

The Town Council of the Town of Burns Harbor, Porter County, Indiana met in its regularly scheduled session on Wednesday, October 9, 2024 in the Town Hall and streamed electronically with Zoom. The meeting was called to order by Council President Jennifer McHargue at 7:01 p.m.

The Pledge of Allegiance to the American Flag was recited.
Councilwoman McHargue requested a moment of silence.

Roll Call: Councilwoman Roseann Bozak ----- Absent (joined via Zoom 7:17 p.m.)
Councilwoman Lisa Draves ----- Present
Councilman Nicholas Loving-----Present
Councilman John (Jack) McGraw ----- Absent
Councilwoman Jennifer McHargue --- Present

Clerk-Treasurer Nicole Migliorini was Present. A quorum was attained.

Additional Officials Present Attorney Clay Patton, Town Engineer Shem Khalil, Town Marshal Jeremy McHargue, Assistant Fire Chief Brent Valpatic, Park Board Member Brijean Hogge, Street Superintendent Brandon Downey, Sanitary Superintendent Adam Friday.

Approval of Minutes:

Councilman Loving made a motion to approve the meeting minutes of September 11, 2024. Councilwoman Draves seconded the motion. Councilwoman Bozak – Absent, Councilwoman Draves – Aye, Councilman McGraw – Absent, Councilwoman McHargue – Aye. Councilman Loving—Aye **Motion passed.**

Public Hearing

Reports:

Town Council:

Nothing to report.

Clerk-Treasurer:

Nothing to report

Town Attorney:

Nothing to report.

Town Engineer:

Nothing to report

Building Department:

Building Commissioner Lawson reported that Mr. Luandowski had completed the landscaping and came to pick up the certificate of occupancy.

Street Department:

Superintendent Downey said he had a couple of questions regarding Corlin’s Landing phase two paving. He asked what was going on with the last layer of asphalt and if the Town is responsible for paving that section. I know we have talked about that section in the past damaging our equipment. Loving said that the paving is unknown at this time. He stated that he plowed phase two for two years and never had a problem. Downey stated that residents have been asking him and he was just wondering what to tell them. Loving asked if the department is using flags. Downey replied that they are using markers but when the snow is anything over two inches they get completely covered. Street sweeping has started today and will run through Tuesday. The Street Department would like to thank the Town for the new mower, it works great. Unfortunately, the second mower will need a completely new motor. There is a hole in the piston, so that will be next spring. Leaf season will be starting soon. We are starting to prep for the Fall season as well as beginning to prepare for the Winter season. Councilman Loving requested a Facebook post to remind residents to only put leaves, no yard debris, in the leaf piles for pickups. Downey said he provided mor information regarding the warranty on the backhoe to the

Council for review. Councilwoman McHargue asked if we have posted the schedule for street sweeping and Downey replied that it has been posted online.

Police:

Chief McHargue said he made mention last month that crashes were already pretty high. We had fifteen crash reports, which is a lot and we are on pace to beat that this month as well. I cannot convey how important it is to just take a little extra time, especially with school back in session. We are having a continual problem with US Highway 20 and Salt Creek Road. Myself and Assistant Chief Lucas are following the school bus for those stop. We will continue to cite, hand or arrest any violators. I apologize for not being able to be at the other bus stops all the time, but this is a known safety hazard that is existing each and every day. There are only so many officers that can be on duty at all time. We had a shooting at the bar/tavern at Route 20/State Road 149. There were three shots fired in the parking lot, none of them struck anyone. The subject was arrested on scene by Officer Jacquez.

Fire:

Valpatic said the Fire Department has two purchase orders, one for Indiana membership dues and the other to purchase five additional sets of bunker gear. Chief Nowacki wanted me to ask if we could increase that number another five for a total of ten if possible. We did not buy any new sets last year. Councilman Loving said when we don't buy every year there comes a time when you have to pay that bill and you have to catch up so that sounds good. Valpatic said they had thirty-three calls for the month of September and there have been a lot of motor vehicle accidents, thankfully nothing serious just minor injuries.

