

Burns Harbor Advisory Plan Commission

Minutes of Monday, September 9, 2024

The Advisory Plan Commission of the Town of Burns Harbor, Porter County, Indiana met in a regular session on Monday, September 9, 2024, at Duneland Falls Event Center. The meeting was called to order by Advisory Plan Commission President, Jeremy McHargue at 6:00 pm.

The Pledge of Allegiance to the American Flag was recited.

Roll Call:

Jeremy McHargue	Present
Bernie Poparad	Present
Roseann Bozak	Present
Travis Dunlap	Present
Gordon McCormick	Present
Nicole Migliorini	Present
Aaron Adcock	Present

Additional Officials Present

Attorney-Clay Patton and Building Commissioner- Joe Lawson.

Also Present

Shem Khalil- Global Engineering and Land Surveying, Attorney Todd Leeth- Leeth Law, and residents of the Town of Burns Harbor

Minutes

Bozak made a motion to approve the minutes of July 31, 2024. McCormick seconded the motion. McCormick stated I have one correction regarding the site plan and State of Indiana entrance plan. The minutes had me stating yes, and my answer was no. McHargue asked Roseanne, would you be willing to amend your motion to include the edit of Gordon's negative recommendation. Bozak made a motion to approve July 31, 2024 meeting minutes after the editing is done of Gordon's recommendation. McCormick seconded the motion. Poparad- Aye, Bozak- Aye, Dunlap- Aye, Watkins- Abstain, McCormick- Aye, Adcock- Aye, McHargue- Aye. Motion passed.

Watkins made a motion to approve the minutes of August 5, 2024. Bozak seconded the motion. Poparad- Aye, Bozak- Aye, Dunlap- Aye, Watkins- Aye, McCormick- Aye, Adcock- Aye, McHargue- Aye. Motion passed.

Communication, Bills, Expenditures

Town Code Updates

Nothing to report.

Report of Officers, Committee, Staff

Nothing to report.

Public Hearing

Advisory Plan Commission Minutes 9 9 2024

Provident Realty Advisors (Zoning District and Re-zoning Parcel)

McHargue asked Attorney Leeth if he had something he would like to speak on before opening the Public Hearing. Attorney Leeth stated I am the attorney for Provident Realty Advisors. At the last meeting, there were 90 minutes of comments and concerns, some from the Plan Commission, and some from the public. We heard those and we are taking a pause, if you will. So, we have not advertised the Public Hearing for tonight because we want to continue to modify our concept plan in response to the concerns that we heard. For example, in the proposed ordinance, our buildings were going to be 120 feet and we are significantly reducing that and the setbacks were 50 feet and we are increasing those. What we would like to do is have a community meeting. We were criticized for moving too fast, so we want to take a pause and have that community meeting. We will work with the Town of Burns Harbor staff to notice of the Public Hearing perhaps in October. Our goal is to have the community meeting the first week of October. We are still working on the details. We don't want to get ahead of ourselves on what we are going to show in our concept plan to work with the ordinance that the Town of Burns Harbor is ultimately going to adopt that would allow for data centers, if that is the Plan Commission and Town Council's choosing. Some things need to change, in my opinion, in the ordinance as well as the proposed ordinance. So, I have asked to work with Attorney Patton, and I am going to suggest to him several modifications to the proposed ordinance that was drafted, and hopefully reach some restrictions that will be more in tune with our concept plan. So, nothing for us tonight because we don't have a Public Hearing, and we hope to have one mid to late October. We have to work with the Town of Burns Harbor staff because that would be a special meeting, so we would respectfully request that you continue us to a date uncertain, which means that we would give notice, both in the newspaper and the individual certified mail notices to the property owners. McHargue stated, that if it's the wish of the board to allow that continuance, to continue these Public Hearings to another date, I would need a motion. Poparad made a motion to continue the Public Hearings until October. McCormick seconded the motion. Dunlap- Aye, Watkins- Aye, McCormick- Aye, Adcock- Aye, Poparad- Aye, Bozak- Aye, McHargue- Aye. Motion passed.

McCormick stated I can't say we will be ready for a vote by the end of October. This is a pretty serious issue and we have a lot of information to go over. My biggest concern is that the Special Use District is written in our codebook that we cannot create a Special Use District for future planning. All that does is protect what is already there. Attorney Leeth stated I would agree with you that you may not be ready to decide on the middle or end of October, but what I am proposing is that we would have the hearing then, and then you would receive our evidence. You would again hear from the public, and then, if the Plan Commission feels that they have enough information, they can decide. If not, you can continue the case then. I am not asking or forcing you to take a vote at any particular time. I am just suggesting that we would like to move forward with the hearing so that you can get the evidence from both sides.

Old Business

Anaya Martin- 1182 Salt Creek Road- Property update

McHargue asked Building Commissioner Joe Lawson if Mr. Martin was present. Lawson stated he said he was coming and was made aware of the location, but he is not here. McHargue stated we can attempt to call him one more time.

New Business

Review: Bonds, Maintenance Guarantees, Letters of Credit

None

Culverts/Drainage Code Ordinance, Inspection, and Enforcement

Lawson stated the ordinance as it stands right now in Section 4-3-3 is the responsibility of the landowner there is a section that needs to be omitted that we were not able to find the reference

to this anywhere. It reads it shall be the duty of each party to ensure the culvert or drain is of sufficient capacity and in the proper location to comply with Sections 4-40 and 4-41 above. There is no such thing in there as that reference. So, that is one thing that needs to be addressed with that ordinance. I would also like to ask that there be some sort of inspections and permitting for culverts so that we can keep track of these things in the Town of Burns Harbor in terms of drainage. A few things I would like to include would be a quarter-inch per foot slope for drainage, possible elevation readings to the adjacent properties so there are no disputes and problems between property owners and some sort of result plan. Whether that be a storm drain tying into a sewer or something so that the water isn't just being dumped off to someone else. That would include pictures and documentation of all of that. I think it would be a good idea for the Town of Burns Harbor to go forward with any kind of growing issues with sewers and drainage. There is very little in the existing culvert ordinance right now. McHargue asked if Lawson had a list of proposed changes so we could address them and then make the changes to the ordinance. Lawson stated he would put together his list and send out an email to the Plan Commission board for review. McHargue stated the ordinance also reads it is recommended that parties request the advice of the Burns Harbor Street Commissioner before making said installation and should such facility be inadequate or require replacement. I have talked with the Street Commissioner and he is okay with this being something that's handled by the Building Department and feels it is probably more appropriate. I'm not sure what everyone else's thoughts on that, but I do happen to agree with it especially if the Building Commissioner is going to be doing the inspections. The consultation should come through the Building Department and skip the Street Department. This will stop our citizens from having to consult with two different people and get two different opinions and potential situations. McHargue stated for Lawson to forward over any recommendations and then the Plan Commission can start developing an ordinance. Then we can move forward with potentially adopting that ordinance.

