

Burns Harbor Advisory Plan Commission
Minutes of Monday, January 7, 2019

The Advisory Plan Commission of the Town of Burns Harbor, Porter County, Indiana met in a regular session on Monday January 7, 2019 in the Town Hall. 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
Roseann Bozak	Present
Gordon McCormick.....	Present
Jeremy McHargue	Present
Krista Tracy	Present

Additional Officials Present
Attorney-Christine McWilliams
Global Engineer-Shem Khalil
Secretary-Marge Falbo

Also Present
Sarah Oudman
Sam Falbo

Nomination of President

McCormick makes a motion to leave the Board as is, which is Eric Hull as President and Bernie Poparad as Vice President. Biancardi seconded the motion. Motion carried by unanimous vote.

Falbo says we need nominate a Plat Committee. Hull says how many does that consist of. Falbo says three. Attorney McWilliams says one person has to be Plan Commission member and the other two can be anyone, such as a Town resident. Poparad says who was it last year. Falbo says we haven't had one for quite some time.

McCormick says what does a Plat Committee do. Hull says in the event there is a small, 5-acres or less subdivision, a Plat Committee can review it on their own and make a recommendation to the Board for acceptance. This way it doesn't have to go through Public Hearing. It gives a bit of flexibility and allows an easier time for someone to split a piece of property, because typically 5 acres or less is not going to be subdivision.

Nomination of Plat Committee

Hull asks for volunteers or motions. Bozak says I volunteer. McCormick says it would have to be evening meetings. Attorney McWilliams says it's a one-year appointment and there wouldn't be separate meetings. But if someone were to submit for a Plat, you would have to review it and ultimately make a decision. It is mostly written work. The Committee would send out notices. Hull says, in the last 6 or 7 years, this is the first time we ran into someone asking to have access to this committee. We haven't had a need for it. McCormick says I will do it. Tracy says I volunteer.

Poparad makes a motion for Bozak, McCormick and Tracy to sit on the Plat Committee. McHargue seconded the motion. Motion carried by unanimous vote.

Minutes

McCormick makes a motion to approve the minutes of December 10, 2018 as written. Biancardi seconded the motion. Motion carried by unanimous vote.

Communication, Bills, Expenditures

None

Report of Officers, Committee, Staff

Engineer, Shem Khalil

Global Engineering

Corlin's Landing Phase I

Khalil says I have the Corlin's Landing punchlist and Maintenance Bond for the acceptance of the streets. I will go through it and explain some of the options you might have. Our recommendation as it stands right now is based on the Town Code, your Council and myself. I'll give some options and hopefully we can get this straightened out. The punchlist amount is \$2,600, so the entire subdivision and infrastructure is in pretty good shape. Keep in mind that the punchlist items are excluding the sanitary system since it's been accepted already. We went through the Town Code and we estimated the construction or the infrastructure excluding the sanitary system to be close to \$1,297,801.03. That is the total amount and 10% for the Maintenance Bond will be \$129,780.13. That is our recommendation as it stands right now. Given that the infrastructure has been in ground for almost 10 years and it's holding up pretty good and I know Lightfoot is concerned about the \$100,000.00 Performance Bond and switching that to a Maintenance Bond will be more than the Performance Bond. Under normal conditions the bonding agency usually doesn't bond any infrastructure after five years. They will not bond it for a Maintenance Bond. The problem this presents right now is Lightfoot does not have bonding agency to bond this but is actually posting a certified check. I am not sure if he is following the bonding requirements but the bonding agencies will not bond it. So I guess it's up to you at this point. The options are either to take our recommendation and make it a \$129,780.13 certified check or you can waive it. Or you can waive the infrastructure that has been in the ground more than five years and have 10% of whatever has been installed in the last five years, which amounted to approximately \$69,000.00 Basically, that was the surface that has been installed in the last two years or so. That will amount to \$6,940.00, close to \$7,000.00.

Biancardi says that's for any infrastructure from the last ten years. Khalil says keep in mind again these are just options to you. These are our recommendations to you based on the Town Code. This is a unique situation so I am not quite sure what the right thing is to do here. We are following the Town Code and our recommendation is based on the Town Code.