Sanitation:

Friday said we had a n emergency call out to lift station five for a bad control unit. The issue was resolved and the station is running fine now. The manhole at 1195 Rak Road has been fixed. I am going to have to send the camera out for repair, it is having issues panning right and left so it is very hard to see the laterals. I have passed out our cleaning schedule for the Fall. I will be using the truck for a week. I went to inspect the manholes in Corlin's Landing and they had quite a bit of liquid, more than normal. We are going to find out how far past they go. McHargue asked if the residents will be affected in any way due to the scheduled cleaning. Friday said that hangers will go out in Harbor Trails as they will be the only ones affected.

Stormwater:

Nothing to report

Park:

Hogg said we have the Fall Fest and Trunk-or-Treat coming up this month. We would love to have more volunteers decorate your vehicles and hand out candy to the little ones, we get up to if not more than 300 little ones. Last year we only had eight cars. We would love volunteers for the festival as well.

Redevelopment Commission:

McHargue said the Town is having a ribbon cutting ceremony for the Westport Trail on the 19th, just before the Trunk-or-Treat event at 5:00 p.m.

Shared Ethics:

McHargue said we have a person of interest and I have been playing phone tag with Ms. Smith from the Shared Ethics Advisory Committee trying to see what we need to do to get him set up.

Correspondence:

IDEM – Notice of Decision PVS Technologies Incorporated
 IDEM- Notice of Decision Scrap Metal Services LLC a contractor of NLMK Indiana
 IDEM- Notice of Decision MonoSol Duneland Plant

Presentations of Resolutions, Petitions, Communications, Ordinances and Remonstrance:

**RESOLUTION 2024-08
 TOWN OF BURNS HARBOR APPROPRIATIONS TRASNFER**

BE IT HERBY RESOLVED BY THE TOWN COUNCIL of the TOWN OF BURNS HARBOR, PORTER COUNTY, INDIANA that the following transfers of funds be made from the 2024 budget:

General Building:

\$1,400.00 from Misc. Services, 5-392 into Office Equipment, 5-443.
 \$325.00 from Office Supplies, 5-213 into Building Materials, 5-231
 \$250.00 from Repair Parts, 5-236 into Other Supplies 5-243
 \$150.00 from Other Equipment, 5-444 into Furniture & Fixtures, 5-441
 \$500.00 from Overtime/Holiday, 5-116 into Other Supplies, 5-243
 \$100.00 from Telephone, 5-323 into Freight, 5-321

General Marshal

\$482.72 from Corporal, 2-119 into Sergeant, 2-120

Street:

\$13,000.00 from Street Lights, 6-354 into Motor Equipment, 6-442.

Fire:

\$3,710.00 from Miscellaneous, 4-392 into Misc Services, 3-392.1
 \$3,000.00 from Other Equipment, 4-444 into Miscellaneous, 4-392
 \$6,000 from Health Insurance, 4-123 into Miscellaneous, 4-392
 \$4,425.00 from Travel Expenses, 4-131 into Miscellaneous 4-392
 \$3,910.00 from Instruction, 4-311 into Miscellaneous 4-392

General Town

\$200.00 from Equipment Repair, 1-362 into INDOT ERC Salary, 1-114
 \$1,085.00 from Other Equipment, 1-444 into Cell Phone 1-128
 \$175.00 from Equipment Repair, 1-362 into Freight, 1-321
 \$1,500.00 from Legal Service, 1-314 into Miscellaneous 1-392

PASSED AND ADOPTED this 9th day of October, 2024.

Councilman Loving made a motion to Approve Resolution 2024-08. Councilwoman Draves Seconded the motion. Councilwoman Bozak – aye. Councilwoman Draves—aye, Councilman McGraw -- absent. Councilwoman McHargue – aye. Councilman Loving – aye. Motion passed

Councilman Loving made a motion to adopt Resolution 2024-9 Adoption of the 2025 Budget. Councilwoman Draves Seconded the motion. Councilwoman Bozak – aye. Councilwoman Draves—aye, Councilman McGraw -- absent. Councilwoman McHargue – abstain. Councilman Loving – aye. Motion passed

Attorney Patton stated that the offer for our ambulance has been withdrawn at this time.

