

**Burns Harbor Advisory Plan Commission
Minutes of Monday, July 12, 2021**

The Advisory Plan Commission of the Town of Burns Harbor, Porter County, Indiana met in a regular session on Monday, July 12, 2021 in the Town Hall and virtually via Zoom. The meeting was called to order by Advisory Plan Commission Vice President, Bernie Poparad at 7:00 pm.

This meeting was made available to the public in accordance with Governor Holcomb’s Executive Order 20-09. It was streamed on both Zoom and Facebook Live.

The Pledge of Allegiance to the American Flag was recited.

Roll Call:

Eric Hull	Via Zoom
Bernie Poparad.....	Present
Toni Biancardi.....	Present
Travis Dunlap	Absent
Jeremy McHargue	Present
Nicole Migliorini	Present
Sarah Oudman	Present

Additional Officials Present

Attorney-Michael Brazil
Building Commissioner-Jack McGraw
Global Engineer-Jeanette Hicks
Secretary-Marge Falbo

Also Present:

Chesterton Tribune-Jim Woods

Minutes

Oudman makes a motion to approve the amended minutes of June 7, 2021. Biancardi seconded the motion. Motion carried by unanimous vote.

Communication, Bills, Expenditures

Poparad: We have a resolution regarding the participation of the Board members by electronic means of communication.

RESOLUTION NO. 2021-01

**A RESOLUTION OF THE ADVISORY PLAN COMMISSION
OF THE TOWN OF BURNS HARBOR ESTABLISHING THE POLICY
BY WHICH MEMBERS OF THE ADVISORY PLAN COMMISSION
MAY PARTICIPATE BY ELECTRONIC MEANS OF COMMUNICATION**

RESOLUTION NO. 2021-_____

A RESOLUTION OF THE ADVISORY PLAN COMMISSION OF THE TOWN OF BURNS HARBOR ESTABLISHING THE POLICY BY WHICH MEMBERS OF THE ADVISORY PLAN COMMISSION 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

NOW, THEREFORE, BE IT RESOLVED BY THE ADVISORY PLAN COMMISSION 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 Commission and applies to the Commission and any committee appointed directly by this Commission 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) 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 Commission may participate by means of electronic communication in a meeting at which the Commission 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 Commission'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 Commission and compliance with IC 36-5-2-10.

PASSED AND ADOPTED this 12th day of July, 2021.

TOWN OF BURNS HARBOR
ADVISORY PLAN COMMISSION

Eric Hill, President

Bernie Poprad, Vice-President

Toni Biancardi

Travis Dunlap

Jeremy McHargue

Nicole Migliorini

Sarah Oostman

ATTEST:

Marge Falbo, Recording Secretary

Biancardi makes a motion to adopt Resolution 2021 01 establishing the policy by which members of the Advisory Plan Commission may participate by electronic means of communication. Oudman seconded the motion. Motion carried by all in favor vote.

Report of Officers, Committee, Staff

Global Engineer Hicks: I have two items. One is the follow-up with Trail Creek Phase I Maintenance Bond which expires on July 10, 2021. I think at the meeting prior I stated that there were a few items that we undone. I did follow-up with Kleihege, had another site visit and found that those items were completed. The only things that were left were some caulking that didn't get done because it started raining. Those were completed. The other item I believe is on the agenda. I reviewed the excavation permit for Deerfield Storage Facility Phase I and didn't have any issues.

Public Hearing

Charles Anderson

DLZ Industrial L.L.C.

Cleveland-Cliffs Phase 1 Cell Closure-Deerfield Storage Facility

Poparad opens the Public Hearing.

Anderson: My name is Chuck Anderson and I'm with DLZ. I'm here representing Cleveland-Cliffs for this project. They are applying for an excavation permit which is going to be required as part of the project to close the Phase 1 Cell of the Deerfield Storage Facility. We basically have two sedimentation ponds that have to be further excavated. We will further excavate those, refine those and put some roadways around them. They will become sedimentation ponds for the stormwater runoff that will come off of the Phase 1 Cell once it is capped and closed. The excavation permit is primarily for those two sedimentation ponds. The project has not been awarded to anyone yet. We don't know when the project will start but I would expect it would be within the next month or two for the project to be awarded. It will run through the rest of this year and shut down for three or four months during the winter and back up next Spring. It will be completed in the Fall of 2022.

Poparad asks for public comment in favor. There is no comment in favor.

Poparad asks for public comment in opposition. There is no comment in opposition.

Oudman: Say 20 years down the road, can anything go on top of the Cell?

Anderson: You might be able to put something on it. It will have a deed restriction put on it once the closure is complete, but right now I doubt there are any plans. Most landfills of this type do not have anything put on them.