Bozak asked Lawson about inspections at the steel mill. Lawson stated they informed me that they are getting ready to adjust all of their fees and things and they will keep me in the loop of it all.

Bozak stated I know Mr. Anaya is not here, but is there any update on his progress and what is going on at that property. I don't want to overlook a deadline that we set. Lawson stated I spoke with Mr. Anaya and made sure he understood that he has to come here to the Plan Commission meeting and give an update. I went out to his property with Councilman Jack McGraw and we found that he had cut all of the load-bearing rafter tails on the roof from both sides of the house. At that point, I told him that he was to stop all work and he needed to get a licensed contractor to come out and fix that issue before anything else happened. He followed me back to the Building Department where I gave him a list of all licensed contractors in the Town of Burns Harbor, so he had plenty to choose from. I talked to Mr. Anaya about a week ago and he told me he was going to meet with a contractor and would give me an update. I have not heard from him since. So, I went back out to the property and I noticed that the upper-level gable window was secured with Tyvek and it had been cut and pulled back. I knocked on the door and walked around the house. I saw that there were additional building materials inside the house, which points to him doing something there. But he has not contacted me. At this point, the property is very unsafe. I do have a chronological list of all of the violations and reports put together if the board would like to see that.

Good of the Order and Any Other Business

McHargue stated at this time if anyone would like to speak, I am going to need you to come to the podium and I will need your name and address when you speak. There is a microphone so that everyone can hear you.

Dr. Alexander Stemer- 46 East Road- Stemer stated I am a member of the Town Council in Dune Acres and I want to express our extreme interest and concern about this project. I want to be assured that there is a place where we can be notified of when this next Town Hall meeting will be so we can further discuss this very controversial, potentially damaging issue. Will there be a place to sign up to be notified when the final date is selected? McHargue stated our next meeting will be advertised on our Town of Burns Harbor website and we will make sure to put that out on all social media as well as the date, time, and potential location. I do not know if this venue is going to be available every time that we need it, however, with moving into cooler weather we do have the Burns Harbor Fire Department garage as an option. As of right now, our next scheduled meeting is scheduled for October 7, 2024. The location will depend on what is on our agenda. If none of these zoning or data center-related items are on there, I think we would have to determine whether there would be a crowd that would require us to spend taxpayer dollars to rent a room that may have two people in it. But, if we are going to have this on our agenda, we will make certain that we have a venue that can handle at least this capacity. A resident asked if the Provident Realty Advisors meeting would be held before or after the October Plan Commission meeting. McHargue stated that the meeting is being put on by Provident Realty Advisors and not the Town of Burns Harbor, so that is up to them. I assume they will reach out to the Town of Burns Harbor and supply us with that information, date, time, and location so we can assist in advertising it. I wish we had a concrete date and time, but I don't have that at this time.

Carrie Davis 1217 Stanley St.- Davis stated I had something written down, but with the change in what Provident has done, I have chicken scratch. First and foremost, I would like to take up front that I am not against data centers, but I am 100% against placing a data center anywhere near a residential area. I would like to take this time to discuss the petition Provident Realty Advisors gave the Town of Burns Harbor Plan Commission. I believe the petition that was presented is weak and poorly written. It leaves out many important things that will protect our community. In the petition, Provident states that there will be no impact that will negatively affect our property values. They also state that the proposed use will in no measurable way alter the essential character of the area, and the proposed use will not frustrate or infringe on the use or enjoyment of the neighboring properties. My concern is that the illusion they are presenting will not be the outcome they are going to provide. That is why they only give you a concept rather than a complete, detailed plan. Many of the other communities have faced the problem of "not getting what was proposed" because these facilities were built and rules were ignored. Now the communities are in legal battles with multi-million-dollar companies. It has happened to other communities and it can happen to us. Do not destroy our community just because they are dangling a few tax dollars over our heads. I'm asking the Planning Commission tonight to listen to the community and deny the whole process. Please protect our property values from dropping, protect our health, protect our peace, and preserve what little bit of sanctuary we have in this town. The property is zoned residential, and I ask you to keep it that way. Furthermore, just from listening to the talk, if the Town of Burns Harbor code states that you cannot make special zoning for future projects, then this should automatically be voted down and denied. There is no way they can make this work without making a special zone.

Neil Stout 209 Trail Creek Dr.- Stout stated I believe you may want to recalibrate your dates. The attorney for Provident has said they will not be ready for the town meeting and that they will host a meeting in early October. Presumably, you would want to wait until that was done so that they could digest what they got and then come back with their list. If they come back in early October, they are just going to continue it again. That is kind of like an insurance company waiting for an old man like myself to die before they make their payout. This is a calculated project, calculated to get this group of citizens all concerned like we are. I am not for a hyper-scale data center. I am not opposed to data centers. Microsoft and Amazon seem to be a little bit more forthcoming because they know they are going to be the people running it. We don't know who is going to

have this one as soon as the Plan Commission passes any kind of enabling ordinance and any zoning changes. If you don't have the provisions in there that deny foreign ownership, that require noise, visual, and all kinds of protection measurements, everything is going to lose control. I am against 120-foot-tall abominations 50 feet from my house.