Councilwoman Draves made a motion to place the ambulance up for bids. Councilman Loving Seconded the motion. Councilwoman Bozak – aye. Councilwoman Draves—aye, Councilman McGraw -- absent. Councilwoman McHargue – aye. Councilman Loving – aye. Motion passed

Councilman Loving made a motion to Adopt Resolution 2024-11 Local Match Fund Transfer CCMG. Councilwoman Draves Seconded the motion. Councilwoman Bozak – aye. Councilwoman Draves—aye, Councilman McGraw -- absent. Councilwoman McHargue – aye. Councilman Loving – aye. Motion passed

Councilman Loving made a motion to Approve Resolution 2024-10 Safe Streets For All. Councilwoman Draves Seconded the motion. Councilwoman Bozak – aye. Councilwoman Draves—aye, Councilman McGraw -- absent. Councilwoman McHargue – aye. Councilman Loving – aye. Motion passed

New Business:

Staff anniversary recognition:

Councilwoman McHargue apologized for missing Jill Sherrill as her one year anniversary was September 11th. Amanda Gucciardo has been here for two years this month; police officer Austin Haynes has been with the Town for six years and Robert Henry has been with the Fire Department for six years as well.

Salt Shed Bids:

Khalil said that we had one bid come in from Gariup Construction for \$297,500.00. The last time we went out for bid on this project we received a \$436,000.00 bid so this is a reduction of about \$130,000.00. Keep in mind this is the bare minimum of that and does not cover the inside of the building. Councilwoman McHargue asked where the shed will be located. Khalil said there is a two beam structure that needs to be demolished and it will be in that location. The notice of award can be sent to Gariup once the bid is accepted. The Council tabled further discussion until November.

Pay Application 4:

Councilman Loving made a motion to Approve Pay Application Four in the amount of \$34,00.11. Councilwoman Draves Seconded the motion. Councilwoman Bozak – aye. Councilwoman Draves—aye, Councilman McGraw -- absent. Councilwoman McHargue – aye. Councilman Loving – aye. Motion passed

Trick-Or-Treat Hours:

Trick-or-Treat hours will be 5:30 p.m. through 7:30 p.m.

Susan Alyea Extension:

Councilman Loving made a motion to extend Susan Alyea's training by thirty hours. Councilwoman Draves Seconded the motion. Councilwoman Bozak – aye. Councilwoman Draves—aye, Councilman McGraw -- absent. Councilwoman McHargue – aye. Councilman Loving – aye. Motion passed

Approval of September 2024 Financial Report:

Councilman Loving made a motion to Approve August 2024 Financial Report. Councilwoman Draves seconded the motion. Councilwoman Bozak – aye. Councilwoman Draves—aye, Councilman McGraw -- absent. Councilwoman McHargue – aye. Councilman Loving – aye. Motion passed

Approval to pay vouchers with 3 or more signatures:

Councilwoman Draves moved to approve vouchers with three or more signatures once corrections have been made to three claims. Councilman Loving seconded the motion. Councilwoman Bozak – Aye, Councilwoman Draves- Aye, Councilman Loving-- Aye, Councilman McGraw – Absent, Councilwoman McHargue –Abstain. Motion passed.

Approval of purchase orders submitted with 3 or more signatures:

Councilwoman Bozak made a motion to approve all purchase orders submitted to the Council with three or more signatures. Councilman Loving seconded the motion. Councilwoman Bozak – Aye, Councilwoman Draves- Aye, Councilman Loving—Aye, Councilman McGraw – Absent, Councilwoman McHargue – Abstain. Motion passed.

Old Business:**Putman Builders Light Approval:**

Councilwoman Draves made a motion to approve Putman Builders lighting plan. Councilwoman Bozak Seconded the motion. Councilwoman Bozak – aye. Councilwoman Draves—aye, Councilman McGraw -- absent. Councilwoman McHargue – aye. Councilman Loving – nay. Motion passed

Downey requested a copy of the map for the Street Department.

Fill open positions:

We are still looking for an engineer to sit on our Sanitation Board.

Good of the Order of the Community:

Councilwoman Draves said that the Town generator was supposed to have been completed on Monday. There is still an issue getting a replacement part The main computer for the engine is bad and they are trying to get a new one ordered. Downey asked if they are done with any of the trench work so he can seal everything up. Councilwoman McHargue said given the recent with drawl from Provident, I as a Council member will not be bullied by residents and I will not be bullied by people with money. I am very open-minded and believe that we will make the correct decision. As of right now it is off of the table for ninety days .

