

Burns Harbor Town Council
Regular Meeting
June 9, 2021

The Town Council of the Town of Burns Harbor, Porter County, Indiana met in its regularly scheduled session on Wednesday, June 9, 2021 in the Town Hall and virtually with Zoom. The meeting was called to order by Council Vice-President Eric Hull at 7:04 p.m.

This meeting was made available to the public in accordance with Governor Holcomb's Executive Order 20-09. It was streamed using Zoom.

The Pledge of Allegiance to the American Flag was recited.

Roll Call: Toni Biancardi ----- Present
Roseann Bozak ----- Present
Eric Hull ----- Present
Nicholas Loving ----- Present via Zoom
Angie Scott ----- Present

Clerk-Treasurer Jane Jordan was Present. A quorum was attained.

Additional Officials Present: Attorney Clay Patton, Fire Chief/Sanitation Superintendent William Arney, GM/Street Superintendent Robert Wesley, Building Commissioner Jack McGraw, Town Marshal Mike Heckman and Park Director Kim Burton.

Approval of Minutes:

Councilwoman Scott made a motion to approve the meeting minutes of May 12, 2021. Councilwoman Biancardi seconded the motion. Councilwoman Biancardi – Aye, Councilwoman Bozak – Aye, Councilman Hull – Aye, Councilman Loving – Aye, Councilwoman Scott – Aye. **Motion passed.**

Reports:

Clerk-Treasurer Jordan informed the Council that Indiana is one of eight states that has to decide whether certain jurisdictions will receive the American Recovery Plan (ARP) grant money, for Indiana that would include townships. If the State decides to include townships, the Town could receive less than they are anticipating. Because of this decision, the first payment will be delayed. Also, the State Board of Accounts is requiring all city and town fund numbers, and in some instances, fund names be changed to meet the SBoA revised chart of accounts beginning January 1, 2022.

Councilwoman Bozak informed the Council that the Park has received complaints about the Shadyside equipment being unsafe. Council discussed if the equipment belongs to the town, if the Town installed the equipment or someone else, whether or not the equipment is on the property the Town leases from the Mill, what parcels are included in the town lease, if the Town could remove the equipment, and how to go about removing or getting the equipment removed, what department mows that land and how much of that land, whether or not to remove listing Shadyside Park as a town park from the town website. Council consensus was to have the Street Department continue to mow the entire property until the status of the property changes and to remove the park sign from the property. Councilman Loving volunteered to contact Cleveland-Cliffs' government affairs liaison to discuss getting the equipment removed and deeding the property to the Town; removing the equipment being the priority.

Councilman Loving informed the Council that he spoke to Republic Services, Jim Metros this morning and Mr. Metros hopes to have something for next month. Republic is struggling to calculate 2022 pricing based upon the current recycling market.

Building Commissioner McGraw informed the Council that Scott's Garages (277 Melton Road) has someone interested in moving into the building to run the same type of business as the previous leasee and that there are various issues with that property. Councilwoman Biancardi informed the Council that this is a long history property from previous owners and asked if the business use meets the property use. Building Commissioner McGraw stated that it was a special exception use. Councilwoman Biancardi indicated that if it was a special exception use that goes with the property, they could lease it to someone else to do the same thing. Attorney Patton informed the Council that he spoke with Building Commissioner McGraw directing him to look at the application, what the use was, what