James Constantine 252 Haglund Rd. – Constantine stated give me one legal reason why you can't make a motion to turn down changing the zoning of that property. Make a vote and let us know where you stand on it. Quit wasting our time. McHargue stated simply put for me, I feel like anybody that comes before any board should have the opportunity to be able to give a clear answer of what it is that they are looking at. I also think whether this is a proper development for this community, will be determined and voted on by this board, and then subsequently, it will be up to the Town Council to decide that. As you know, we are just an advisory board, and we don't make any final decisions. In addition, I think that we try to make it clear in the first meeting that whether or not this data center gets built in the Town of Burns Harbor, not having an ordinance that addresses how we would restrict things opens the door to the next developer to call and create the same scenario, instead of having an answer when they look at current code. So, if we say it must be a setback to residential of this distance, then we could set that in our town code. Constantine asked why change it. McHargue stated I am not saying that it should be changed. McHargue stated you have been a resident of this town for a very long time. Data centers are not addressed in the town code. Because this is a newer type of thing, there are two elements to this. There is the zoning district, which even if created, doesn't mean it's going to go anywhere. The question is do we go through creating a zoning district that meets the standards that we want, and then if anybody comes knocking on our door, it is going to have to meet those standards? Or, every time that somebody else fills out a petition and comes to the Town of Burns Harbor, we are going to be right back here with a new proposed zoning ordinance, a new request to rezone a property, and every time there is going to be 120-150 people that are mad at us already. If a property owner, or Provident in this case is under contract with it, they have the option to build a request to have a property rezoned just like anyone else does if they want to rezone their property. The proper petition is filled out and then we hear the request.

Dominic Orlando- Orlando stated my family is 100% against the ordinance and petition to allow for data centers in Burns Harbor. I am here to tell you one of the many reasons why my dad is so passionate about this. I have epilepsy, and luckily, I have not had an episode in several years. Although I have not had an episode in years, that does not mean it can be triggered again. Some people with epilepsy can experience seizures triggered by certain sounds or stimuli, and I am afraid that this might trigger seizures for me again. Sleep deprivation is a common trigger for seizures in many people with epilepsy. Lack of sleep can disrupt normal brain functioning, potentially leading to increased abnormal electrical activity that may trigger seizures. Sleep deprivation and poor sleep can decrease seizure thresholds in people with epilepsy, resulting in poorer seizure control. Let me tell you a little about Dr. John Lyver. Dr. Lyver had an extensive and accomplished background in science, engineering, and public service. He has a Master of science in electronic and computer engineering, a Master of science in computational science and informatics, a PhD in computational science and informatics, PhD in computational physics, worked for NASA for 35 years, focused on safety analysis of nuclear materials for space missions, retired from the U.S. Navy as a Lieutenant Commander, and has served on a Planning Commission board for William County. To summarize, he is very smart. He talks about how low-frequency noise from data centers can travel long distances potentially affecting residents far from the source. Low-frequency sound waves are highly resilient and can penetrate buildings more easily than high-frequency noise. It is often felt as vibrations rather than heard, which can be especially disruptive to sleep. If the zoning is approved, my family will have to put our house up for sale. I love my neighborhood, my friends, my school, and playing basketball for Chesterton High School. I do not want to move. This is not something to take lightly, and I hope you all have

done your homework and have read my dad's emails. Those emails are designed to educate you, protect you, and protect our neighbors. Please keep that in mind when you make your decision. I will end my statement with this, neighbors want good neighbors. Hyper-scale data centers should never be built within a mile of homes, schools, churches, or parks. These should also be built 3-5 miles away from National and State Parks. We will never support this or any future data center project in this town.

Chuck Thomas 357 Maryland Rd.- Thomas stated before the first meeting for the data center was ever held, I turned in 50 questions and none of those questions have been answered. At least 30% of data centers in the United States are owned by the Chinese. I have no idea how many are owned by the Russians. The problem I have with this data center is that if they spend according to Indiana law, 750 million, they can get a tax rebate. If they spend the 1.2 billion on this data center, they will get a tax break for 50 years and we will not see a dime of that money. We do not have a fire engine that can handle the 120-foot buildings that they want to build.

Bill Herring 1232 Castle St.- Herring stated I think we are at a critical point with SD 8. Everything that was in the petition that you were given has been adopted in SD 8, which is confusing. There are four levels of data centers, some of them as innocuous as a little office building. Hyper-scale data centers are the fourth level of data centers. They are at the top of the food chain. I cannot imagine that you are even giving this any consideration. They do not have a site plan; they have a concept plan. The concept plan is a nice set of pastel drawings with people walking along sidewalks in front of tall buildings. They are already telling you the whole thing is going to be secured with fencing all around. You need to understand there is noise involved, noise pollution, light pollution, and odors and hazardous pollution. When you turn on the generators that must do the backup, this thing is going to be so lit up at night. It is going to look like a football stadium playing a night game. I just cannot believe you have let it get this far, please do your homework. Please do not let them scam you into this.

Izzy Orlando- Orlando stated my family is 100% against the ordinance and petition to allow for data centers in Burns Harbor. I asked my parents one day if so, many people are against the data center, so why don't we just tell them no? If someone were to offer me a cigarette, alcohol, or drugs, I would just tell them no. My parents then told me it's complicated and blah blah procedures, blah blah politics, blah blah lawyers. They were going on about how people need to watch what they say and who they talk to. I love my house, my backyard, my school, and my friends. I do not want to move just because some big dumb company wants to come in and ruin this town. If you grown-ups think that you are going to sneak this ordinance through, think again. You are messing with my family, my besties, and my future. Who knows, maybe I will be like my dad and start posting about this on TikTok and Instagram. Maybe I will start researching zoning codes and laws and tell you why this does not make sense. In the meantime, be grown-ups and listen to the public. They have given you the cheat code for this game. Neighbors want good neighbors. Hyper-scale data centers should never be built within a mile of homes, schools, churches, or parks. These should also be built 3-5 miles away from National and State Parks. We will never support this or any future data center project in this town.

Gary Brown President of Isaac Walton Porter County- Brown stated I am against this location. We have taken pictures of these data centers in other states where they spread it out over hundreds of acres, and the low-frequency problems are still there. But these areas are no longer residential or areas where you want to grow things. It is a dead zone. Do you want to put a dead zone in the middle of the Town of Burns Harbor? I think Burns Harbor is probably the highest per capita industrial area in all of Indiana. I know a large part of the budget is from the steel mill. Do you want to chase them out of here because you are going to build this monstrous data center? Please reconsider this.