McHargue says out of curiosity, you are saying that a bonding agency would not bond this because it's over five years. Khalil says after the completion of the construction they will have a hard time bonding a Maintenance Bond if the infrastructure has been in the ground for five years. It's very difficult for a bonding agency to actually guarantee the work after five years.

Poparad says do we have the authority to waive. Biancardi says I think that we have the authority to make a recommendation because the Town Council will accept it. I think that we would make the recommendation that it be accepted under whatever the circumstances. We can give a recommendation that includes whatever the Board decides would be appropriate and the Council can consider it.

Hull says the way the Town Code reads is that the Engineer determines and recommends a Maintenance Bond for two years. The Plan Commission issues a favorable recommendation to the Town Council for acceptance. The Town Council approves it and then the subdivider submits a Maintenance Bond recommended by the Engineer. So if we sent this to the Town Council for acceptance, with a different amount, it would just be subject to Council's approval. Attorney McWilliams says I think ultimately the Town Council is the one that makes the decision.

Hull says we are currently holding a Treasurer's check in the amount of \$100,000.00 for Phase I correct. and \$197,516.00 for Phase II, which has nothing to do with this. Lightfoot says correct. Khalil says keep in mind the \$7,000 or so is the infrastructure that has been installed in the ground for the last five years or so. The punchlist items amounted to close to \$2,600.00 or so roughly around \$10,000. Biancardi says the topcoat is part of what would be in that bond. Khalil says that's correct. Khalil says in all reality I've never seen an entire subdivision collapse. Lightfoot says the subdivision is pretty solid.

Khalil says a recommendation for the future. I don't think the Plan Commission should release the Performance Bond without having a Maintenance Bond right away. I think the issue here is we released the Performance Bond and not accepting the infrastructure after it's been installed. The Performance Bond got reduced without a Maintenance Bond in place is what created this gap. The infrastructure has been in limbo for a while. Not to say that there's a problem with the infrastructure but the process. In the future if you are releasing a Performance Bond just require a Maintenance Bond which is 10% of that Performance Bond all at the same time and you won't have that issue anymore. Hull says Lightfoot would have a hard time getting a Maintenance Bond. Khalil says, correct, unless it's a certified check, that's cash.

McHargue says I think there are errors in this process and how long it took, but we have to look at it as how we would treat someone else and not just this isolated incident. Khalil says that's my point, before releasing the Performance Bond you have to get the 10% right away. McHargue says so in the future that is how we would have to address it. Attorney McWilliams says we changed the Town Code to address this as well, so they cannot bifurcate it. That was not the case in the past, which I think is part of how this was created. Lightfoot didn't really have an avenue to come and get acceptance for the underground and the aboveground took too long. But, I do believe that the new process we implemented will help prevent that from happening in the future.

Attorney McWilliams says I think where we fall into another gap in the Town Code is that it specifically states that a reduction in the Performance Bond doesn't necessarily mean

acceptance. So then in order to move into the Maintenance phase that infrastructure would have to be accepted, I think. Khalil says I totally agree and I think it's a gap, a loophole in the Ordinance and I think the reduction should not happen without the acceptance. I totally agree and I think it's an issue with the Code. My point is once you reduce the Performance for the infrastructure, I think you should accept the infrastructure you are reducing the bond for, because it's complete. Biancardi says how are you saying it's complete if you are just reducing the Performance Bond. Hull says you shouldn't reduce it until it's complete. Attorney McWilliams says he is saying those particular items that are being taken off the punchlist. Biancardi says so you accept those items. Khalil says, yes, and for example the curb has been installed or constructed, accept the curb at the time of the reduction of the bond and take it off the list. Biancardi says so you are saying accept things in pieces. Attorney McWilliams says yes. Khalil says if you have the provision in the Town Code to reduce the Performance Bond, I think you should have the provision to accept it.

Oudman from the audience says I think there is a lot of value in exploring this more. One question I would have that you would have to answer is police enforcement. At what point does the Town actually have the right to enforce without an agreement with the developer. Officer McHargue says at the last meeting we discovered it was at secondary plat approval. As soon as that is completed and accepted it's the Town's. I can come and go and do as I please, it is the Town's at that point. Prior to secondary plat approval we would have to have a contractual agreement to allow us to enforce traffic and things like that on private property because it is still owned by the developer. But the minute the secondary plat is approved it's a public right-of-way. You are going to be bound by all traffic laws and everything else. It doesn't matter if you're operating intoxicated or reckless driving, I can come on to your property and arrest you for that.