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was intended and if the new owner or occupant needs to come in and seek a new variance. Councilwoman Biancardi suggested that would answer the question if it was a special exception to that person and not to the property then we would know right away if he wants to do the same thing or if he would have to go through the process. Fire Chief Arney informed the Council and Building Commissioner that part of that special exception that he was operating under, he never met all the criteria for that. Councilwoman Biancardi stated it could be revoked. Building Commissioner McGraw informed the Council he was able to get a copy of the letter pertaining to 1128 Gustafson Lane. Pat Kleihege is in violation so fines will be assessed starting tomorrow. Attorney Patton explained that Mr. Kleihege is in violation of Ordinance 290-2019 and that Attorney Brazil send a certified letter to Trail Creek LLC and Mr. Kleihege on May 25, 2021 which was delivered on May 27, 2021 at 12:20p.m. The letter indicates that Trail Creek LLC has been found to be in violation of section 14c of Ordinance 290-2019 and shall be assessed a fine of up to \$2,500 for every day they continue to be in violation in accordance with section 16 of this ordinance commencing upon service of this letter. Trail Creek LLC will avoid being assessed the daily fine upon completion of the following and then proof of signed contract of monies paid to NIPSCO for installation of electric service per exhibit A within 7 days commencing upon service of the letter, proof of a signed contract of monies paid to NIPSCO for installation of gas service per exhibit B within 7 days commencing upon service of the letter, a 3 inch water main to be extended from the end of the existing 8 inch main on Gustafson Lane to 10 feet across the property line of Lot 4 and a fire hydrant installed within 500 feet of the house on Lot 4 within 14 days commencing upon service of this letter. After further discussion, on when fines could be assessed and that Mr. Kleihege did not attend the June 7th Plan Commission, Councilman Hull suggested assessing fines beginning Monday, June 7, 2021 the day the Plan Commission met and discussed the matter. Building Commissioner McGraw informed the Council his department received a letter from Sun Steel Express, 317 Tech Drive which is looking to do a dealership at that location. Council discussed the process of approving or denying the request which would trigger action by the Board of Zoning Appeals. Building Commissioner McGraw informed the Council his office received a complaint form from a homeowner in Corlin's Landing Subdivision indicating that a substance they believe is from PVS Chemicals (1111 State Road 149) landed in their yard and stained their pool cover. Councilwoman Biancardi informed the Council that she requested the Building Commissioner bring this before the Council because she wasn't sure how the Town would precede with this investigation. Council discussed the matter indicating previous residue similar to this showed it was not coming from PVS, how do we approach the company, and that the orange dust has been blowing around in that area for more than 30 years. Building Commissioner McGraw gave the Council a status update on Rainbow Community (210 Rainbow Drive) indicating that no improvements have been made to the mobile home park. The State Health Department has filed more than 14 violations. The property owner is telling the State he has no money to correct the violations. Doug Williamson from the State Health Department indicated today, he will pursue filing against the park owner. Mr. Pasternac moved two more mobile homes into the park over the weekend. Councilwoman Biancardi asked if the Town would continue to write violations and the process of condemnation and see where it goes. After further discussion of the Park not having a state or local license, state employees returning to work after COVID, and safety concerns at the Park, the Council consensus was to have Attorney Patton begin condemnation proceedings.

Councilwoman Biancardi informed the Council that a purchase order was submitted by the Building Commissioner to have the air ducts at Town Hall and the street building cleaned. After discussion, Councilwoman Biancardi made a motion that the air ducts in the Town Hall, Police Department, Building and Street Departments be cleaned at a not to exceed \$2,000. Councilman Loving seconded the motion. Clerk-Treasurer Jordan asked if all of the work to be paid for from the town budget. Councilman Hull stated yes. After reviewing the purchase order, Councilwoman Biancardi amended the motion not to exceed \$2,200. Councilman Loving seconded the amended motion. Councilwoman Biancardi – Aye, Councilwoman Bozak – Aye, Councilman Hull – Aye, Councilman Loving – Aye, Councilwoman Scott – Aye. **Motion passed.**

Building Commissioner McGraw informed the Council that he has a company coming to look into the possible mold problems and they will be moving around in the attics.

GM/Street Superintendent Wesley informed the Council that the department has been busy. Reroofing the street department buildings is scheduled to begin next week. Council

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directed GM/Street Superintendent to obtain quotes for detailing the new department truck. Council thanked the Department for the new signs throughout town and asked that the sign on Melton Road west of town be replaced with similar signage. Street GM/Superintendent Wesley thanked his staff for all their work getting ready for the trail ribbon cutting ceremony. He asked the Council if the Street Department could work 6:00 a.m. to 2:00 p.m. during the summer. After Council discussion about staggered shifts to cover normal business hours, and what staff would do at 6:00 a.m. to not cause noise complaints, Council consensus was that everyone from that department would start at 6:00 a.m. for the summer.

Town Marshal Heckman thanked the Redevelopment Commission for purchasing bikes and suspect transporters for the department.

Fire Chief Arney informed the Council that the department has had a busy month and thanked the Council for the exhaust removal system at the Fire Station.

Sanitation Superintendent Arney informed the Council the department has been busy and are continuing to work on upgrades to the lift stations.