Ed Orlando 1149 Gustafson Ln. – Orlando stated I have a few handouts for the board that I want to have recorded in the minutes. This ordinance is a lot different than the ordinance you have in front of you. Let us look first at the Town of Burns Harbor, with the Burns Harbor logo. This is the SD 8 that is on the table and ready to be passed. This is the worst petition and ordinance that is trying to protect their residents that I have ever seen. I have asked this question many times and no one has answered it. Who wrote the ordinance and who helped draft the ordinance? How does it get this far where you guys could have had this ready for the Town Council on August 14, 2024, and could have put us in a really bad situation? No one did their homework. Provident tried to take advantage of us and put this pile of garbage in your laps. How can you guys not deny this piece of garbage this evening? The other document is not perfect, but it is much better than the ordinance that you guys have. This is the ordinance from Branson, Missouri. I have been sending emails to everyone, they are so sick and tired of my emails, but my emails will not stop until Provident goes away. I will highlight some things that were blatantly either left out or not mentioned at all. First thing, I would want these data centers to be one to two miles away from residential and three to five miles away from National and State Parks. That will allow them not to build. Orlando referenced key points throughout the handout. A copy of the handout is below and will be on file at the Town of Burns Harbor Town Hall. How many of you have visited a hyper-scale data center? I have visited several of them, and what I can tell you is that they are just big industrial complexes. The fact that we are labeling this as light industrial is a complete joke. These things are heavy, heavy industrial. They are just big utility lines. The fact that you are allowing Provident to again determine the calendar and not listen to the residents is ridiculous. If we must continue this then you guys will continue to get emails from me every single day and see the Facebook posts every single day. I do have one more submission for the minutes. It is a document of all of the people who have signed the no-data center petition. A copy of this petition will be on file at the Town of Burns Harbor Town Hall.

9/4/24, 7:56 AM

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Ed Orlando <ed.orlando07@gmail.com>

A Comparison of Ordinances | Burns Harbor v Branson, MO

Ed Orlando <ed.orlando07@gmail.com> Sat, Aug 31, 2024 at 6:27 AM
To: jennchargue@burnsharbor-in.gov, Roseann Bozak <rbzak@burnsharbor-in.gov>, ldraves@burnsharbor-in.gov, nicholas.living@burnsharbor-in.gov, jmcargue@burnsharbor-in.gov, aadcock@burnsharbor-in.gov, nloving@burnsharbor-in.gov, mduinlap@burnsharbor-in.gov, gtm46304@yahoo.com, boperal@burnsharbor-in.gov, secretary@burnsharbor-in.gov, ascott@burnsharbor-in.gov, blancard@burnsharbor-in.gov, klumb@burnsharbor-in.gov, cluter@burnsharbor-in.gov, bhogge@burnsharbor-in.gov, rrecolius@burnsharbor-in.gov, minier@burnsharbor-in.gov, jmeeks@burnsharbor-in.gov, idunlap@burnsharbor-in.gov, jshen@burnsharbor-in.gov, amigliori@burnsharbor-in.gov, mwatkins@burnsharbor-in.gov, jlawson@burnsharbor-in.gov, imccormick@burnsharbor-in.gov, buldinglerk@burnsharbor-in.gov, mowacki@burnsharbor-in.gov, kburt@burnsharbor-in.gov, parkdirector@burnsharbor-in.gov, bdowney@burnsharbor-in.gov, afriday@burnsharbor-in.gov, tsufana@townofporter.com, jerikason@townofporter.com, jkenneke@townofporter.com, hlyer@townofporter.com, ralsch@townofporter.com, ewagner@townofporter.com, araffin@townofporter.com, cgyrich@townofporter.com, nve@townofporter.com, mnachnik@townofporter.com, bjunge@townofporter.com, shultman@townofporter.com, dphillips@townofporter.com, jdmittroff@townofporter.com, tduffe@townofporter.com, dthrow@townofporter.com, idurkin@townofporter.com, mreyrods@townofporter.com, mburke@townofporter.com, lmesgan@townofporter.com, wlopez@townofporter.com, rewin@townofporter.com, jhogand@townofporter.com, bmsling@townofporter.com, kspanier@townofporter.com, cpeffers@townofporter.com, agucciardo@townofporter.com, dcraff@townofporter.com, kkrirman@townofporter.com, knovers@chestertonin.org, James Ton <jton@chestertonin.org>, ecollins@chestertonin.org, dlatata@chestertonin.org, sdarnel@chestertonin.org, fisher@chestertonin.org, jackman@chestertonin.org, riley@chestertonin.org, jkolwaski@chestertonin.org, jcarney@chestertonin.org, fowens@chestertonin.org, sudvare@chestertonin.org, modell@chestertonin.org, mgavelek@chestertonin.org, dmarchetti@chestertonin.org, lkopko@chestertonin.org, jkolwaski@chestertonin.org, chammar@chestertonin.org, bohn@chestertonin.org, bmatias@chestertonin.org, wmarcial@chestertonin.org, pahm@chestertonin.org, joseph.husey@nwi.com, andrew.steele@nwi.com, sharon.ross@nwi.com, cleditor@chestertonin.org, sports@chestertonin.org, renee@chestertonin.org, pivoice@post-trib.com, southtownservice@tribpub.com, molly.neary@iga.in.gov, sydney.kokinis@iga.in.gov, ivant26@comcast.net, tonvelli@comcast.net, bobandmargot@gmail.com, rob.carnes@nwi.com, tomlou25@aol.com, daracadmissioner@gmail.com, cwyhia@aol.com

Good morning,

I hope this letter finds all of you well.

I find it odd and disturbing that an outside company, like Provident, can come to the Town of Burns Harbor, work with our Town lawyer, and proffer up a petition and ordinance that could have been passed along to the Town Council and signed on August 14th. Thank goodness we stopped it! Otherwise, we would be two weeks into a situation where the residents, including Porter, Chesterton, and Dune Acres, would have zero protection.

