but besides that there are no requirements for pool inspections. If there is electricity involved there is an inspection or gas if they have a heater. Hull says Oudman has done an excellent job, please coordinate with Attorney Brazil, McHargue, Global Engineer Hicks and get this into Code. If you could get something together for us to review next month would be great. Oudman says that sounds fine. We will proceed with this with the idea that an appropriate amount of intrusion into the rear setback is ok but not into any easement area. Correct? McHargue says I agree with that statement.

Attorney Brazil says this all makes sense. I am also in agreement with McHargue and Hull about where the pool is located.

New Business

Ice and Water Shield for Roofs

Oudman says the Building Department Clerk needs some direction regarding ice and water shield for roofs and since that needs an inspection, should there be a fee adjustment. Hull says an inspection is an inspection. They get charged by how many they get. Biancardi says when you pull up the Fee Table, we have a line item that says \$35 for each required inspection as determined at the time of plan review. So, if an ice and water inspection is determined to be needed then we charge \$35.00. As new things need to be inspected it just needs to be determined and they would be made aware that it would be required. A list of all the different types of inspections that would fall under this \$35.00 fee would be helpful. Oudman says that makes sense that it's right up front for everybody.

Enforcement of Shipping Containers

Oudman says how does the Building Department approach the fees, and also would there be any type of notification. Biancardi says in September 2020 we had an Ordinance that had fees written into it but as we looked through Code, we have things in multiple places and sometimes it's hard to keep track of where it's at. We would like to keep everything central so it's easy to find and that would be on the Fee Table. At the September meeting there was a motion to take the written fees out of the Ordinance and add it to the Table and then send it on to the Town Council. In the process of sending the Ordinance to the Council, this table didn't make it. The Ordinance has been passed but we need to go back and make sure that this Fee Table is then sent on as well. Is everyone comfortable with these numbers and feel like that was where we landed. Then, I think we should move forward with a Public Hearing to get that to the Town Council.

Biancardi makes a motion to hold a Public Hearing on April 5, 2021 for the Shipping-Cargo Containers Fee Table which will then be forwarded to the Town Council. Oudman seconded the motion. Motion carried by unanimous vote.

Oudman says because the Ordinance is set to be effective on March 9, what happens to that Ordinance in the meantime and is this just a chance to contact people who have shipping containers and say this is the new Ordinance and you have this amount of time to comply. Biancardi says it is my understanding that this Ordinance is in effect. What we need to do is create a permit form. I agree it is an opportunity to contact people and let them know they are either out of compliance or not. It would take us some time to do the fees because they would require 90-days before they are in effect. Building Commissioner Wesley says I will email everyone the sticker I'm proposing and then we need to draw up a permit form for the application process. Hull says can you have that for us for the Public Hearing. Building Commissioner Wesley says absolutely. Oudman says now that we are done working the Ordinance what do we do with those people who were not granted variances for outdoor storage. Hull says the Building Commissioner would notify them and tell them how to handle it. We will put it out there as best as we can.

New Business

Review: Bonds, Maintenance Guarantees, Letters of Credit

Falbo says I would like to request a punchlist for Trail Creek Phase 1-Maintenance Bond which is due in July 2021 in order to send it along with a letter to Mr. Patrick Kleihege inviting him to the May 3, 2021 meeting.

Poparad makes a motion to request a punchlist from Global Engineering for the Trail Creek Phase 1-Maintenance Bond. Oudman seconded the motion. Motion carried by unanimous vote.

Review of Table 5-2, Zoning Form & Function Table

Oudman says in my study of the Town Code...part of what I studied was also the Zoning Form and Function Table as well as thinking about some of the activity that the BZA has recently had

as far as businesses coming in for variances because whatever use they had intended does not fit the particular zone. This has often happened especially in the Downtown District, but it has happened in other districts as well. I wanted to request that everybody take a look at the Zoning Form and Function Table and review it with the needs of Burns Harbor in 2021 and beyond because zoning is something that is dynamic and what was envisioned when this was first put together has changed somewhat in the Town. There are a few things we could consider looking at that we either want to refine or we want to consider if the restrictions are appropriate or inappropriate for some of the different items. Just as an example, we currently have at the BZA where the property at 311 Melton Road is in the process of being sold and so far, there have been two different potential buyers who have asked if their potential use for that property would be acceptable. We don't have to change the zone, but we may want to re-evaluate what use could be in that Downtown District. It is not a Downtown District anymore, far as usage, but it is still a district that is in a particular locality. I think we could look at not only that district but others for potential use and the way we want to manage it to encourage development and just if there's things that need to be changed. One item that goes with that is that I was surprised at first that a property could be sold to someone and they wouldn't have clue that their use was not acceptable. Maybe they hadn't done their due diligence and that put us in kind of an awkward position when they come to say why can't I do this on my property that I just bought. That is just something that I think we should look and try to figure out how we can handle. Biancardi says I agree with Oudman and I also thought as Oudman mentioned that 2021 and going forward is looking different. Is the Downtown District zone something that should still be part of the Town or is it RC2? Do we bring those together? I do like what Oudman is saying. Is that zone still something that we need? Oudman says I looked at Biancardi's question on if we should change that zone and I think once you start getting into making the zone change entirely it ends up being more complicated and more expensive that just adjusting our expectations or uses of the zone itself. Biancardi says I can understand what Oudman is saying, but I think that not addressing the change through a zone could almost continue on the path of what we're trying to sort out now in the Code book. I think it needs to be considered of becoming another and then looking at those uses. Hull says rezoning is a nightmare. I don't think cost, time and energy should be a factor as much as getting it right and having it correct is the bigger deal. Part of where we're at now is transition between the new path that we've laid out and the old path that we walked into. We had to go through at lot of that at the RDC in the plans that had to be redone because of districts and those types of things. We know zoning is going to be an issue. We can start looking at it and see what we need to do. It needs to be done so let's keep that one on the agenda for next month. Everyone can review Table 5-2 and come with some questions.

Good of the Order and Any Other Business

None

Announcements

None

Adjournment

McHargue makes a motion to adjourn at 8:16 p.m. Biancardi seconded the motion. Motion carried by unanimous vote.

APPROVED on April 5, 2021

Eric Hull, President

Marge Falbo, Secretary