Councilman Loving asked for thoughts and prayers for everyone in Florida that is facing the upcoming hurricane. Second I would like to discuss the data center a little bit too now that we're allowed to, I told you earlier, it's kind of like a dog chasing a mail truck, and finally got loose from the collar. So, we're off the chain a little bit. So, I'm going to walk through a little bit of my thought process on the data center as it as it existed before it was withdrawn, and then talk about kind of steps forward. So, the I think the first thing we have to point out is there were a lot of questions around timing. Are we are we moving too fast? Are we not moving too fast. So just noting Indiana Code Title, 36, 74608, this is the governing code for plan commissions. This is what we followed to the letter of the law. So as things happen and progressed the way that they did, request comes in meetings get set within certain time frames. That's the State code that we were using to navigate the timing on this so did we move too fast? Did we move too slow? Was not enough consideration given at a certain time. It doesn't matter. We have to follow that State code. And that was, that was kind of what governed the timing of when meetings were set and how things were done. There were some questions about the continuance that was granted. Just, I'm just putting stuff out here so I can answer as many questions as I can. A hearing may be continued from time to time as maybe found necessary. So, we tried to do everything by the book. We certainly don't want to run afoul of state law. We certainly don't want to be accused of making arbitrary or capricious decisions which lead to judicial review, which I think would have been in nobody's best interest, opinions about whether it's right or wrong. Can you hear it a mile away, two miles away? Would you be able to hear it at all south of the highway? How tall should it be? All of those are opinion questions that I think would have been resolved somewhere in the in the site planning process. We wanted to give you know any, any Petitioner that comes before the town, any business, any person, any property owner, is giving you process. And I think working through it the way that we did shows that as a town, we're open to development. We're open to petitions and proposals from anybody that wants to do anything in the town, and we're going to give everybody proper consideration that being said, this is where it gets. This is the best part about the law, is that it's written down ahead of time, and then you just work off of what you have. So, in Town, Town code is very clear on this issue. It's Chapter 14. It's the subdivision control ordinance, the requirements for a zoning change, and this is where I think we ran into this was the first thing that I found that was a problem for me. You know, it reads as follows, all petitioners for any zoning change must bear the burden of proving one or more of the following points to the satisfaction of the commission and then ultimately to the Council. So, it places the burden of proof on a petitioner to prove one of two things. Number one, and I'm going to go through all of this, I think it's important there was an error in the zoning classification for the property in question when its present zoning classification was adopted. So, this the property that's in question at the corner of Haglund Road and North Babcock was zoned residential in 1969 zoned residential when it was purchased. You know, in the 70s, it was confirmed as residential in 2009 and it was confirmed again in the 2019 master plan, this was not an error in zoning classification. I think it can be argued that it shouldn't be zoned R1 I think an argument can be made for