Hull says we basically want to continue to explore and that's to change the Town Code which I think would make sense. We'll review it some more and find the best way to do it. Whether it's this discussion or something else we learn as we go can make it even better. I think that's something we as a Board will continue to explore over the course of the next year, because it's going to take months to do. Hull says let's get back to where we are today with what we have in front of us now.

McCormick says we've signed off on the underground. Hull says underground is done. So, the question right now is with the Town engineer's recommendation of 10% or a Maintenance Bond, correct, which would then cause us to increase the amount that is currently on deposit by \$29,800.00. Literally that's what we would be doing because he is unable to go out and get a bond. If you follow the engineer's recommendation you're are going to ask Lightfoot to come in and increase the amount of deposit that he has with us or you can choose to do something else. Biancardi says based on whether the punchlist items would be completed (the \$2,600 worth of items). Hull says we have to get the punchlist taken care of. Biancardi asks Lightfoot if the items are Spring-time things. Lightfoot says, not necessarily, as long as it doesn't get real cold out, most of this can be done in the next couple of weeks. Unless it would get real cold and freeze. Most of it is raising manhole structures. McHargue says so Lightfoot can post two certified checks, one for the topcoat of asphalt and the other for the punchlist. That way when he completes the punchlist items that \$2,600 can get released back to him. This would probably be the easiest way. Biancardi says whatever 10% of the infrastructure of the past five years, so \$7,000. Hull says the \$7,000 is compiled of the last five-year's worth of infrastructure and topcoat of asphalt. Khalil says \$6,900. Hull says I want to make it simple and this is just a recommendation is to make it a round

number. You're at \$6,900 plus the mobilization, so \$7,500. You have to have a little mobilization in there. Plus, you said another check in the amount of \$2,600 for the punchlist. Poparad says so \$7,500 and \$2,600 would make it \$10,100.00. Lightfoot says but you can keep that \$7,000 one for two years. Poparad says it's better than keeping \$129,000.

Biancardi makes a motion for a favorable recommendation to accept Corlin's Landing Phase I with two checks, one for the punchlist items in the amount of \$2,600 and the second in the amount of \$7,500 which is 10% of the last five years of infrastructure. McHargue seconded the motion.

Motion carried by unanimous vote.

Biancardi asks Lightfoot if he can have those two checks Wednesday night for the Town Council meeting because we could certify this and put it to the Town to accept this Wednesday. Then Clerk-Treasurer Jordan can release the other check to you once those two are in our hands. So you can either drop them off prior to the meeting or attend the meeting. That's all we need as a Council to approve it. Hull says what about the sewer line flush, the \$5,000 we have on that. How long do we hold that? Biancardi says Lightfoot will have to come and talk to the Sanitary Board about that.

Khalil says I have one comment, please address the Town Code as soon as possible. I would hate to see this happen for anyone else. Hull says we are going to start on that next month with Attorney McWilliams' help. It will take us a few months I'm sure.

Lightfoot says when will the Maintenance Bond start. Hull and Biancardi say the day the Council accepts it.