PLEASE NOTE: I DO NOT SUPPORT THE BUILDING OR REZONINGS OF A HYPERSCALE DATA CENTER WITHIN AT LEAST ONE MILE OF RESIDENTIAL AREAS, SCHOOLS, PARKS, CHURCHES. I WOULD LIKE THESE 3-5 MILES FROM NATIONAL PARKS, STATE PARKS. I DO NOT THINK THIS CURRENT PROVIDENT PROPOSAL IS CONGRUENT, NOR IS IT A PROPER USE FOR THE PROPERTY LOCATED AT 1234 BABCOCK. THERE ARE ADDITIONAL ITEMS I WOULD LIKE TO CHANGE AND MODIFY

In no shape or fashion do I believe that this area should be rezoned to Light Industrial to serve the need for a Hyper-Scale data center. Even labeling this project as light Industrial is incorrect, in my opinion. But I do believe that extra information is better than less information.

IN OTHER WORDS, THIS EXERCISE IS FOR COMPARISON PURPOSES ONLY AND SHOULD NOT BE THE PATH WE PURSUE. THE PATH IS TO REJECT THE SD8 ZONING AND REJECT THE REZONING OF THE LAND FROM RESIDENTIAL TO INDUSTRIAL.

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9/4/24, 7:56 AM

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With this said, I did find an ordinance from Branson, MO that has a lot more language that at least attempts to protect its residents. You will see it is quite different and much more detailed compared to the Branson, MO. I do believe that extra information is better than less information.

- If you need time to get organized and prepared, some towns suggest a **100-day administration pause** so that you can have time to research these ordinances and strategize
- I didn't see a height restriction, but when I spoke with my contacts, they thought **35-38 feet was reasonable (1 full data center story)**. When I visited the ones in Papillion, NE and Council Bluffs, they appeared to be no taller than 40 feet. I am not sure why 120 feet is listed on the ordinance.
- They think we should use the National and State Parks to our advantage. Virginia has tried hard to get 1-mile setbacks from National and State Parks. I would prefer 3-5 miles.
- Has the Town of Burns Harbor filed out an application to the National and State Parks to ensure they are on board with this project? I want to make sure the Town does not get sued later in the process by not following proper procedure.
 - o <https://cnva.org/bill-of-the-day-data-center-growth/>
 - o <https://www.datacenterdynamics.com/en/news/virginia-lawmakers-propose-new-bills-limiting-data-center-development>

Thank you,

Ed Orlando
Concerned Burns Harbor Resident

Here is a note one of the residents sent to the Town of Peculiar. They are in a much different situation.

Gentlemen,

Attached is an ordinance that Branson Missouri passed on July 28th on Development standards, land usage and Zoning code language related to Data centers, Crypto mining and Bitcoin related development. I feel there are a couple things that should be modified and would suggest those be considered.

1. All definitions to be applied to usage charts as **Special Usage or conditional usage**. Because of the variables that come from these facilities
2. **Permitted At-right should never be allowed** and should be considered on individual merits and location.
3. **Min of 1,000ft set backs from Residential Districts, schools, churches ect.** I think it should be at least a mile. This to include all exterior substations, generators and utilities. Buffering zones to contain substantial 15-20' Berms and screening. A minimum of 500' Buffer zone outside of security fence between Residential Districts.
4. **500' Setbacks** for all other usage groups unless same usage group as all adjoining properties then 200' Set backs.
5. All utility accessory usage to be fully screened from any residential Districts, Primary road ways and high visibility zones.

The key to this is maintaining the special usage designation as to allow considerations for if a setback and buffer zone could be reduced or increased as applicable.

I am happy to help and participate in any discussions or focus group that would benefit a successful passing of zoning that would be more compatible with communities and citizens of Cass County.

3 attachments

03_Branson Data Center code.pdf
3657K

01_Burns Harbor - An Ordinance Establishing A New Special Use Zoning District.pdf
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RESOLUTION NO. MC24-07

REQUEST FOR MUNICIPAL CODE AMENDMENTS THROUGHOUT CHAPTER 94, INCLUDING BUT NOT LIMITED TO THE INDUSTRIAL ZONING DISTRICT, NOISE REGULATIONS, AND SPECIAL USE REQUIREMENTS FOR DATA CENTERS, DATA MINING AND SIMILAR INDUSTRIES.

WHEREAS, it is the desire of the Planning Commission to have zoning regulations in the Branson Municipal Code that are clear and concise for understanding and interpretation; and

WHEREAS, it is the desire of the Planning Commission to ensure the Unified Development Code is current and user friendly; and

WHEREAS, the Planning Commission has determined that amendments to the Branson Municipal Code are reasonable and necessary; and

WHEREAS, the Zoning Regulations for the City of Branson, Missouri, require a Public Hearing before the Planning Commission for the approval of amendments to the Unified Development Code; and

WHEREAS, a Public Hearing was held before the Branson Planning Commission on July 29, 2024 at 6:00 PM in the City Council Chambers located at 110 W. Maddux Street, Branson, Missouri; and

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF BRANSON, MISSOURI, AS FOLLOWS:

Section 1: The Planning Commission hereby recommend approval of Municipal Code Amendments to Chapter 94, including but not limited to the Industrial Zoning District, Noise Regulations, and Special Use Requirements for Data Centers, Data Mining, and Similar Industries as described within Exhibit 'A'; attached hereto and incorporated by reference herein.

Section 2: This resolution shall be in full force and effect after its passage and approval.

ADOPTED, by the Planning Commission of the City of Branson, Missouri, this 29th day of July, 2024


Gary Gromm
Chairperson

ATTEST:

Amanda Ross
Director of Planning and Development

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BILL NO. {customfields.BillNumber} ORDINANCE NO. _____

1 REQUEST FOR MUNICIPAL CODE AMENDMENTS THROUGHOUT CHAPTER 94,
2 INCLUDING BUT NOT LIMITED TO THE INDUSTRIAL ZONING DISTRICT, NOISE
3 REGULATIONS, AND SPECIAL USE REQUIREMENTS FOR DATA CENTERS, DATA
4 MINING AND SIMILAR INDUSTRIES.