zoning this property as a denser residential space, but that's not the case. It's zoned one I can affirm that it's my signature at the top of the master plan in 2019 I was the President of the Council. It's not an error in classification. We argue that it's misclassified, but there was no error. Number two is that the character of the area under consideration has changed sufficiently from the time its present zoning classification was adopted to justify the change requested. So, the last adoption of this property, being R1, was the 2019 master plan. Nothing has changed in that area since 2019 so there's nothing's changed that would justify the change in zoning. So that could potentially be that the property across the street, the Sutton property that's owned its own commercial if that were developed in some kind of commercial way, an argument could be made to change the zoning that hasn't happened. So, number two doesn't work either, and the burden of proof is on any petitioner to prove one of those two items. And the petition for consideration didn't even mention one of those two options. So nowhere wasn't even asked to consider one of those two options, and the burden of proof is on the petitioner to do so. In determining those two points, the Commission was supposed to consider and was considering before the withdrawal and the Council ultimately would have considered, they have to take into consideration three things when determining whether or not those two points are proven. Number one, that a change of the soul will not be injurious or detrimental to surrounding property values. Arguments were made that it that it wouldn't affect surrounding property values. It may have property values are consistently going up, it seems, in assessed valuation. So, I don't know one way or another how that would have played out. That would be an opinion, but it's the burden of proof on the petitioner to prove that it will not and that the words there are very important. It's not. Could be it's not. Maybe it's will not, and I don't know for certain how you improve that. Number two is that if the change were granted, it would promote orderly community growth. I'm not certain that it would be orderly. I think that's the key word in that sentence to go from, you know, a residential zoning to you know, where I believe fits somewhere between a light industrial or I'm just not certain that it's heavy industry. But either way, going from any residential to any industrial zone is a big jump to make when you're talking about property zoning classifications. And number three, which I think is one of the most important, is that the petition is not spot zoning, which will confer a special benefit on a relatively small tract without commensurate benefit to the community. This is the definition of it would have been the definition of spot selling. We were conferring a benefit of going from R1 to a special district, significantly increasing property, the property's value, and also resale value, to on a relatively small track as it pertains to the side of the whole town, with the benefit to the community, yet unproven by the petitioner when the burden of proof is on that. So, I just really struggle with, with the thought process behind this. And then, you know, you get to, I think for me, was the deal sealer is Section Eight of the ordinance. Um, Any or against the provision of any ordinance of the Town of Burns Harbor conflict with the provision of any ordinances here by superseded by this ordinance that I'm a hard no on that, like, forever. So just, I just I guess I just want to put it out there and be clear. On we've got a lot of proposals on the table that we're hearing, certainly not a no on data centers, but for this specific parcel of property, I'm I would be a hard no, and I've spoken with the majority of the council, and we do have, I told people, all you have to do in this business is count to three. I can count to three on that. So, I mean, at this point, if you want to communicate that to a Chinese perfect. So, yeah, just, you know, I feel like, at this property, this location, it's a, it's a no for me, and it's, I know, it's a no for I can count to three, so I will leave it at that.

Councilwoman McHargue said anyone that wishes to speak has three minutes. Wendy Reigel at 1561 Lobwedge Lane in Chesterton said she feels it will take more than ninety days to sort out any and all matters regarding the proposed data center and asked that we keep communication between the Town and the public open.

Councilwoman McHargue confirmed that nobody signed a NDA, and Councilman Loving confirmed we are not legally allowed to sign NDAs. Mr. Stout at 209 Trailcreek Drive said it is his understanding that the issue is zoning for a data and specifically for hyperscale. He said what he believes the residents encouragement was to adopt some for of period of time that would allow the collective organization to build the necessary zoning. Resident residing at 203 Harrison Blvd in Valparaiso stated he is the president of Issiac Walton Porter County. I am representing three groups, the District Five Chicago EPA Water and Drainage Section, Hoosier Environmental Council out of Indianapolis, Save the Dunes and the National Park. They have spent almost ten years trying to repair and restore the grove of trees and the Manuka Prairie and a data center will completely destroy their efforts. I volunteer to be on your Advisory Board and I suggest they meet as soon as possible. Tina Rongers asked if Mr. Stout said he was speaking on behalf of the National Park Service. Mr. Stout clarified that he is speaking on behalf of various members, not officially by them

by any means though but they were ready to make a statement. Rongers clarified that the Assistant Superintendent has communicated with the Town of Burns Harbor that they have no opinion on this matter at this time and they are waiting until there is further information available in the public domain. They want an opportunity at the appropriate time to read facts, so I just wanted to clarify that this is the official position.

Resident Ed Orlando, 1149 Gustafson Lane Burns Harbor, handed out a copy of a email he previously sent to the Council for review. He was requesting that the Council entertain a motion to extend the pause to 200 days. The Town needs to be very careful and proceed with caution as these things are very complicated and you probably reserve some third party council if we were to proceed.

Friday said that the Burns Harbor Fire Department held their annual golf outing on September 23rd and raised over \$4,000.00 for Santa’s Workshop.

Councilwoman Draves made a motion to adjourn. Councilwoman Bozak seconded. Councilwoman Bozak – Aye, Councilwoman Draves- Aye, Councilman Loving--Aye , Councilman McGraw – Absent, Councilwoman McHargue – Aye. Motion passed.

There being no further business to discuss, the meeting concluded at 8:16 p.m.

TOWN COUNCIL OF THE
TOWN OF BURNS HARBOR

Jennifer McHargue, President

Roseann Bozak, Vice-President

Lisa Draves

John (Jack) McGraw

Nicholas Loving

ATTEST:

Nicole M. Migliorini
Clerk-Treasurer