Preliminary Hearing

None

Old Business

Charles Anderson

Arcelor Mittal

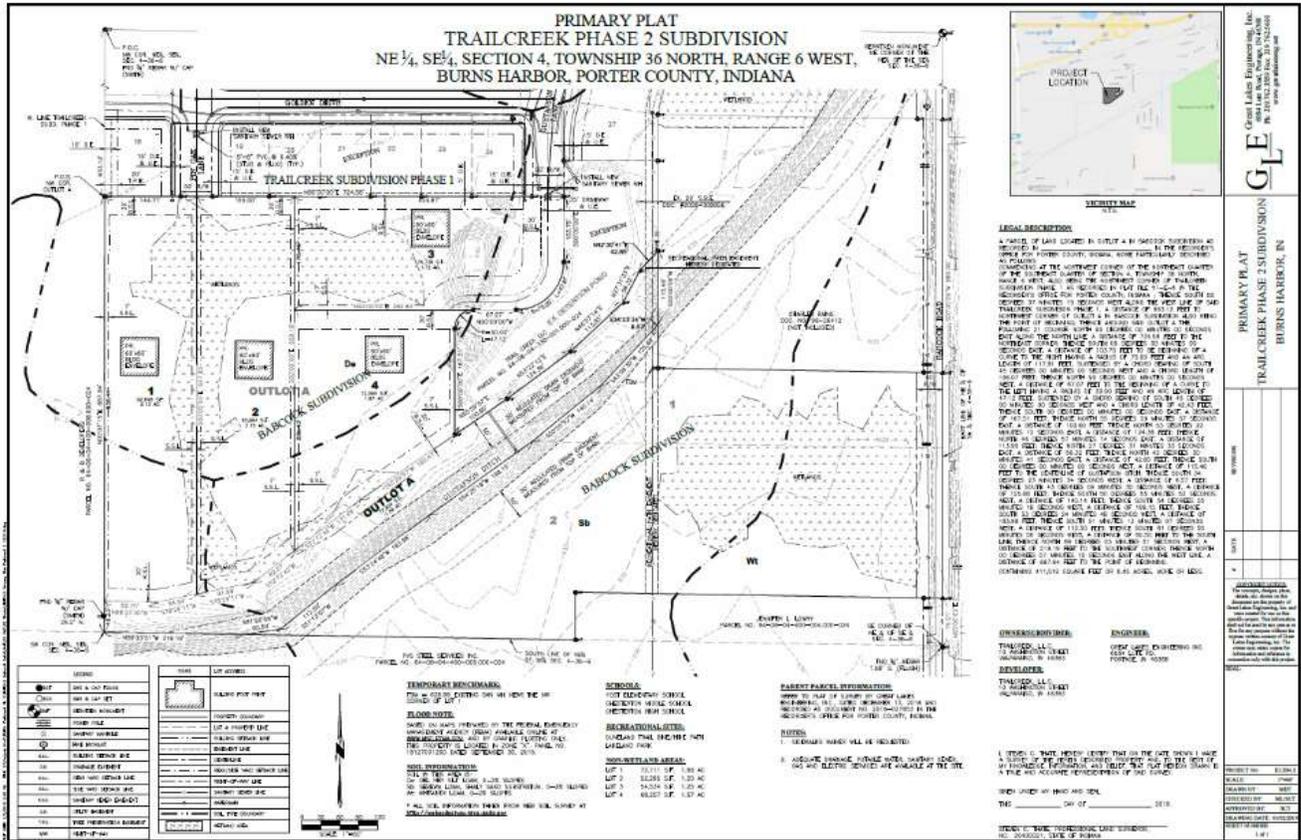
Excavation Permit - Deerfield Phase II

Anderson says I just want to be here this evening to see if there are any other issues that we need to address. I would still like to have the Public Hearing scheduled for next month (February 4, 2019) so we can move forward with the excavation permit. Hull asks Khalil if he has had a chance to review the light reading material. Khalil says I just talked to Anderson a couple of days ago. I didn't have a chance to talk to Attorney McWilliams about it so in the next few days I will be in touch with Anderson. Hull says unless something drastic changes do you have any objections to us having a Public Hearing. Khalil says no I don't foresee any major issues, I just want to make sure the Council is ok with it. Anderson says one other thing I would like to ask is that at the November meeting I submitted a lot of documents for several years. There are still documents being submitted to IDEM. So now I just want to confirm who do I need to be sending the documents to as they're submitted to IDEM moving forward. Hull says IDEMs would go to Clerk-Treasurer (Jane Jordan.) Hull says you are set for a Public Hearing next month.

Poparad makes a motion to schedule a Public Hearing for Arcelor Mittal Deerfield Phase II Excavation Permit on February 4, 2019. Tracy seconded the motion. Motion carried by unanimous vote.

Old Business
 Patrick Kleihege
 Trailcreek Phase II Subdivision

Hannon of Great Lakes Engineering says the secondary plat for the subdivision you approved the other night has been recorded. So Babcock Subdivision is a recorded subdivision. So now what you have in front of you is what we are calling Phase II of Trail Creek.