5 WHEREAS, it is the desire of the Planning Commission and the Board of Aldermen to have
6 zoning regulations and a Unified Development Code in the Branson Municipal Code that are clear
7 and concise for understanding and interpretation; and

8 WHEREAS, the language of this Bill has been submitted to the Planning Commission, which,
9 after conducting a public hearing on the same which was properly noticed, has recommended that
10 the Board of Aldermen amend the Zoning Code of the City of Branson as provided herein; and

11 WHEREAS, a public hearing was held by the Planning Commission at City Hall in Branson,
12 Missouri at the hour of 6:00 PM on July 29, 2024; and

13 WHEREAS, the Planning Commission has recommended approval of the request; and

14 WHEREAS, a public hearing was held by the Board of Aldermen at City Hall in Branson,
15 Missouri at the hour of 6:00 PM on August 1, 2024; and

16 WHEREAS, the Board of Aldermen has determined that amendments to the Branson Municipal
17 Code are reasonable and necessary; and

18 WHEREAS, the Board of Aldermen has conducted a public hearing on this matter in compliance
19 with Chapter 89 RSMo.

20 NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE
21 CITY OF BRANSON, MISSOURI, AS FOLLOWS:

22 Section 1: It is the intention of the Board of Aldermen, and it is hereby ordained that the
23 provisions of this ordinance shall become and be made a part of the Branson
24 Municipal Code, and the sections of this ordinance may be renumbered to
25 accomplish such intention.

26 Section 2: That the Branson Municipal Code, Chapter 94 – ZONING, and the corresponding
27 chapters listed below, is hereby amended to read as follows:

- 28 • ARTICLE I. – IN GENERAL.
- 29 o Sec. 94-5. – Definitions.
- 30 • ARTICLE IV. USES
- 31 o Sec. 94-60. – Table of Permitted Uses.

- 32 ▪ Table 94-60.1 Permitted Uses
- 33 o Sec. 94-61. – Use and Structure Standards.
- 34 o Sec. 94-62. – Special Use Standards.
- 35 • ARTICLE VII. – LANDSCAPING AND SCREENING
- 36 o Sec. 94-105. – Utility and service area screening.

37 CHAPTER 94
38 ARTICLE I. IN GENERAL
39 Sec. 94-5. – Definitions.

40 For the purpose of this chapter, any words defined in the building code of the city and not
41 specifically defined herein shall be construed as defined in the building code of the city. Any
42 word not defined herein or in the building code of the city shall have its usual meaning unless
43 otherwise provided in this section. For general definitions and rules of construction applicable
44 throughout this Code, see section 1-2.

45 [Data-center means a facility whose primary service is data processing, and is used to house
46 computer systems and associated components, such as telecommunications and storage systems,
47 including but not limited to, web hosting organizations and internet service organizations. A
48 server farm, telecom hotel, carrier hotel, telehouse co-location center, or any other term
49 applicable to facilities which are used for these specified purposes shall be deemed to be a data
50 center.]

51 Data center means a facility whose primary service is data processing or data storage,
52 and is used to house computer systems and associated components, such as central
53 processing units, graphical processing units, neural networks, quantum bits, quantum
54 processors, memory, data routing, data storage, server farm, bitcoin mining, crypto
55 processing, virtual private networks, virtual servers, artificial intelligence training or
56 processing, image processing, cloud computing, email servicing, a telecom hotel, telehouse
57 co-location, or any other term applicable to facilities which are used for such purposes shall
58 be deemed to be a data center.

59 Cryptocurrency means digital currency in which encryption techniques are used to
60 regulate the generation of units of currency and verify the transfer of funds, operating
61 independently of a central bank.

62 Cryptocurrency Data Center means a leased or owned boundaries of floor space
63 devoted to the operating, data processing equipment for Commercial Cryptocurrency
64 Mining; excludes spaces for commercial offices, storage, shipping and receiving,
65 warehousing, or any other space that is not electronic processing.

66 Commercial Cryptocurrency Mining means the commercial process by which
67 cryptocurrency transactions are verified and added to the public ledger, known as the
68 block chain, and also the means through which new units of cryptocurrencies are released.

88 through the use of server farms or data centers employing data processing equipment. Any
89 equipment requiring a High-Density Load Service, for a server farm or data center, will
90 constitute a commercial cryptocurrency mining operation.

91 Cryptocurrency Server Farm means three or more interconnected computers housed
92 together in a single facility whose primary function is to perform cryptocurrency mining or
93 associated data processing.

94 Manufactured Engineered Non-Residential Unit (MENU) means an engineered
95 structure, non-residential in use designed for data centers.

96 Decibel (dB) means a decibel (dB) is ten (10) times the common logarithm of the ratio
97 of two power terms expressed in the same units of power.

98 Sound Pressure Level (SPL) means the sound pressure levels stated in dB units
99 referenced to 20 micropascals, with a C frequency weighting and a 10 ms response with
100 peak detection per ANSI S1.4-2014.

101 Noise means any sound which annoys or disturbs humans or which causes or tends to
102 cause an adverse psychological or physiological effect on humans.

103 Noise Disturbance means any sound which: (a.) Endangers or injures the safety or
104 health of humans or animals; or (b.) Annoys or disturbs a reasonable person of normal
105 sensitivities; or (c.) Endangers or injures persons or real property.

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CHAPTER 94
ARTICLE IV. USES
Sec. 94-60. – Table of Permitted Uses.
Table 94-60.1 Permitted Uses

Use Category	Ag/Residential										Mixed-Use/Nonresidential										Supplement to Use Standards
	Coa	A	LDR	MDR	HDR	NC	CC	MU	D	ENT	BUS	I									
Subcategory																					
None. This reference is to use, specific standards only, other code requirements may apply.																					
<u>Specific Use Type</u>																					
<u>Industrial</u>																					
Building Maintenance, Sales and Services																					
Construction Contractor																					
Data Center																					
Digital Production																					
Medical Research Laboratory																					
Medical Marijuana Testing																					

154 such as storage sheds, non-occupied secondary or accessory
155 structures, and MENU's.

156 (ii) Buffering. A minimum setback of 50 feet shall be required for all
157 structures located on the subject property measured from the subject
158 property lines to the property lines in question.

159 (iii) Distancing Requirements for Residential, Places of Worship,
160 Daycares, Parks, and Educational facilities. Data Centers shall
161 require a minimum 500 feet distance setback from a residential use or
162 district, place of worship, daycare, park, and educational facilities
163 measured from the subject property lines to the property line in
164 question.