Park Director Burton informed the Council that the beach is open, a fishing derby was held last weekend, day camp will not be offered this year but there will be an art program, soccer camp and other programs for smaller groups. Shelter rentals have increased and the Footloose 5K will be Saturday, June 26th 7:30 a.m. – 9:00 a.m. There will be road closures during the race. The Park thanked the Street Department for their assistance while the Park works through their staff shortage.

Redevelopment Commissioner Hull informed the Council that the grand opening and ribbon cutting for the west side of the Marquette Greenway Trail was last Friday and work continues on the east side.

The following purchase orders were presented for discussion: #2705, 2841, 2845, 2847, 2848, 2856, 2857, 2858, 2859, & 2860.

Correspondence:

IDEM – Notice of Approval Title V Administrative Permit Renewal TMS International LLC, Portage

IDEM – Notice of Public Comment Part 70 Operating Permit Powder Processing Technology, Porter County

IDEM – Notice of Approval Title V Administrative Amendment MonoSol, LLC, Portage
Notice of Public Hearing Burns Harbor Plan Commission 1237 Westport Road
Notice of Public Hearing Burns Harbor Plan Commission 1240 Boo Road

Presentations, Resolutions, Ordinances and Remonstrance:

Ordinance 296-2020 Westport PUD District Amendment:

Matter tabled until next month.

Ordinance 308-2021 Amending the Text of Chapter 15 Zoning Concerning Swimming Pools:

Councilwoman Biancardi made a motion that the Town adopts **Ordinance 308-2021 An Ordinance of the Burns Harbor Town Council Amending the Text of Chapter 15 Zoning Concerning Swimming Pools Within the Town of Burns Harbor, Indiana.**

WHEREAS, the Burns Harbor Town Council has adopted a Zoning Ordinance codified as Chapter 15 of the Town Code of Burns Harbor, Indiana; and

WHEREAS, the Burns Harbor Advisory Plan Commission has initiated certain amendments to the text of the Zoning Ordinance in order to better regulate Swimming Pools in the Town by adopting codes to adhere to requirements for outdoor swimming pools, adding definitions to distinguish between different types of Swimming Pools and adding restrictions to which all Swimming Pools shall conform; and

WHEREAS, notice has been given in accordance with Indiana Code of all proceedings concerning these text amendments; and

WHEREAS, a public hearing has been held before the Burns Harbor Advisory Plan Commission and said Commission has paid reasonable regard, in preparing and considering the proposal, to the factors set forth in Indiana Code § 36-7-4-603, including the Comprehensive Plan; and

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WHEREAS, the Commission now certifies its proposal to amend the text portions of the Zoning Ordinance to the Burns Harbor Town Council; and

WHEREAS, the Burns Harbor Town Council concurs with its Advisory Plan Commission and accepts this proposal;

NOW THEREFORE, be it and it is hereby ordained by the Burns Harbor Town Council as follows:

Section 1. That section 15.13 of Chapter 15 of the Town Code of the Town of Burns Harbor Zoning Ordinance shall be amended to include the following:

15-13-8 SWIMMING POOLS

The Town of Burns Harbor adheres to the current edition of the requirements for outdoor swimming pools, found in:

- Section 675, Article 20 of the Indiana Administrative Code
- Appendix G, Section AG 105.2 of the International Residential Code, as published by the International Code Council, Inc.

A. DEFINITIONS:

- 1. SWIMMING POOL:** Any artificial basin constructed, modified, or improved for wading, swimming, or diving. This does not include artificial lakes.
 - (a) Swimming pool, in-ground:** Any pool whose sides rest in partial or full contact with the earth.
 - (b) Swimming pool, non-permanently installed:** Any pool that is so constructed that it may be readily disassembled for storage and reassembled to its original integrity. (Generally intended to be removed for winter storage each year.)
 - (c) Swimming pool, on-ground:** Any pool whose sides rest fully above the surrounding earth.
 - (d) Swimming pool, permanently installed:** Any pool that is constructed in the ground or in a building in such a manner that the pool cannot be readily disassembled for storage. (Generally, not intended to be removed seasonally.)
 - (e) Swimming pool, wading:** Any shallow pool, usually intended for small children or adults who can get their feet and lower bodies wet.
 - (f) Swimming pool, residential:** Any pool with a water depth of at least forty-two (42) inches for use by not more than two (2) owner families and their guests and situated on the premises of a detached one- or two-family dwelling, or a one-family townhouse not more than three (3) stories in height.