Oudman: I was just curious. Thank you.

Building Commission McGraw: Are there State inspections done by the State of Indiana?

Anderson: Yes. The Deerfield Storage Facility is permitted with IDEM. They do perform regular inspections on the entire site. Every five years a permit has to be renewed, so a complete new set of updated documents have to be submitted to IDEM and they have to renew the operating permit every five years. There are monthly and quarterly submittals required to IDEM. Those are some of the documents that were included on the thumb drive I provided last month.

Poparad: All this information that is coming from the State to Cleveland-Cliffs, will we get copies that would be sent so we know and have them for our files?

Anderson: Yes and I'm sure some of the documents were included on that thumb drive. Basically what I do is I go to IDEM's virtual file (anyone can access the virtual file) on the internet on the IDEM website and enter Cleveland-Cliffs or the previous name Arcelor Mittal Facility. You can review anything that IDEM either gets or sends out for that site in that virtual file cabinet. I believe on the thumb drive I submitted you will find the permit renewal was submitted last year. I make sure that you're updated anytime I have to come before the Commission. I'm not sure what gets submitted to you or doesn't. It is a stipulation of the 2009 Settlement agreement that you are provided whatever documentation is submitted to IDEM regarding the Deerfield Storage Facility. So I just make sure I pull everything from the virtual file cabinet.

Building Commission McGraw: Who would be the contact person I would go to ask for information other than looking at the thumb drive. My time is limited, and I won't be able to go through a thumb drive. Who will be our contact?

Anderson: I will forward over to Falbo the contact information for the State Licensed Operator along with the contact information for the Environmental Manager at the Burns Harbor facility.

Poparad closes the Public Hearing.

Biancardi makes a motion to approve the application for an excavation permit for Cleveland-Cliffs Burns Harbor. Migliorini seconded the motion. **Motion carried by all in favor vote.**

Old Business

Town Code Chapters 4, 14 and 15 Draft Ordinance

Oudman: Attorney Brazil was not able to complete that for this month. He will have that for next month.

Accessory Building Use

Oudman: My recommendation would be that we don't allow any accessory use in any recorded easement except as governed by specific ordinance, for example, the one on swimming pools, if they are within our regulations.

Also, I recommend that we not allow the front porch to encroach into a front setback except for the steps. The steps is something already in practice in the Town. The reason I mention that is, for instance in Corlin's Landing, if you had someone who decided to put their house so the front porch was in the setback they could be ten feet closer to the street than their neighbors and I think it just gives you that broken tooth uneven look. So I don't know that anybody has done this in some of those other zones, but I would suggest that that would be a change we consider.

Also, that we would allow the accessory buildings and uses to encroach into the setbacks in the same way as we decided the swimming pools which would be seven feet from the rear setback and seven feet from the side setback on each of the property lines unless there's already a minimum setback that's less. There are some zones that we have applied but are not allowed to go two feet into your neighbors with your accessory use.

Also, instead of going by number of accessory uses within each zone, or how big they can be, I would suggest that we not restrict the number of accessory uses (keeping in mind an attached garage is included in that) we would go by maximum lot coverage. The accessory uses and the primary cannot be more than the maximum lot coverage for each zone. We would restrict an accessory building to no more than 90% of the primary structure. So, if you have an attached garage you can't be more than 90% of the footprint of the primary structure. You don't want to have the garage bigger than the house unless it specifically stated that way for Downtown District, Special Districts or Business Park. Restrict the total lot coverage of the primary and accessory use at the maximum lot coverage for each zoning district as is already stated within.

Biancardi: Is this the email that we received at 1:00pm today?

Oudman: Yes.

Biancardi: I read the email but didn't have time to review anything else for tonight.

McHargue: I'm trying to make sense of restricting the accessory buildings by lot coverage of up to 90% of the footprint at the ground level. Is that cumulative? 90%?

Oudman: No, I would say that the cumulative is the lot coverage total per zone.

McHargue: You're going to have a higher lot coverage in the Village than what I have in my subdivision?

Oudman: Yes, but not by much though. But then each accessory use cannot be bigger than 90% of the primary. So, if a detached garage or a detached shed or if a greenhouse, it can't be equal to or bigger than the size of the house.

Biancardi: So you are saying 90% across the board?

Oudman: Yes. Unless it's already in another district and a different use for those zones. This is going to be primarily related to residential. My garage and my house are just about equal in size, but the lot coverage is almost maxed out of what my lot coverage can be.

McHargue: The way that's written...a 1,600 square foot home...if I want to put up a pole barn at 90% of that or less, is there anything else in that Code that requires me to get a variance or am I good to go?