165 (iii) Lighting: A photometric diagram showing predicted maintained
166 lighting levels produced by the proposed lighting fixtures shall be
167 required. The maximum maintained vertical footcandle at an
168 adjoining residential property line shall be 0.5 footcandles, measured
169 at three feet above the grade.

170 (iv) Manufactured Engineered Non-Residential Unit (MENU). MENU's
171 shall be screened from view by a combination of landscaping, opaque
172 fencing, and/or a decorative opaque wall that is integrated into the
173 architecture of the structure. The fence or wall shall be of a height
174 equal to, or greater than the height of the MENU being screened.
175 Chain link fencing is not permitted as a screening method. On a case
176 by case basis, a line-of-sight analysis can be submitted to assess the
177 visual impact of the MENU on the surrounding environment. The
178 line-of-sight analysis can consider, but not be limited to: terrain,
179 obstructions, vegetation, buildings, and other objects.

180 (v) All utility lines serving the site and located on the subject property,
181 shall be contained underground.

182 (vi) All data centers shall be contained within a primary structure or a
183 MENU.

184 (vii) All parking areas, drive aisles, service areas, storage, and loading
185 docks shall be constructed of a hard surface (i.e. asphalt/concrete),
186 conforming to the Branson Municipal code requirements.

187 d. Sound/Noise Requirements:

188 (i) On site monitoring of sound: The permit holder shall provide to the
189 city, prior to the issuance of a certificate of occupancy or completion, an
190 affidavit that includes the following information:

191 1. Name and qualifications of the person who measured the sound
192 pressure levels, requiring a supervised and wet stamped report by a
193 qualified Missouri licensed Professional Engineer.

194 2. Equipment used. List all test results; equipment; equipment serial
195 numbers; equipment settings; copies of National Institute of
196 Standards (NIST) traceable calibration certificates; drawings and
197 pictures of the test setup including pertinent distance measurements;

Facility																					
Wrecker Service																					
Energy Production and Natural Resource Extraction																					
Energy Production, Renewables																					
Cogeneration Facility																					
Solar Array																					
Wind Energy Commercial																					
Wind Energy Small																					
Mining and Quarrying																					

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CHAPTER 94
ARTICLE IV. USES
Sec. 94-61. – Use and structure standards.

- (f) Industrial uses.
- (1) General. All industrial uses shall be subject to the following standards:
- a. All traffic hazards shall be minimized;
- b. Lights shall be directed away from adjoining residential areas;
- c. Off-street loading areas shall be available as needed; and
- d. No dust, smoke, fumes, gas, noxious odor, excessive noise or other atmospheric effluent shall exceed in intensity [at] past the boundary of the lot, [of conditions normally found in a residential neighborhood.]
- e. The operations shall not cause the dissemination of vibration or noise in excess of the maximum environmental noise level established by City Code of Ordinances Chapter 58, Article VII, Section 262 or other restrictions as contained in Chapter 94 as it relates to specific industrial uses.

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CHAPTER 94
ARTICLE IV. USES
Sec. 94-62. – Special Use Standards.

- (c) Industrial uses.
- (2) Data Centers.
- a. Data Centers. Data Centers shall be permitted with a special use permit in the Industrial (I) zoning district, or as further determined through a Planned Development (PD) approval. Modification of the conditions set out below may be specified as part of the approval of a special use permit, if noted on the application and required notification, when it is determined that the data center can be accommodated in a modified manner without adverse impacts on adjacent properties and that such data center will still meet the general intent of the limitations.
- b. Required conditions. All data centers shall comply with the following conditions:
- c. Site Requirements:
- (i) Primary Structure: A primary structure shall be required prior to the installation of a MENU. A primary structure excludes structures

- 198 and weather conditions during the tests including wind speed,
199 temperature and relative humidity.
- 200 3. Location of the noise measurements depicted on a scaled site plan.
201 The points of measurement shall be at all property lines and generally
202 at the points on those property lines most susceptible to noise from the
203 applicable equipment.
- 204 4. Sound pressure levels (SPL) at each property line.
205 5. Time and duration of measurements.
206 6. A statement attesting to the accuracy of the information provided and
207 a guarantee that the permit holder will not run their equipment,
208 including generators, at a greater sound pressure level than when the
209 measurements were made.
210 The city reserves the right to require independent verification of noise
211 measurements and/or to request additional measurements at different
212 point on the property. All measurements must comply with the noise
213 levels established in this Section of Branson Municipal Code.
- 214 (ii) Generators:
- 215 1. Testing of generators is prohibited between the hours of 11 p.m. and 7
216 a.m.
- 217 2. If generators are located outside of an enclosed building a screening
218 wall shall be required.
- 219 (iii) The SPL attributable to infrastructure of the data center property shall
220 not exceed 65 dBC, as measured at all data center property line. For
221 data centers located within 500 feet of any allowed residential use or
222 district, place of worship, daycare, park, and educational facilities, the
223 SPL attributable to the facility shall not exceed 55 dBC at all data center
224 property line.
- 225 (iv) If at any time the data center operation exceeds the standards as set
226 forth in this Section, the special use permit shall be revoked and
227 operations shall cease.
- 228 e. Utilities and Resources Conditions:
- 229 (i) Confirmation of utility agreement: Prior to approval of a special use
230 permit, the applicant shall provide written verification from the utility
231 provider stating the following:
- 232 1. Adequate capacity is available on the applicable supply lines and
233 substation to ensure that the capacity availability to serve the other
234 needs of the planning area is consistent with the normal projected
235 load growth envisioned by the utility.
- 236 2. Utility supply equipment and related electrical infrastructure are
237 sufficiently sized and can safely accommodate the proposed use.
- 238 3. The use will not cause electrical interference or abnormal in line
239 voltage on and off the operating premises.

240 4. An agreement that if a power outage or shortage occurs, the data
241 center will be secondary to all other uses within the City of Branson
242 or surrounding properties.
243 (ii) Confirmation of water availability: If water is used for cooling, the
244 source and adequacy of the supply shall be provided.
245 (iii) Changes in resources or data center expansion: If a change in resource
246 occurs, a new special use permit shall be required for re-evaluation. If a
247 data center expansion is proposed, a new special use permit shall be
248 required for re-evaluation.
249 (iv) Certain foreign adversaries shall be restricted from developing data
250 centers within the City of Branson. The determination of a foreign
251 adversary shall be regulated on a case by case basis, as determined by
252 the United States Department of State.
253 (v) All requirements relating to noise and noise disturbance shall be
254 considered for data centers.
255 f. Modification of Use: Any modification to the data center site requirements;
256 number of MUNU, location of MENU, screening, lighting, sound/noise
257 requirements, and utilities requires an application for the special use permit.