B. RESTRICTIONS:

All swimming pools shall conform to the following restrictions:

1. No swimming pool shall be located in any recorded easement.
2. Swimming pools shall observe the same side and rear Setbacks as primary Buildings in their District;
3. No swimming pool shall be located closer to the Front Lot Line than the Front Line of the Building;
4. Pools must be a minimum of seven (7) feet from any property line and a minimum of seven (7) feet from any other structure.
5. Pools and any appurtenant structures shall not be within ten (10) feet of any part of a septic system.
6. No Swimming pool shall be located above or below any utility lines including electric, gas, or water.
7. Swimming pools shall be securely fenced or covered as required by State Statute.
8. A minimum four (4) foot barrier surrounding pool is required, either fenced yard or pool fence with locking gate or ladder if pool is less than four (4) foot above ground.
9. If the top of the pool wall is less than four (4) foot above any surround deck, patio, or grade, the barrier must be placed to be a minimum of four (4) foot above.
10. For in-ground pools, an automatic locking pool cover may be installed in lieu of barrier, as provided for in 675 IAC CH 20.
11. A temporarily installed above ground pool must be removed by the temporary pool permit expiration date.

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12. For pools less than twenty-four (24) inches in height, no permit is required. Homeowner accepts responsibility for all liability.
13. Any in-ground, partially in-ground pool, above-ground pool, permanently installed, or an above-ground, temporarily installed pool with a deck, requires a building/location improvement permit.
14. Inspections are required for location, electrical, mechanical, concrete (in-ground pools), and final.
15. Notice shall be given to the Town's Sanitary Superintendent prior to draining a Swimming Pool with a capacity of more than five hundred (500) gallons.

Section 2. This Ordinance shall be effective upon its adoption and publication.

Councilwoman Bozak second the motion. Building Commissioner McGraw stated there was not a whole lot put on as far as electrical and inspections, in order for me to do an inspection on an electrical. Is there a fee and do I have to change the fee table to do that? There is no fee schedule for that. Right now, the permit does not include an inspection for electrical. Councilwoman Biancardi stated I would say if that is what we want to do and it requires an amendment, we wouldn't be able to charge for an inspection until it's changed. It says inspections are required. Plan Commission member Sarah Oudman asked would this fall under the asterisks that says \$35 for any other required. Councilman Hull stated yes. Councilwoman Biancardi stated it does say they are required and it is listed. Councilman Hull stated the asterisk part we discussed at Plan (Commission) at the last meeting they are going to make the clerical and formatting corrections to do that to help eliminate some of that. Building Commissioner McGraw stated so, we can put that on the fee table too. Councilwoman Biancardi stated no, it's already on there. But I would suggest that once the ordinance is adopted, that Lori (Building Clerk McCormick) would update the permit and include all that information because, that would be something that is new. Councilwoman Biancardi – Aye, Councilwoman Bozak – Aye, Councilman Hull – Aye, Councilman Loving – Aye, Councilwoman Scott - Aye. **Ordinance 308-2021 passed its first reading.**

Councilwoman Biancardi made a motion that the Town declares an emergency and suspends the rules of adopting an ordinance in two separate meetings. Councilwoman Scott seconded the motion. Councilwoman Biancardi – Aye, Councilwoman Bozak – Aye, Councilman Hull – Aye, Councilman Loving – Aye, Councilwoman Scott – Aye. **Motion passed.**

Councilwoman Scott made a motion that the Town adopts **Ordinance 308-2021 An Ordinance of the Burns Harbor Town Council Amending the Text of Chapter 15 Zoning Concerning Swimming Pools Within the Town of Burns Harbor, Indiana** on its second reading. Clerk-Treasurer Jordan asked since there are fees involved so, they will not take effect until they are advertised. Councilman Hull stated they are not new fees involved. Councilwoman Biancardi stated I guess in a sense they are new to this permit. Attorney Patton stated assuming this is approved, it is a matter of Jane (Clerk-Treasurer Jordan) sending this to the Times. Councilwoman Scott stated what if you already got a permit. Councilman Hull stated then you are good to go. Councilwoman Scott asked are these new fees to the permit. Councilman Hull stated there is nothing new but, it's because we are changing it that it has to advertised because there is a fee involved. Councilwoman Biancardi stated we can follow the new guidelines but, the fees won't take effect until ninety days. Building Commissioner McGraw stated fifty or sixty percent of the pools out there have extension cords out there running their pumps. That is a hazard. There is nothing I can enforce to have them change that. Attorney Patton stated you can enforce that. You just cannot charge the fee. Councilman Hull stated the fee is for a permit for the pool. Councilwoman Biancardi stated the fee is for him to go out and inspect it once it is done so he can make sure it is not an extension cord. Councilman Hull stated that is the only new fee, okay. Councilman Loving stated just confirming existing pools with existing extension cords are not affected. Councilman Hull stated yes, you would be in violation. Building Commissioner McGraw said it is a safety violation. Councilman Hull stated you cannot run an extension cord to the pool. It has not been allowed. People just do it. He has been able to enforce that previously, this is not a new deal. Councilwoman Biancardi seconded the motion. Councilwoman Biancardi – Aye, Councilwoman Bozak – Aye, Councilman Hull – Aye, Councilman Loving – Aye, Councilwoman Scott – Aye. **Ordinance 308-2021 passed and was adopted.**