Building Commission McGraw: It depends what your total lot coverage is.

McHargue: I'm not going to exceed my lot coverage because I'm on a 1/2 acre, I'm good, but the way this is written...

Oudman: That's up to the group as a whole. The way it is now, yes, you're restricted. If we changed it, your restriction would change. Another thought you may want to consider is do you want to limit the accessory building height no more than the height of primary structure, but that's a whole other consideration.

Hull: There's a lot in here to look at and I'm like Biancardi, I had a chance to look at it a little bit today, but I haven't gone through to digest it all the way.

Poparad: Do you want to put it off until next month?

Hull: There's a lot in there that has to be cross referenced. It's a great start...we're getting closer and we're moving down the right path.

McHargue: The only thing I will say is I love the idea of getting rid of the total number of buildings.

Hull: Anytime we get into this type of thing, we don't need to rush. We just need to make sure we get it right. I'm ok with going slow on this to make sure we have everything covered.

Poparad: I agree, let's do it right, one time. Is everybody ok with that? We'll table it to next month.

Hull: Thank you Oudman for the work that you've done so far. There's a lot of good stuff in here.

Agricultural Use

Oudman: This is a corollary question that goes with this. We talked about it last month. There is a place that references agricultural use and then the only place that I find anything on agricultural use on the zoning table is in the definitions. Does anybody remember? Poparad and Biancardi in particular that there was ever anything else that may have gotten lost? Because, right now, the way our Code reads we don't really restrict agricultural use. We define it but we don't give any review to it. I thought we should move what's in the definitions into Ordinance form and put it in its own section and go from there.

Poparad: I think sooner or later the agricultural stuff in this Town is going to basically go away.

Biancardi; So you're going to take what we have and put it in its own section?

Oudman: It's in definitions now but in our Code in Chapter 15 it just says this practice does not apply to:

1. agricultural uses
2. limited review

Limited review we crossed out because we realized that was an error, but agricultural use is still sitting there. I just want to correct that loose end. We should either regroup that part that says it doesn't apply or we should give it a section and say what does apply. It's another gray area. There is more agricultural use stuff now that is not your traditional farm.

McHargue: That's another thing we need to look at.

Oudman: I can send out that information.

Poparad: Yes, send it out and we'll all look at it and have it ready for next meeting.

Town Code Section 9-2(1) Grass/weeds in excess of 8 inches

Poparad: Did we do anything with an Ordinance about that?

Oudman: I see from last minutes that it says something about a 10-foot area that has to be mowed. Does anyone know where that 10-foot area came from?

Building Commissioner McGraw: That was a suggestion that I made—that 10-feet would be maintained.

Oudman: Can we put that in an Ordinance?

Building Commissioner McGraw: I don't know why you need to put it in an Ordinance as long as it's maintained.

Attorney Brazil: If it just says maintained...is there a definition of maintained?

Oudman: No, there's not a definition.

Attorney Brazil: The problem with "maintained" is it's just too broad.

Building Commissioner McGraw: For example, in the Village, all I'm saying is a lot of people are in their yards and you've got an empty lot between two beautiful homes that have patios and then at the end of their property line it's all weeds. With the 10-feet it's at least maintained partially. We don't want things being dumped on these lots. I need some direction, so I have some weight in keeping these lots as neat as possible. There are residents questioning this. If we have to sit down and write out something, let's do that. Whatever it takes so we can keep control of it.

Poparad: We're going to look at some of the surrounding Towns and see what they do and go from there. Is that ok with you Hull?

Hull: That works for me.

Assign 3rd Member to the Plat Committee

Poparad: We are going to fill the empty seat on the Plat Committee tonight. We have two members now and need a 3rd.

Town Code 14-3-7.5

MINOR SUBDIVISION APPROVAL; ESTABLISHMENT OF A PLAT COMMITTEE:

...The Plat Committee may grant primary and secondary approval to minor subdivisions without public hearing, provided the plats meet with the requirements of this chapter. The plat committee shall provide for due notice to interested parties of the right to appeal the action of the plat committee under I.C. 36-7-4-708. "Interested parties" shall mean the petitioner and all owners of real estate located within 300 feet of the proposed subdivision. The plat committee may adopt rules governing its duties which must be approved by majority vote of the entire committee. (Ordinance 208, 9/12/2007).

I need someone to volunteer.

McHargue makes a motion to appoint Councilwoman Biancardi to the Plat Committee as the 3rd Member. Oudman seconded the motion. Motion carried by all in favor vote.