So on the other side of Gustafson Ditch, everything south of it is basically built out as Phase I. We have looked at this a couple of times with you. This is what we considered to be a fairly complete Primary Plat for the four lots that are being proposed. There were questions on how the road would be finished, how Golden Drive would be finished and Gustafson Lane. So, we are showing how the curbs will be modified on those two roads. Where those roads end, that's where the beginning of the driveways would be for these four lots. The only other thing in terms of infrastructure that we keep talking about is sanitary sewer and water mains have already been stubbed beyond the ends of the existing pavement. We are proposing to install a new sanitary sewer where that sanitary sewer is existing now. The pipe is there and its stubbed and plugged. We are proposing to drive a manhole over that end of the pipe and have that manhole on Pin Oak Lane serve Lots 1 & 2, and the new manhole over at the end of Gustafson Lane service Lots 3 & 4. Lot 4 will be accessed through a 35-foot driveway and utility easement that is shown on the drawing.

McCormick says so that sewer line is not there, correct? Hannon says the sewer line is there where you see the proposed manholes. That is where the pipe is stubbed at this time. McCormick says so going south, then west, then south and east, that's all new. Hannon says Lot 4 is going to have to arrange to get to the manhole on their own. I would think if I were at Lot 4 I would probably be putting a grinder pump in. That would be my first thought. They could go by gravity if they chose to but that is up to them. In any case, it's four lots, the Estates Lots as I've been calling them and we believe this document is ready for Khalil's review.

Khalil says I have questions because I want to make sure I'm reviewing it correctly. As it stands right now, this is a Primary Plat, correct? Hannon says yes. Khalil says are you through a PUD process because as it stands right now you would have to get variances from the BZA. So that means I would have to review it as based on the zoning outright. If not, we will have to go through the process of a PUD which is through this Board. I want to make sure I'm applying the right Town Code to it. So is it a PUD or a Primary Plat? The easiest is probably the PUD and that would get

it through one Board and you won't have to have multiple Public Hearings with different Boards. So a PUD would probably be the smoothest. McCormick says what variance would be required. Khalil and Hannon both say the frontage on a public right-of-way. Kleihege says it's going to be a PUD. Khalil says that's what I would do. Hannon says so we are requesting Khalil to review it as a PUD. Biancardi says the Fire Department, Police and the Building Commissioner should all be made aware that this coming and we need comments. Hull says the only thing we're doing right now is reviewing what they are submitting to us as a Commission so Khalil can look at it and we can give it to all the departments for their input.

Shipping Containers

Attorney McWilliams says I did receive feedback from Bozak. Hull thanks Bozak and says let's table this until next month so we can get feedback from others.

Tag Fee

Draft Building/Improvement Location Permit with required language for enacted new legislation

Attorney McWilliams says I have one comment. I would potentially suggest that if we are going to put this language on the permit that we give a definition of what those advanced components are under the Town Code. Assuming it's developers that come in and get these permits, but I don't know that it always will be and not everyone will necessarily know what they are. I don't know whether the definition under the State Code is all that descriptive but it at least gives the minimum threshold of what we're talking about that you need to put on these permits. I would put what is actually in the Town Code on the permit which is:

Indiana Code 22-11-21-9 requires that any structures using advanced structural components for floors and roofs, must be identified on this application.

Pursuant to Indiana Code 22-11-21-2, "advanced structural components" means lightweight I-joists or lightweight roof trusses that: (1) have less mass cross-sectional area than sawn lumber of equivalent proportions used in an equivalent application; and (2) are assembled from combustible or noncombustible materials, or both.

The term does not include a structural assembly, joist, or truss that provides at least one (1) hour of fire resistance when tested in accordance with the ASTM Standard E119.

Biancardi makes a motion to approve the new application to the building permit with the description as stated in our Town Code so that we are in compliance with the newly enacted legislation. Bozak seconded the motion. Motion carried by unanimous vote.

New Business

Hull says John Miller has left us as Building Commissioner. Currently Fire Chief/Sanitation Superintendent Arney is our acting Building Commissioner. The Town is currently accepting applications until January 11, 2019. Arney had a commitment tonight which was made prior to this announcement and is not able to be here. We do have the Building Department report which was completed by him, if you have any questions, please direct them to Arney.

Review: Bonds, Maintenance Guarantees, Letters of Credit

Hull says I didn't see any changes.

Good of the Order and Any Other Business

None.

Announcements

None

Adjournment

Poparad makes a motion to adjourn at 8:00 pm. Bozak seconded the motion. Motion carried by unanimous vote.

APPROVED on February 4, 2019

Eric Hull, President

Marge Falbo, Secretary