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Resolution 2021-06 Establishing the Policy by Which Member of the Town Council May Participate by Electronic Means:

Attorney Patton explained to the Council that a new law passed in April by the Governor allows for electronic meetings post state health emergency, post pandemic. It has various provisions in the law that allows participation electronically. A quorum physically present is still a requirement, members cannot participate electronically for successive meetings, there are provisions for record keeping, minutes, the roll call, and who's voting in what manner. People who aren't physically present can be counted as present and their vote can count. The Public Access Councilor and legal counsel for Association for Indiana Municipalities (AIM) explained that the Council passing this does not give a blanket to all the town boards. Each Board's governing body would need to adopt a similar resolution should they wish to benefit from this new law.

After further discussion, Councilwoman Biancardi made a motion that the Town adopts **Resolution 2021-06 A Resolution of the Town Council of the Town of Burns Harbor Establishing the Policy by Which Members of the Town Council May Participate by Electronic Means of Communication**

WHEREAS, P.L. 88-2021 (HEA 1437), SEC. 5, amended IC 5-14-1.5-1 et seq. (Act), effective April 20, 2021 by amending IC 5-14-1.5-3.5 to prescribe new requirements by which members of the governing body of a public agency of a political subdivision may participate in a meeting by any electronic means of communication;

WHEREAS, a member of the governing body may participate by any means of communication that:

- Allows all participating members of the governing body to simultaneously communicate with each other; and
- Except for a meeting that is an executive session, allows the public to simultaneously attend and observe the meeting;

WHEREAS, the Act requires the governing body to adopt a written policy establishing the procedures that apply to a member's participation in a meeting by an electronic means of communication and may adopt procedures that are more restrictive than the procedures established by IC 5-14-1.5-3.5(d); and

WHEREAS, the Town Council (Council) is the governing body of the Town of Burns Harbor, Indiana:

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BURNS HARBOR, INDIANA:

- Section 1. (a) The provisions of the Act, including definitions, apply to this resolution.
(b) This resolution shall be known as the "Electronic Meetings Policy" of the Council and applies to the Council and any committee appointed directly by this Council or its presiding officer.
- Section 2. (a) Subject to Sections 3 and 5, any member may participate in a meeting by any electronic means of communication that: (i) allows all participating members of the governing body to simultaneously communicate with each other; and (ii) other than a meeting that is an executive session, allows the public to simultaneously attend and observe the meeting.
(b) A member who participates by an electronic means of communication: (i) shall be considered present for purposes of establishing a quorum; and (ii) may participate in final action only if the member can be seen and heard.
(c) All votes taken during a meeting at which at least one member participates by an electronic means of communication must be taken by roll call vote.
- Section 3. (a) At least fifty percent (50%) of the members must be physically present at a meeting at which a member will participate by means of electronic communication. Not more than fifty percent (50%) of the members may participate by an electronic means of communication at that same meeting.
(b) A member may not attend more than a fifty percent (50%) of the meetings in a calendar year by an electronic means of communication, unless the member's electronic participation is due to:
(1) military service;
(2) illness or other medical condition;
(3) death of a relative; or
(4) an emergency involving actual or threatened injury to persons or property.
(c) A member may attend two (2) consecutive meetings (a set of meetings) by electronic communication. A member must attend in person at least one (1)

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meeting between sets of meetings that the member attends by electronic communication, unless the member's absence is due to:

- (1) military service;
- (2) illness or other medical condition;
- (3) death of a relative; or
- (4) an emergency involving actual or threatened injury to persons or property.