New Business

Review: Bonds, Maintenance Guarantees, Letters of Credit

Hull: There was a question last month about a maintenance bond that expired but wasn't removed from the Bonds, Maintenance Guarantees, Letters of Credit monthly report. Clerk-Treasurer Jordan emailed and explained that the check for that particular maintenance bond hasn't been picked up by the developer and therefore it will not be removed from the report until that is done.

Review of Table 5-2, Zoning Form & Function Table
Table to next month.

Chapter 13 Smoke Detectors

Oudman: In Chapter 13 we talk about Smoke Detectors. I did talk to Chief Arney and he suggested that the section on Smoke Detectors be put into the Chapter 14. Attorney Brazil will have that for us next time.

Swimming Pool Ordinance and Fencing

Hull: A question for Building Commission McGraw. The Ordinance we passed--if your pool isn't four feet high you are not required by the State to have a fence. Is that correct?

Oudman: That's not what it says.

Building Commission McGraw: It says that if the pool is four feet it doesn't need a fence. I talked to Oudman about this this afternoon...

**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.**

15-13-8 SWIMMING POOLS

B. RESTRICTIONS:

All swimming pools shall conform to the following restrictions:

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.**

I have people that tell me their pool is four feet high and they don't need a fence. The ruling needs to be clarified. This is something that's going on right now.

Biancardi: 7. Swimming pools shall be securely fenced or covered as required by **State Statute.** What does the State Statute say?

Building Commission McGraw: It also says if it's four feet or less.

Biancardi: The State does, right?

Building Commission McGraw: The State does, right. Most pools if you take a tape measure from the ground up to the top rim of the pool it's four feet. Yet, I'm forcing people to put a fence on top of their pool or fence in their yard because my concern is the "barrier" (which is what they call it) being considered a pool as a barrier or is it supposed to be a separate barrier that is supposed to protect people from getting into that pool.

Hull: You can have a fence mounted to the pool on the side of the pool to keep you out. So it doesn't have to be separate, it can be part of the pool.

Building Commission McGraw: But if a pool is out in the middle of the yard, has no fence around the yard and it's four feet high they may need a fence. This is what I need clarification on.

Hull: State Code says if it's four feet or less...

Building Commission McGraw: Less than four feet there needs to be a fence or a fence above the pool to secure the area.

Oudman: I think Building Commission McGraw's concern is that while they can meet the obligation of being 48 inches above the grade, there's still the access point that is not controlled.

Hull: Doesn't the ladder have to be locked? In the State Code?

Oudman: I think it actually says it has to be removeable, but I don't believe there is anyway in the Ordinance to enforce that someone removes it every time they use the pool. That's where it can get tricky.

Hull: If they are required to do it, and somebody doesn't, and you didn't catch it, and a kid climbs in and drowns, the homeowner will be liable for that. Building Commissioner McGraw when we went through all this I thought that you were well prepared and good to go.

Building Commissioner McGraw: If you look at this:

The first one says:

7. Swimming pools shall be securely fenced or covered as required by **State Statute**.

Then:

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.**

So you're telling me if a pool is four feet off the ground, they don't need a fence. That's what I'm reading – am I reading it wrong?

Oudman: I think it goes back to the State Statute and whatever they say. If the State Statute changes it still covers us on whatever the regulation is on the access.

Hull: What do we have to do to fix it?

Poparad: First of all, I think we need to see what the State Statute says.

Hull: We meet again in three weeks right?

Poparad: Right

Hull: Building Commissioner McGraw I'll meet with you and help you get this straightened out.

Building Commissioner McGraw: Thank you.

McHargue: One quick suggestion. You talked a lot about the pool and grade. My pool is 48-50 inches deep as far as the water. Call it 50 just to be safe, but if you're talking about grade, my pool only comes 2 feet out of the ground. It's dug half-way into the ground. With 50 inches depth of water, it should be fenced.

Building Commissioner McGraw: Part of the State, when I was reading it, said anything over two feet of water should be fenced or secured in some way.

McHargue: I just want to make sure we're on the same page. There's a half dozen of them in my neighborhood.

Biancardi: Do those need fences?

McHargue: Yes

Good of the Order and Any Other Business

Poparad: We have a reporter from the Chesterton Tribune here tonight. If you could stand and give us your name so we know who you are.

Woods: My name is Jim Woods and I work for the Chesterton Tribune.

Poparad: We'll see ourselves in the newspaper once again.

Announcements

None

Adjournment

McHargue makes a motion to adjourn at 7:54 p.m. Migliorini seconded the motion. Motion carried by unanimous vote.

APPROVED on August 2, 2021

Bernie Poparad, Vice President for Eric Hull, President

Marge Falbo, Secretary