CHAPTER 94
ARTICLE VII LANDSCAPING AND SCREENING
Sec. 94-105. – Utility and service area screening.

262 (2) *Mechanical equipment.*
263
264 a. *Applicability.* The standards of this section shall apply to all of the following:
265 (i) Electrical and gas-powered mechanical equipment;
266 (ii) Ductwork and major plumbing lines used to heat, cool, or ventilate; and
267 (iii) Power systems for the building or site upon which the equipment is located.
268 Roof or wall-mounted antennas and vent openings shall not be considered
269 mechanical equipment for purposes of these screening standards. The standards of
270 this section are not intended to apply to solar arrays, solar energy collection
271 systems, or small wind energy systems, if such systems are otherwise in
272 compliance with applicable building codes and development standards
273 requirements.
274 b. *Screening standards.*
275 (i) *Roof-mounted mechanical equipment.* Roof-mounted mechanical equipment
276 shall be screened by a parapet wall or similar feature that is an integral part
277 of the building's architectural design. The parapet wall or similar feature
278 shall be of a height equal to, or greater than the height of the mechanical
279 equipment being screened. Roof-mounted mechanical equipment, except

280 solar energy collection systems, is prohibited on single-family residential
281 dwellings.
282 (ii) *Wall-mounted mechanical equipment.* Wall-mounted mechanical equipment,
283 except air conditioning equipment (e.g., window AC units), that protrudes
284 more than six inches from the outer building wall shall be screened from
285 view by structural features that are compatible with the architecture of the
286 subject building. Wall-mounted mechanical equipment that protrudes six
287 inches or less from the outer building wall shall be designed to blend with
288 the color and architectural design of the subject building.
289 (iii) *Ground-mounted mechanical equipment.* Ground-mounted mechanical
290 equipment shall be screened from view by landscaping, a fence, or a
291 decorative wall that is integrated into the architecture of the structure. The
292 fence or wall shall be of a height equal to, or greater than the height of the
293 mechanical equipment being screened.
294 (iv) *Manufactured Engineered Non-residential Unit (MENU).* Manufactured
295 engineered non-residential units shall be screened from view by a
296 combination of landscaping, an opaque fence, or a decorative wall that is
297 integrated into the architecture of the structure. The fence or wall shall
298 be of a height equal to, or greater than the height of the MENU being
299 screened. Chain link fencing is not a permitted as a screening method.
300 On a case by case basis, a line-of-sight analysis can be submitted to
301 assess the visual impact of the MENU on the surrounding environment.
302 The line-of-sight analysis can consider, but not be limited to: terrain,
303 obstructions, vegetation, buildings, and other objects.
304 (v) *Alternate screening.* Alternate screening methods that meet the intent of this
305 section may be approved by the planning and development director.
306 Alternative screening might include, but shall not be limited to, increased
307 setbacks, increased landscaping, grouping the equipment on specific portions
308 of a site, architectural elements, and painting or otherwise causing the
309 equipment to blend with the site or structure.
310
311 NOTE: LANGUAGE WHICH IS **BOLD, UNDERLINED** HAS BEEN ADDED; LANGUAGE
312 WHICH IS [BRACKETED, STRICKEN] HAS BEEN REMOVED.
313
314 Section 3: This ordinance shall be in full force and effect from and after its passage by the
315 Board of Aldermen and approval by the Mayor.
316
317 Section 4: That should any section, sentence or clause of this Ordinance be declared invalid
318 or unconstitutional, such declaration shall not affect the validity of the remaining
319 sections, sentences or clauses.
320
321 Section 5: That the City Clerk is authorized by this Ordinance to correct any scrivener's errors

322 identified with in this Ordinance.
323
324
325 Read, this first time on this _____ day of _____, 20____.
326
327 Read, this second time, passed, and truly agreed to by the Board of Aldermen of City of Branson,
328 Missouri this _____ day of _____, 20____.
329
330
331
332 _____
333 Larry D. Milton
334 Mayor
335
336 ATTEST: _____
337 APPROVED AS TO FORM:
338
339 _____
340 Hillary Briand
341 City Clerk

Elaine Stout 209 Trail Creek Dr. – Stout stated we are all very frustrated because we can't get answers. This is a vast country. We have tons of undeveloped property and plenty of that in Indiana. Why are they fighting like feral cats over this little piece of land? There are a ton of places they could go.

McHargue stated we are hearing everything you have to say, but because we have no new information, we are discussing the same things we discussed at the last meeting. I can appreciate that everyone is still ramped up about this, but my question is, what are we gaining from this? We do not have the information, so there was a request to obtain more information. Provident is going to have that meeting and then I think once all that information is available, this board could then decide having all the information. But without that, we are stuck. Orlando stated they presented their presentation to the Plan Commission board on July 8th, they have this information. McHargue stated Mr. Orlando you have said a lot of things tonight. You said that we do not have a noise ordinance, which we have in Chapter 16, which would apply to this. You let all these people believe that none of that would apply. Orlando state in SD 8 there is no noise ordinance. McHargue stated if you look at every zone is there a noise ordinance attached to it? Orlando stated it did not matter. McHargue stated it does. It applies to any bordering residential property that would receive noise from any other district. Orlando stated that is not appropriate then because it doesn't apply to DVC's which are more sensitive to low frequencies. McHargue stated this board will not be deciding without having everything, so on that note, I have a motion to adjourn.

Announcements

None

Adjournment

Dunlap made a motion to adjourn at 7:13 p.m. Watkins seconded the motion. Poparad-Aye, Adcock-Aye, McCormick-Aye, Watkins-Aye, Bozak-Aye, Dunlap-Aye, McHargue-Aye. Motion passed.

Approved: October 7, 2024

Jeremy McHargue, President

Jill Sherrill, Secretary