Section 4. The minutes or memoranda of a meeting at which any member participates by electronic means of communication must:

- (1) identify each member who:
 - (A) was physically present at the meeting;
 - (B) participated in the meeting by electronic means of communication; and
 - (C) was absent; and
- (2) identify the electronic means of communication by which:
 - (A) members participated in the meeting; and
 - (B) members of the public attended and observed the meeting if the meeting was not an executive session.

Section 5. No member of the Council may participate by means of electronic communication in a meeting at which the Council may take final action to:

- (1) adopt a budget;
- (2) make a reduction in personnel;
- (3) initiate a referendum;
- (4) impose or increase a fee;
- (5) impose or increase a penalty;
- (6) exercise the Council's power of eminent domain; or
- (7) establish, impose, raise or renew a tax.

Section 6. (a) If an emergency is declared by:

- (1) the governor under IC 10-14-3-12; or
 - (2) the Town Council president under IC 10-14-3-29;
- members are not required to be physically present for a meeting until the emergency is terminated.

(b) Members may participate in a meeting by any means of communication provided that:

- (1) At least a quorum of the members participate in the meeting by means of electronic communication or in person.
- (2) The public may simultaneously attend and observe the meeting unless the meeting is an executive session.
- (3) The minutes or memoranda of the meeting must comply with Section 4 of this resolution.

(c) All votes taken during a meeting at which at least one member participates by an electronic means of communication must be taken by roll call vote.

Section 7. This resolution shall be effective from and after adoption by this Council and compliance with IC 36-5-2-10.

Councilman Loving seconded the motion. Attorney Patton stated while this is implemented if we find some things that we want to add, take out or tweak with regards to some of the. There are only so many things you can tweak from the state code. Some of it as far as notification who is going to be appearing electronically and that is just about communication amongst the five of you and the Clerk-Treasurer. Councilwoman Biancardi – Aye, Councilwoman Bozak – Aye, Councilman Hull – Aye, Councilman Loving – Aye, Councilwoman Scott - Aye. **Resolution 2021-06 passed and was adopted.**

New Business:

Staff anniversary recognition:

Council recognized the following employees' years of service that have June anniversary dates: Michael Heckman 14 years and William Arney 13 years.

Ambulance service abatements:

None.

Park 5K Footloose road closure request:

Matter discussed under reports.

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Decommission 2013 Ford Taurus VIN 1FAHP2MK1DG199892:

Councilwoman Biancardi made a motion to decommission the 2013 Ford Taurus VIN 1FAHP2MK1DG199892. Councilwoman Biancardi asked what are we going to do with it once we decommission it. Clerk-Treasurer Jordan said it was used as a trade-in on the new police vehicle. I will contact the insurance company and have it removed. Councilwoman Scott seconded the motion. Councilwoman Biancardi – Aye, Councilwoman Bozak – Aye, Councilman Hull – Aye, Councilman Loving – Aye, Councilwoman Scott – Aye. **Motion passed.**

Schedule budget meetings:

Tabled until next meeting.

Planning Commission Trail Creek Issue – Derek Anderson:

Burns Harbor Resident Derek Anderson of 1128 Gustafson Lane asked the Council when does it end, at what point. Is there a next step? What is that next step if he continues to stay in violation?

Councilman Hull stated at the end of the day it's civil.

Attorney Patton stated the teeth we have is the fines.

Mr. Anderson stated didn't he have to put up a guarantee letter or some type of letter of credit?

Councilman Hull stated not in regards to the construction on your home. Those are guarantees on the infrastructure, things like the street, the sewer, the above ground infrastructure, and the below ground infrastructure. It's typically what those are to cover.

Mr. Anderson stated correct, and that is what the issues are, he hasn't completed those.

Councilwoman Biancardi stated right, so that letter if I understand was, he is supposed to have an agreement with NIPSCO, with the water company. What I did hear is that if he gets those to us and complies, we would waive those violations. My concern with that is, how long is he going to pull that out, knowing that those are going to be waived when he complies?

Mr. Anderson stated again, he has to provide some letter of guarantee. He had to provide that with this PUD. Those people need to be notified of this potential issue they are going to be facing if he is not going to complete his work as required per the PUD. In order to get the PUD, he had to provide a letter of guarantee.

Councilman Hull stated correct, he provides a bond or a maintenance guarantee and those are for the infrastructure when he is done that are dedicated to the Town. That becomes the Town's property. That money guarantees that the things that he built are going to hold up for a period of time, typically two years, and that money holds up. So those bonds, those types of things are for the road, for the curbs, for the sewer. When I say below ground infrastructure, it's sewer and those types of things. It's not the utility.

Mr. Anderson stated it's not water.

Councilman Hull stated it's not water. We don't have anything to do with water. That is kind of where your hold up is. Same thing with NIPSCO, we have no control over that. It's the infrastructure that when he walks away, when he is completely done, now it's the Town's responsibility. So, now all the sidewalks, roads and curbs, all those things become ours. That is what those funds are for. It's a protection that way.

Mr. Anderson stated okay, what about being in violation of state law. Is that civil too; with the fire hydrant?

Attorney Patton stated I am not sure what the question is.

Councilman Hull stated the fire hydrant is not in the right spot.

Fire Chief Arney stated that is within our town ordinance. It is not a state law.

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Councilwoman Biancardi directed Building Commissioner McGraw in addition to sending a certified letter, he should call Mr. Kleihege tomorrow and inform him he is being fined beginning today.

Attorney Patton stated it is my understanding he has forwarded this to his attorney so, hopefully they are looking at it. I am looking at this letter and I don't see where Attorney Brazil represents that it's a violation of state law.

Attorney Patton read excerpts of the letter sent to Mr. Kleihege.

Councilman Hull stated we are getting to the end of our ability to do much.

Attorney Patton stated you bought this lot from him. You need to seek your own legal counsel. I know Attorney Brazil has spent quite a deal of time talking to you, he can't give you legal advice.

Mr. Anderson stated he has a PUD and there are certain things that the Town is required. If it were civil, I am not just going to sue him is what I am getting at. I was never supposed to be issued a building permit based on town code.

Attorney Patton stated I guess based on that statement I am not going to say anything further.

Councilman Hull stated we are at the end of the tools that we have to do anything with. You don't want us to put a stop work order over there because that is going to affect you and I fully understand that. Because there is no certificate of occupancy, there is not a health issue, those types of things, we are limited on the directions we can go in a safety or those types of directions. Really, what we have is a violation of agreement, which is a civil matter. We are more than happy and want to help you in any way we can. And at a point we can't represent you either. We can only help you up in to a point if it does go into a court of law and there is a point where you have to represent yourself and we have to represent us. It is not that we're not together. It's not that we're not at the same table. Because we are different individuals. That's where we kind of get to the end of the rope and that is why Attorney Patton suggests you need to seek a little bit of counsel on your side for your protection and have your attorney work with our attorney. They will be happy to work together with those types of things. We are not interested in trying to fight.

Mr. Anderson stated I get it. I know how it works. If he reaches back out and you hear some information.

Councilman Hull stated absolutely, Jack will get a hold of you. We do understand the urgency.

Approval to Pay Vouchers:

Councilwoman Scott moved to approve vouchers with three or more signatures. Councilwoman Biancardi seconded the motion. Councilwoman Biancardi – Aye, Councilwoman Bozak- Aye, Councilman Hull – Aye, Councilman Loving – Aye, Councilwoman Scott – Aye. **Motion passed.**

Approval of May 2021 financial report:

Councilwoman Scott made a motion to approve the May 2021 financial report. Councilwoman Bozak seconded the motion. Councilwoman Biancardi – Aye, Councilwoman Bozak- Aye, Councilman Hull – Aye, Councilman Loving – Aye, Councilwoman Scott – Aye. **Motion passed.**

Old Business:

COVID-19 Safety and Action Plan:

Attorney Patton informed the Council that the Governor has extended the State of Emergency through June 30 on a thirty day renewal.

After discussion of mask requirements, easing safety protocols and police staffing their front desk, Councilwoman Biancardi made a motion that the Town open their buildings to the public with masks required in public spaces. Councilman Loving seconded the motion.

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Councilwoman Biancardi – Aye, Councilwoman Bozak – Nay, Councilman Hull – Aye, Councilman Loving – Aye, Councilwoman Scott – Nay. **Motion passed.**

Waiving waste water late fees due to State Health Emergency:

After discussion of Sanitary Board discussing this matter month by month, number of delinquent accounts, and shutoff and liens, Councilwoman Scott made a motion to affirm the waiving of sanitary late fees for the month of June due to Indiana's state health emergency. Councilwoman Biancardi seconded the motion. Councilwoman Biancardi – Aye, Councilwoman Bozak – Aye, Councilman Hull – Aye, Councilman Loving – Aye, Councilwoman Scott – Aye. **Motion passed.**

CF-1 statement reviews for 2022 abatement:

Attorney Patton informed the Council that Linde, Inc. appears to be in compliance based upon the amounts they listed as their estimated costs and assessed value and actual costs and assessed value, number of employees and number of employees retained and salaries. They appear to be in substantial compliance.

Councilwoman Biancardi made a motion to approve Linde, Inc.'s CF-1. Councilwoman Scott seconded the motion. Councilwoman Biancardi – Aye, Councilwoman Bozak – Aye, Councilman Hull – Aye, Councilman Loving – Aye, Councilwoman Scott – Aye. **Motion passed.**

Attorney Patton informed the Council that Cleveland-Cliffs has multiple CF-1s. The CF-1 regarding 2019-06 has an estimated start date of May 1, 2019 and completion date of December 31, 2022. Resolution 2019-07 has an estimated start date of May 1, 2019 and completion date of December 31, 2023. The CF-1 regarding 2019-08 has an estimated start date of May 1, 2019 and completion date of December 31, 2023. All of these projects were to purchase new equipment to replace old or outdated equipment. The Mill is suggesting that the pandemic affected those projects but, the estimated start date of those projects was ten months before everything shut down in March of 2020. If the Town Council reports that the Mill is compliant on these matters, the property owner will get an abatement on older outdated equipment and assessed valuation.

Councilman Hull informed the Council that he and Councilman Loving participated on a call with representatives from the Cleveland-Cliffs. Some of those abatements are for the walking beam furnace. A lot of the parts have been ordered and purchased but, they still need to be built and installed.

Attorney Patton stated I understand they have been ordered, paid for but, they have not been put into operations. They are not part of the assessed valuation. I completely understand the pandemic but, these are things that based on the resolution an estimated start date of over two years ago, May 1, 2019 as the estimated start date on all three.

Council further discussed reasons for delay, whether abatement would be on old equipment or on nothing at all, requiring a new start date and/or resolution.

Attorney Patton informed the Council that with regards to the CF-1s for resolutions 2015-04, 2016-14, 2016-20 and 2017-14, it seems that they are in substantial compliance.

Councilwoman Biancardi made a motion to approve Cleveland-Cliffs CF-1s for resolutions 2015-04, 2016-14, 2016-20 and 2017-14 and that the Town requests additional information from Cleveland-Cliffs on the three CF-1s referenced as resolutions 2019-06, 2019-07 and 2019-08. Councilwoman Scott seconded the motion. Councilwoman Biancardi – Aye, Councilwoman Bozak – Aye, Councilman Hull – Aye, Councilman Loving – Aye, Councilwoman Scott – Aye. **Motion passed.**

Rainbow Community Mobile Home Park condemned under Indiana's unsafe building statute:

Discussed previously in the meeting under reports.

Instate trash service fee:

Discussed previously in the meeting under reports.

Burns Harbor Town Council
Regular Meeting
June 9, 2021

INDOT Town road inventory update status report:

Councilman Hull explained that an email from Town Engineer Martin Bobcek received earlier in the day indicated that he is putting together bids for the crack sealing project.

GM/Street Superintendent Wesley informed the Council the crack sealing will take place in the fall when cooler temperatures aids in it adhering to the road.

Clerk-Treasurer Jordan informed the Council that if Oak Leaf Lane is not on the town's road inventory by end of July, the Town will unable to add it to this year's Community Crossing grant submission.

Good of the Order of the Community:

None.

Councilwoman Scott made a motion that we adjourn. Councilwoman Bozak seconded the motion. Councilwoman Biancardi – Aye, Councilwoman Bozak – Aye, Councilman Hull – Aye, Councilman Loving – Aye, Councilwoman Scott – Aye. **Motion passed.**

There being no further business to discuss, the meeting concluded at 9:06 p.m.

Approved at July 14, 2021 meeting.

TOWN COUNCIL OF THE
TOWN OF BURNS HARBOR
Nicholas Loving, President
Eric Hull, Vice-President
Toni Biancardi
Roseann Bozak
Angie Scott

ATTEST:

Jane M. Jordan, IAMC, MMC, CPFA, CPFIM
Clerk-Treasurer